

use, or disposal of the microorganism, or any combination of such activities, to the extent necessary to protect against an unreasonable risk of injury to health or the environment, as set forth in section 5(e) of the Act. EPA may issue an order under section 5(e) of the Act that requires certain testing to be conducted and presented to EPA after the applicable review period has concluded.

(iii) Following determinations described in paragraph (b)(1)(v) of this section, EPA will issue the submitter a document containing EPA's final determination and will submit for publication in the *Federal Register* a statement of the finding, as set forth in section 5(g) of the Act. Upon EPA's issuance of the determination document, the submitter may commence the manufacture of the microorganism without waiting for the end of the applicable review period.

(3) EPA may modify or revoke the prohibitions and limitations in an order issued under paragraph (b)(2)(i) or (ii) of this section after the applicable review period has ended if EPA receives additional information, testing, studies, or reports that EPA determines, upon review, demonstrate that such prohibitions or limitations are no longer necessary to protect against an unreasonable risk of injury to health or the environment. Where such information demonstrates that the prohibitions or limitations of the order are not sufficient to protect against an unreasonable risk of injury to health or the environment, EPA may modify the order or take other action, as appropriate, to the extent necessary to protect against such risk.

(4) No person submitting an MCAN in response to the requirements of this subpart may manufacture a microorganism subject to this subpart until EPA has issued a determination in accordance with paragraph (b)(1) of this section and taken the associated action required under paragraph (b)(2) of this section.

\* \* \* \* \*

**PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS**

■ 28. The authority citation for part 761 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

■ 29. In § 761.3 amend the definition for “Importer” by removing the citation

“§ 720.3(l)” and adding in its place “§ 720.3.”

\* \* \* \* \*

[FR Doc. 2024–28870 Filed 12–17–24; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 37**

[Docket No. DOT–OST–2024–0090]

RIN 2105–AF05

**Transportation for Individuals With Disabilities; Adoption of Accessibility Standards for Pedestrian Facilities in the Public Right-of-Way**

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT or the Department) is amending its Americans with Disabilities Act regulations to adopt, without modification, the Architectural and Transportation Barriers Compliance Board’s Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) as DOT’s regulatory standards for new construction and alterations of transit stops in the public right-of-way.

**DATES:** This rule is effective January 17, 2025.

**FOR FURTHER INFORMATION CONTACT:** For general questions, Holly Ceasar-Fox, Office of the General Counsel, U.S. Department of Transportation, (202) 366–7420, [holly.ceasarfox@dot.gov](mailto:holly.ceasarfox@dot.gov). For legal questions related to PROWAG, James T. Esselman, Office of Chief Counsel, Federal Highway Administration, (202) 366–6181, [james.esselman@dot.gov](mailto:james.esselman@dot.gov). For legal questions related to transit, Diane Alexander, Office of Chief Counsel, Federal Transit Administration, (202) 366–3101, [diane.alexander@dot.gov](mailto:diane.alexander@dot.gov). For questions related to intercity or high-speed rail, Linda Martin, Federal Railroad Administration, Office of Chief Counsel, 202–689–9408, [Linda.Martin@dot.gov](mailto:Linda.Martin@dot.gov).

*Electronic Access and Filing:* This document, the notice of proposed rulemaking (NPRM), all comments received, and all background material may be viewed online at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic

copy of this document may also be downloaded from the Office of the Federal Register’s website at [www.federalregister.gov](http://www.federalregister.gov) and the Government Publishing Office’s website at [www.GovInfo.gov](http://www.GovInfo.gov).

**SUPPLEMENTARY INFORMATION:** The Americans with Disabilities Act (ADA) directs the Architectural and Transportation Barriers Compliance Board (U.S. Access Board, or the Board) to issue minimum guidelines for accessible design to guide the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) in the development of ADA accessibility standards. *See* 42 U.S.C. 12204(a). On August 8, 2023, the Board issued its final rule on Public Rights-of-Way Accessibility Guidelines (PROWAG). (88 FR 53604).

Title II of the ADA sets forth accessibility requirements applicable to public entities. Under Title II, Part B, DOT is authorized to implement the ADA relating to nondiscrimination in the provision of public transportation services. *See* 42 U.S.C. 12149(a). The ADA directs DOT to adopt standards for accessible public transportation facilities that are “consistent with” final minimum accessibility guidelines issued by the Board. *Id.* at section 12149(b). Similarly, Title III of the ADA directs DOT to adopt regulations implementing the transportation provisions of Title III, applicable to private entities that provide specified public transportation services and provides that any standards adopted under such regulations must be “consistent with” final minimum accessibility guidelines adopted by the Access Board. *Id.* at sections 12186(a), (c).

Under these authorities, DOT issued a notice of proposed rulemaking (NPRM) to adopt the PROWAG into DOT’s ADA regulations on August 22, 2024 (89 FR 67922). The NPRM proposed to adopt the entirety of the PROWAG into DOT’s ADA regulations but noted that DOT’s independent regulatory authority under the ADA extends only to the accessibility of public transportation facilities. *See* 42 U.S.C. 12149(a), 12186(a), (c). As a result, the NPRM proposed that in adopting the PROWAG into DOT’s ADA regulations, DOT will apply only those provisions applicable to new construction and alterations of transit stops in the public right-of-way. PROWAG R210 requires transit stops and transit shelters to comply with technical requirements set forth in PROWAG R309. Elements required to be accessible under PROWAG R309 include the boarding and alighting area

at a sidewalk or street-level transit stop or the boarding platform, pedestrian access routes (PARs) that connect altered boarding and alighting areas or altered boarding platforms with existing pedestrian circulation paths, and, if provided, transit shelters and PARs connecting transit shelters with boarding and alighting areas or boarding platforms. Other PROWAG provisions applicable to transit stops in the public right-of-way include: fare vending machines (R210); operable parts of other fixed elements (R210); detectable warnings for boarding platforms (R205.5) and sidewalk and street-level rail boarding and alighting areas (R205.6); pedestrian signs (R208); PARs between newly constructed transit stops and accessible elements, spaces, and pedestrian facilities required to be accessible (R203.2.1); alternate transit stops (R204.2); and benches (R209.6.1).

Because DOT's independent regulatory authority under the ADA extends only to the accessibility of public transportation facilities, DOT's authority does not extend to regulating the accessibility of other separate elements of the public right-of-way, such as on-street parking spaces, crosswalks, or sidewalks, with the exception of the elements mentioned above, as applied to transit stops. Such other elements in the public right-of-way fall under the jurisdiction of the Department of Justice under Title II, Part A, of the ADA.

In addition to seeking comments on DOT's proposal to adopt PROWAG into its ADA regulations, DOT also requested comments on specific issues. First, noting that DOT's ADA standards must be "consistent with" the Access Board's PROWAG, the Department asked whether its accessibility standards should differ from the Access Board's PROWAG by adopting modifications that provide greater accessibility than the PROWAG or that clarify application of certain PROWAG provisions. Specifically, DOT requested comments on whether it should add restrictions on certain transit stop designs that locate the transit boarding and alighting area so that it coincides with vehicular lanes, including bicycle facilities. The Department expressed concern that these types of transit stop designs may impede accessibility for individuals with disabilities.

The NPRM proposed, as well, to add definitions of "transit stop," "public right-of-way," and "alteration of a transit stop" to 49 CFR 37.3. The Department also proposed that a transit stop project located in the public right-of-way on which construction has begun, or for which all approvals for

final design have been received, before the effective date of the final rule, would not be required to comply with DOT's PROWAG standards, but would otherwise be required to be readily accessible to and usable by individuals with disabilities. The Department also proposed an effective date of the final rule of 30 days after publication of the final rule.

As discussed in further detail below, DOT is proceeding with adopting the PROWAG into DOT's ADA regulations at 49 CFR part 37, without modification, as standards applicable to transit stops in the public right-of-way. In order to avoid duplication, since the entire text of the PROWAG is available in materials published by the Access Board, the Department is adopting the PROWAG into § 37.9 of the Department's ADA regulations at 49 CFR part 37 by cross-reference to 36 CFR part 1190.

### Comments to the NPRM

DOT published its NPRM proposing to adopt the PROWAG into DOT's ADA regulations at 49 CFR part 37 on August 22, 2024. The comment period ended on September 23, 2024.

DOT received 88 comments in response to the NPRM. Out of the 88 comments considered, 61 commenters expressed general support for the proposed rule, while 27 commenters did not provide a general opinion but rather focused their comments on specific issues. No commenters expressed general opposition to the proposed rule.

#### 1. *Overlapping Boarding Areas With Vehicular Lanes*

##### Comments

The greatest number of comments on the NPRM concerned DOT's request for comments on whether DOT should consider adding restrictions on certain transit stop designs that locate the transit boarding and alighting area so that it coincides with vehicular lanes, including bicycle facilities. The PROWAG does not currently address such designs, and DOT expressed concern that co-location of the boarding area with a vehicular lane, including a bicycle lane, may put a transit user with disabilities at risk of being struck while waiting to board or while alighting from a transit vehicle. The Department sought comment on whether allowing boarding and alighting areas to overlap vehicular lanes presents accessibility concerns, and whether it should consider adding a provision to R309.1 when it adopts the PROWAG into its standards restricting such co-location. DOT also sought comment on whether there are solutions short of prohibiting co-location that

would address accessibility concerns, such as alternative designs that prevent vehicular passage when riders are boarding or alighting from a transit vehicle.

DOT received comments from forty-four entities opposed to adding restrictions on transit stop designs that provide for overlap between boarding and alighting areas and bicycle lanes. Those entities included ten State departments of transportation (State DOTs), fourteen local public entities, four public transit providers, three disability advocacy groups, eight transportation-related organizations, two consultant groups, and three individuals. Arguments against adding restrictions on these types of transit stop designs included the following: (1) several entities that have used such designs reported no or minor instances of conflicts between cyclists or micromobility users (e.g., scooters) and transit users; (2) even if such conflict does exist, numerous design guidelines have been developed that minimize the potential for conflicts between transit riders and vehicles while retaining the key design features of multimodal transit boarding and alighting areas; (3) such designs are an emerging area of practice that would benefit from increased coordination and research; (4) the addition of restrictions would impact the scope of currently active bike lane projects and create additional barriers to their completion; and (5) prohibition of co-location would add more complexity to future active transportation projects, especially in constrained environments, and negatively impact the ability of entities to meet environmental and Vision Zero goals. Commenters also expressed opposition to DOT taking any action in this area in the absence of proposing specific regulatory language.

More specifically, several entities, acknowledging the potential for transit user—vehicular conflicts where transit stop designs provide overlap between vehicle lanes and the boarding and alighting area, argued that restricting such designs would deprive entities of necessary flexibility to accommodate all users of limited right-of-way and pointed to existing design guidelines from around the country that they contend effectively mitigate conflict concerns. One transit agency commented that it undertook its own design process for transit stops that could safely accommodate pedestrians, transit users, and cyclists and that, working alongside accessibility advocates, transit experts, and active transportation advocates, arrived at a design that has been implemented in

thirty locations. The entity reported few incidents between cyclists, micromobility users, and transit riders at these locations.

One local public entity reported using an overlapping transit stop/bike lane design at over forty locations with no record of reported pedestrian-cyclist accidents at such locations. The entity noted that through monitoring and evaluation, as well as consultation with the local disability community, it has continued to refine shared stop designs to promote safe and predictable interactions between bicyclists and bus customers. Other entities commented that research should continue to better inform the conversation before any regulatory action might be taken. The three disability advocacy groups that opposed regulatory restrictions at this time encouraged DOT to monitor ongoing research.

DOT received comments from fifteen entities in favor of adding restrictions on the co-location of boarding and alighting areas with vehicular lanes. These entities include ten disability advocacy groups, one State DOT, three local public entities, and one public transit provider. These entities generally contended that designs that allow overlap of boarding areas with vehicular lanes (e.g., bike lanes) present significant accessibility and safety concerns for people with disabilities, including those who are blind or have low vision, warranting restrictions through this rulemaking.

One disability advocacy group shared the concerns that DOT had noted about co-located boarding and alighting areas and bicycle lanes and noted that there was at least one instance in their community of a cyclist colliding with and injuring a transit rider alighting from a bus. This commenter emphasized that shared transit stop areas are becoming increasingly dangerous as bike lanes are used more frequently by individuals using electric bikes, electric scooters, and motor scooters, which can travel at much greater speeds. Another disability advocacy group added that although many cyclists and micromobility users act responsibly at conflict points, the personal experiences of members is that many cyclists and micromobility users do not reliably yield to pedestrians or transit riders at shared transit stop locations. Another commenter noted that shared transit stop designs can cause confusion for individuals with vision disabilities and increase safety concerns which may encourage some individuals with disabilities to avoid certain transit stops or shift their mode of travel to curb-to-curb service.

Many of the same commenters who encouraged DOT to add regulatory restrictions on shared or overlapping transit stops also encouraged DOT to restrict or provide further guidance on “floating” transit stop islands, a design in which the transit stop is set away from the sidewalk with a bike lane channel in between the sidewalk and the transit stop island. Commenters noted that in addition to transit stops that overlap with vehicular lanes, transit stop islands also present challenges and safety concerns for individuals with disabilities, particularly those who are blind or have low vision, who must cross the bicycle lane to reach the transit stop. Commenters stated that individuals with vision disabilities struggle to detect approaching cyclists at such locations and lack customary physical cues signaling the presence of a bus stop.

#### DOT Response

DOT continues to have concerns, as expressed in the NPRM, about the accessibility of transit stop designs that locate the transit boarding and alighting area so that it coincides with vehicular lanes, including bicycle facilities. These concerns were echoed primarily by disability advocacy groups, but also by commenters that opposed DOT taking any regulatory action at this time. In fact, most commenters who opposed regulatory restrictions recognize the inherent conflict that exists by allowing vehicular lanes to overlap with boarding and alighting areas but argue that allowance of design flexibility, particularly in constrained right-of-way environments common predominantly to dense urban areas, is vital to allow safe accommodation of travelers as a whole. They note that there is little data showing that the use of overlapping transit stop designs has led to major conflicts between transit riders and cyclists or micromobility users and point to existing design guides that have been developed to minimize the potential for major conflicts at such locations.

Despite DOT’s ongoing concerns about transit stop designs that locate the transit boarding and alighting area so that it coincides with vehicular lanes, DOT will not add any regulatory restrictions on such designs at this time. DOT recognizes the relatively recent development of these types of designs and the ongoing research taking place to identify the impact of such designs on transportation in general, including efforts to develop safe multimodal networks, but also more specifically on individuals with disabilities. DOT is encouraged by the number of comments

that reflected public entities working with individuals with disabilities to address safety and accessibility concerns in the design of transit stops and encourages continued coordination among all transportation stakeholders on these issues.

DOT also recognizes the concerns expressed by many commenters about the accessibility and safety of floating transit stop islands, including comments that urged further research on the use of wayfinding aids, such as tactile warning surface indicators, tactile directional indicators, and tactile warning delineators. DOT declines to take any action in this final rule with respect to floating transit stop islands but encourages further research on the accessibility of such designs.

#### 2. Definition of “Transit Stop”

##### Comments

DOT received seven comments regarding the proposed definition of transit stop. Three disability advocacy groups commented that DOT should remove the language in the definition limiting its application to stops used by transportation vehicles that operate on a fixed route or scheduled route. These groups argued that by focusing only on stops used by vehicles that operate on a fixed or scheduled route, the definition does not account for pick-up and drop-off locations used by demand responsive public transportation services. These commenters noted that many public transportation providers have begun and are likely to continue to deploy a wide range of demand-responsive transit models beyond paratransit service that should be addressed by DOT’s rule. Two transportation organizations commented that the definition of transit stop should expressly include the need for a pedestrian access route connecting to existing pedestrian circulation paths. One State DOT supported the proposed definition of transit stop, and one local public entity suggested that the definition of transit stop should include all elements required to be accessible at a transit stop.

##### DOT Response

As DOT explained in the NPRM, the ADA directs DOT to adopt standards for accessible public transportation facilities that are “consistent with” final minimum accessibility guidelines issued by the Board. *Id.* at section 12149(b). Similarly, Title III of the ADA directs DOT to adopt regulations implementing the transportation provisions of Title III, applicable to private entities that

provide specified public transportation services and provides that any standards adopted under such regulations must be “consistent with” final minimum accessibility guidelines adopted by the Access Board. *Id.* at sections 12186(a), (c).

Public transportation facilities subject to Title II of the ADA and DOT’s ADA regulations at 49 CFR part 37 are those facilities used in the provision of designated public transportation, which is defined in DOT’s ADA regulations as “transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.” 49 CFR 37.3. These facilities include bus and other transit stops in the public right-of-way operated by public transit agencies.

Public transportation facilities subject to Title III of the ADA and DOT’s ADA regulations at 49 CFR part 37 include those facilities located in the public right-of-way used in the provision of specified public transportation, which is defined in DOT’s ADA regulations as “transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.” 49 CFR 37.3.

DOT’s intent in the NPRM was to bridge the gap between the language used in its current regulations at 49 CFR part 37 regarding designated and specified public transportation and the language in the PROWAG, which does not refer to designated and specified public transportation but contains provisions specific to transit stops. To bridge this gap, DOT proposed adopting a definition of “transit stop” that mirrors the definition of transit stop in the PROWAG but also seeks to clarify that a transit stop is a transportation facility used in the provision of designated or specified public transportation.

The PROWAG defines “transit stop” as: “An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. This definition does not include intercity rail except where a stop is located in the public right-of-way.” PROWAG R104. DOT proposed adding a sentence to the end of this definition as follows: “A facility used in the provision of designated or

specified public transportation in the public right-of-way is a transit stop.”

As noted above, three disability advocacy groups commented that DOT’s proposed definition of “transit stop,” by focusing only on stops used by transportation vehicles that operate on a fixed route or schedule route, does not address stops in the public right-of-way that may be used by providers of demand responsive designated or specified public transportation. In response, DOT notes that the definition of “transit stop” in the PROWAG is intended only to cover those stops used by public transportation vehicles that serve fixed or scheduled routes. The bus boarding and alighting area dimensions, boarding platform requirements, and other elements included at R309 of the PROWAG were all developed to address the accessibility of stops used by public transportation vehicles that serve fixed or scheduled routes. Those specific requirements are not intended to apply to other locations in the public right-of-way that may be used by demand responsive designated or specified public transportation vehicles.

The PROWAG, however, includes provisions for other pick-up and drop-off locations in the public right-of-way. The PROWAG defines a “passenger loading zone” as “[a]n area that is specifically designed or designated for loading and unloading passengers, but that does not primarily serve vehicles on a fixed or scheduled route.” By noting that a passenger loading zone does not primarily serve vehicles on a fixed or scheduled route, the PROWAG distinguishes a passenger loading zone from a transit stop. The PROWAG further provides that “permanently designated passenger loading zones” other than transit stops, must comply with accessibility requirements. PROWAG at R212. The Access Board described the application of section R212 in further detail in the preamble to its final PROWAG rule: “Often, permanent passenger loading zones in the public right-of-way are comprised of a sidewalk cut out so that vehicles can pull out of the traveled way to unload passengers. However, a permanently affixed sign designating a passenger loading zone is sufficient to bring the loading zone under coverage of this rule. Passenger loading zones that vary with the time of day or the occupancy of a particular retail space, such as valet stands that are provided only during certain hours, are not considered permanently designated and are therefore not subject to PROWAG.”

DOT acknowledges that demand responsive designated or specified public transportation vehicles may use

passenger loading zones in the public right-of-way, but such loading zones are not necessarily exclusively designed for use by such vehicles; rather, they may often be used by individual, private vehicles. In developing its NPRM to adopt PROWAG into its ADA regulations, DOT viewed the scope of “passenger loading zones” as falling under DOJ’s ADA jurisdiction over all other pedestrian facilities in the public right-of-way, and, thus, DOT did not propose covering such facilities under its ADA rule. While DOT declines to finalize standards at this time concerning coverage of passenger loading zones applicable to providers of designated or specified transportation, DOT recognizes that this is an area of overlapping jurisdiction with DOJ and may consider proposing standards in this area in a future rulemaking. Even in the absence of enforceable standards, the ADA requires new and altered facilities, including facilities used in the provision of public transportation, to be accessible to and usable by individuals with disabilities. *See* 42 U.S.C. 12146, 12147. DOT encourages entities to follow the PROWAG guidelines applicable to passenger loading zones.

In response to these comments, however, DOT also acknowledges that a portion of its proposed definition of “transit stop” should be removed. The sentence reading “[a] facility used in the provision of designated or specified public transportation in the public right-of-way is a transit stop” is overbroad and unnecessary. A transit stop is a facility used in the provision of designated or specified public transportation, but not all facilities used in the provision of designated or specified public transportation are transit stops. As discussed above, a passenger loading zone may be used in the provision of designated or specified public transportation. As a result, DOT will remove this sentence from its definition of “transit stop.”

Regarding other aspects of the proposed definition of transit stop, two transportation organizations commented that the definition of transit stop should expressly include the need for a pedestrian access route connecting to existing pedestrian circulation paths, and one local public entity suggested that the definition of transit stop should include all elements required to be accessible at a transit stop. Both of these concerns derive from DOT’s proposed definition of transit stop identifying some but not all elements of transit stops for which PROWAG accessibility requirements would apply under DOT’s final rule. As noted previously, the PROWAG defines “transit stop” as “[a]n

area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. This definition does not include intercity rail except where a stop is located in the public right-of-way." DOT proposed adopting a definition of "transit stop" into its regulations mirroring the PROWAG definition but adding that "[t]ransit stops include, if provided, transit shelters and pedestrian circulation connections between transit shelters and bus boarding and alighting areas or boarding platforms they serve." The local public entity commenter expressed that by adding a sentence that includes transit shelters and pedestrian circulation connections in the definition of transit stop but excludes other elements that must be accessible if provided at transit stops, such as fare vending machines and benches, may confuse the public. Similarly, the two transportation organizations that commented on this aspect of the definition of transit stop felt that the definition should make clear the need for a pedestrian access route connecting to existing pedestrian circulation paths.

Upon consideration of these comments, DOT has decided to remove the additional sentence about transit shelters and pedestrian circulation connections from the definition of "transit stop" in DOT's final rule. In this way, the definition of "transit stop" in DOT's final rule tracks more closely with the definition of "transit stop" in the PROWAG. Other elements required to be accessible if provided at a transit stop are set forth clearly in the PROWAG itself, which is adopted into DOT's regulation by reference. As set forth in the NPRM, elements required to be accessible at a transit stop in the public right-of-way under PROWAG R309 include the boarding and alighting area at a sidewalk or street-level transit stop or the boarding platform, pedestrian access routes (PARs) that connect altered boarding and alighting areas or altered boarding platforms with existing pedestrian circulation paths, and, if provided, transit shelters and PARs connecting transit shelters with boarding and alighting areas or boarding platforms. The PROWAG contains other provisions applicable to transit stops in the public right-of-way that would be subject to DOT enforcement under this rule: fare vending machines (R210); operable parts of other fixed elements (R210); detectable warnings for boarding platforms (R205.5) and sidewalk and street-level rail boarding and alighting

areas (R205.6); pedestrian signs (R208); PARs between newly constructed transit stops and accessible elements, spaces, and pedestrian facilities required to be accessible (R203.2.1); alternate transit stops (R204.2); and benches (R209.6.1).

### 3. Alteration of a Transit Stop

#### Comments

DOT proposed to adopt a definition of "alteration of a transit stop" providing: "*Alteration of a transit stop* means a change to or an addition of a transit stop in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability." DOT received eight comments regarding the proposed definition. Four State DOTs and one local public entity commented that DOT should further clarify specific activities that would constitute an "alteration of a transit stop." One public transit provider commented that DOT should clarify that an "alteration of a transit stop" only includes activity that involves concrete work. One disability advocacy group commented that the definition of "alteration of a transit stop" should be consistent with the existing definition of "alteration" in DOT's regulations at 49 CFR part 37. And, last, one local public entity commented that the definition of "alteration of a transit stop" should be revised to read "alteration or addition of a transit stop" to ensure that practitioners understand that an addition of a transit stop to existing developed right-of-way is considered an alteration under PROWAG and not new construction.

More specifically, with respect to the types of activities that would be considered an alteration of a transit stop under the rule, one commenter asked whether resurfacing a road adjacent to a transit stop would be considered an alteration of the transit stop requiring the entire transit stop to be brought into compliance, to the maximum extent feasible, with PROWAG transit stop requirements. Similarly, another commenter asked if activities such as repairing a broken post, or fixing or replacing a sign, would trigger an obligation to bring the entire transit stop into compliance with PROWAG requirements. Commenters expressed concern that if small changes to individual elements at a transit stop triggered an obligation to ensure that the entire transit stop meets PROWAG standards, entities may choose to remove particular stops altogether rather than improve them.

#### DOT Response

DOT agrees with the commenters that the public needs clarification on what activities explicitly constitute an "alteration" under the proposed definition of "alteration of a transit stop" and the scope of improvements that would be required when a transit stop or part of a transit stop is altered. DOT specifically proposed a definition of "alteration of a transit stop" to distinguish alterations of such facilities from the definition of "alteration" in DOT's current ADA regulations at 49 CFR 37.3, which applies to alterations of facilities that are buildings or on sites. Thus, to the extent that one commenter suggested that the definition of "alteration of a transit stop" should be harmonized with the existing definition of "alteration," DOT declines to take that step because the definition of "alteration" that applies to buildings or sites contains language that is specific to those types of facilities. A separate definition of "alteration of a transit stop" is necessary.

DOT notes that the existing definition of "alteration" at 49 CFR 37.3 contains much more detail about the types of activities considered to be alterations of buildings or sites than DOT proposed for the definition of "alteration of a transit stop." Specifically, the existing definition of alteration is: "Alteration means a change to an existing facility, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility." This definition is a modification of the definition of "alteration" in the Access Board's 2004 ADA Accessibility Guidelines, which provided examples of the types of modifications to a facility that would constitute an alteration.

Similarly, DOT adopted its proposed definition of "alteration of a transit stop" from the PROWAG's definition of "alteration," which provides that an alteration or the term altered means: "A change to or an addition of a pedestrian facility in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability." In adopting the PROWAG, the Access Board deliberately chose to omit detailed examples of the types of activities that would be considered

alterations, choosing instead to allow DOT and DOJ, the ADA enforcement agencies, to provide necessary clarification. See Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 88 FR 53604, 53608 (Aug. 8, 2023). Because the term “alteration of a transit stop” narrows the scope of the types of activities that could be covered as compared with the general definition of “alteration” in the PROWAG, DOT believes it is appropriate to provide clarification of the scope of covered alterations and more detailed examples of “alteration of a transit stop” in the regulatory text as opposed to relying on the issuance of guidance statements at some future date, while not precluding the possibility of issuing further clarifying guidance.

Accordingly, DOT is adopting the following definition of “alteration of a transit stop” in this final rule: “*Alteration of a transit stop* means a change to or an addition of a transit stop, or a part thereof, in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability. Alterations include, but are not limited to, the reconstruction of an existing transit stop, the addition of a new transit shelter, the addition of a new bench, fare vending machine, or transit sign that identifies a stop or route, reconfiguring the interface of a transit stop with the street or sidewalk network, such as adding floating bus stops, adding a prepared surface for boarding and alighting, and rearrangement of transit stop elements, such as benches or fare vending machines. Normal maintenance such as painting transit shelters, replacing damaged transit shelter windows or screens, repairing a fare vending machine, replacing damaged sign posts, repairing existing curb, or repairing damaged benches or trash cans, are not alterations unless they affect the usability of the transit stop. Permanent closure of a transit stop due to service changes is also not an alteration of a transit stop.”

It is not possible to provide examples of all potential modifications to a transit stop in the regulatory definition of “alteration of a transit stop,” but DOT believes that the examples provided in this final rule illustrate the way particular modifications should be addressed. In addition, in response to comments regarding whether an alteration of an element of a transit stop necessarily triggers the need to bring the entire transit stop into compliance with PROWAG standards at the same time, DOT is modifying the definition of “alteration to a transit stop” to mean “a

change to or an addition of a transit stop, or a part thereof” (emphasis added). In making this revision, DOT intends to focus compliance efforts in the first instance on the part of the transit stop that is being altered. This phrasing is consistent with language in the ADA statute, which provides that alterations to an existing facility, or part thereof, must be made in such a manner that to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. 42 U.S.C. 12147(a). For example, should a public entity add a new bench at a transit stop, which is included as an example of an “alteration of a transit stop,” only those provisions of PROWAG applicable to benches added to an existing right-of-way would be required to be made accessible at the transit stop to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible. This would include the requirements for benches at transit stops set forth at R209.6.1 but would also include the provisions at R202.2 which require pedestrian access routes to connect altered pedestrian facilities to an existing pedestrian circulation path (a transitional segment may be used in the connection). Addition of a new bench at a bus stop would require the bench to be connected by a PAR to an existing pedestrian circulation path but would not trigger the requirement to bring the bus boarding and alighting area into compliance with PROWAG standards.

Similar approaches would be taken to other alterations of elements of a transit stop. If an entity adds a bus boarding and alighting area with a prepared surface to a bus stop that previously did not include a prepared surface (e.g., a stop identified only by a sign in the ground), the bus boarding and alighting area would be required to be made accessible to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible. The entity adding the new bus boarding and alighting area would be required to provide necessary PARs connecting the new bus boarding and alighting area to existing pedestrian circulation paths under PROWAG R309.1.3.2, which provides that “[i]n alterations, boarding and alighting areas and boarding platforms shall be connected to existing pedestrian circulation paths by pedestrian access routes complying with R302.”

#### 4. Compliance Exception for Projects in Construction Phase or Through Final Design

##### Comments

DOT proposed to include an exception in the regulation that would exempt from compliance with the final rule those transit stop projects located in the public right-of-way on which construction has begun or for which all approvals for final design have been received before the effective date of the final rule. DOT received two comments from State DOTs and one comment from a local public entity that urged DOT to exempt from compliance with the final rule all transit projects in the planning stage at the time the final rule becomes effective. One of the State DOTs commented that projects in the planning and design stages, but which have not yet completed final design, may have already completed right-of-way acquisition or signed contracts with utility companies and that the requirement to comply with newly adopted standards could result in delays to such projects.

##### DOT Response

DOT disagrees with the commenters’ recommendation to exempt transit projects in the planning and design stages from compliance with the newly adopted PROWAG standards at the time of the effective date of the final rule. The exemption for projects on which construction has begun or for which final design has been completed before the effective date of the rule strikes an appropriate balance for entities affected by the rule by recognizing the investment of resources in projects that have advanced to final design or construction versus ensuring that the benefits of the newly adopted standards are realized for projects that remain only in the planning or design phase. DOT followed this same approach with respect to compliance with the revised ADA Accessibility Guidelines that DOT adopted in 2006. DOT will adopt the exemption as proposed in the NPRM. DOT notes, however, that projects for which all final design approvals have been received or for which construction has begun at the time of the effective date of the final rule still must ensure that the elements of the transit stop affected by the transit project (either new construction or alteration) are accessible to and usable by individuals with disabilities even if they are not required to comply with the specific standards adopted by DOT in this final rule. See, e.g., 42 U.S.C. 12147(a).

## 5. Effective Date

### Comments

DOT proposed in the NPRM that its final rule adopting PROWAG into its ADA regulations at 49 CFR part 37 would become effective 30 days after issuance of the final rule. In support of this proposal, DOT noted the public and regulated entities have been aware of the proposed PROWAG's provisions related to transit stops since 2011, which are generally unchanged in the PROWAG, and that many entities have relied on the Department of Justice's similar 2010 ADA Standards and DOT's 2006 ADA Standards for boarding and alighting areas or boarding platforms as references for transit stops in the public right-of-way. As a result, DOT stated that it did not anticipate entities requiring additional time to become familiar with the Department's ADA public right-of-way standards before compliance is required for new construction and alterations.

DOT received twelve comments in favor of its proposed 30-day effective date. Five of those commenters favored the 30-day effective date outright, including one disability advocacy group, three local public entities, and one transportation organization. Seven other commenters endorsed the 30-day effective date provided that DOT did not adopt any modifications to the PROWAG, particularly with respect to placing restrictions on the use of transit stop designs that place the bus boarding and alighting area so that it overlaps with vehicular lanes, including bicycle lanes.

DOT received six comments opposed to the 30-day effective date. One State DOT proposed setting a 90-day effective date. One State DOT, one local public entity, one transportation organization, and one public transit provider proposed a 12-month effective date. Last, one State DOT expressed opposition to the 30-day effective date but did not propose an alternative. The commenters opposed to the 30-day effective date generally expressed that although the Access Board's PROWAG NPRM was issued in 2011 and similar standards for transit stops at sites under the ADA Accessibility Guidelines (ADAAG) have been in place since 1991, the length of time since the 2011 PROWAG NPRM to the present has created ambiguity over how entities should approach the accessibility of transit stops in the public right-of-way.

### DOT Response

DOT disagrees with commenters who proposed a later effective date than the 30-day effective date in the proposed

rule. The Access Board issued its final PROWAG rule in August 2023, setting minimum guidelines for the accessibility of pedestrian facilities in the public right-of-way, including transit stops, and the ADA requires DOT to adopt standards for accessible public transportation facilities that are "consistent with" the Access Board's minimum guidelines. So, covered entities have been aware for more than a year that DOT's accessibility standards for transit stops would provide accessibility requirements no less than the guidelines in PROWAG. Moreover, as reflected in the Regulatory Impact Analysis accompanying this final rule, even in the absence of enforceable standards before issuance of this final rule, public entities have had a general obligation to ensure that their facilities are readily accessible to and usable by individuals with disabilities, and to otherwise not discriminate against individuals on the basis of disability. As such, covered entities have generally looked to the Department of Justice's 2010 ADA Standards,<sup>1</sup> the Federal Transit Administration's ADA Circular,<sup>2</sup> or other references for guidance on how to meet that general accessibility requirement. A review of these sources shows that they provide specifications substantially similar to the final PROWAG rule. In addition, guidance from some of the largest transit agencies indicated that these transit agencies either cite DOT's or DOJ's existing ADA standards applicable to facilities on sites (2004 ADAAG) with regard to accessibility of transit stops or otherwise refer to ADA accessibility requirements in their publications. For more information and analysis on the current state of industry practice, please see the Regulatory Impact Analysis, which is available in the docket for this rulemaking.

Entities have had sufficient time to anticipate the standards that DOT is adopting in the final rule. This is especially the case as DOT is not proposing any modifications to PROWAG in adopting PROWAG in this final rule. The majority of entities that commented on this issue support this approach, and the rule retains an exception from compliance with the PROWAG standards for those projects

<sup>1</sup> 2010 ADA Standards for Accessible Design, U.S. Department of Justice (2010), accessed July 14, 2022 from <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm> (applicable primarily to facilities on sites).

<sup>2</sup> FTA Circular 4710.1—Americans With Disabilities Act Guidance, Federal Transit Administration (2015), accessed July 18, 2022 from [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final\\_FTA\\_ADA\\_Circular\\_C\\_4710.1.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf).

on which construction has begun, or all approvals for final design have been received before the effective date. DOT is adopting a 30-day effective date from the date of publication of this rule.

## 6. Other Comments

### Comments

DOT received several comments requesting that DOT make revisions to various PROWAG provisions that are unrelated to the accessibility of transit stops in the public right-of-way. For instance, one individual and one consulting firm requested clarification about the change of grade requirements at PROWAG R304.5.2 for curb ramps and blended transitions at gutters or streets. Another individual commented on the pedestrian signal phase timing requirements at PROWAG R306.2. Two disability advocacy groups and one State DOT commented on PROWAG provisions related to roundabouts. These and other similar comments pertain to provisions of PROWAG that fall within DOJ's ADA jurisdiction and fall outside of DOT's limited ADA jurisdiction over facilities related to the delivery of designated or specified public transportation. These PROWAG provisions will become enforceable once they are adopted, with or without modifications, as mandatory standards under the ADA by DOJ.

### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

The Office of Management and Budget (OMB) has determined that this rulemaking is not a significant regulatory action within the meaning of E.O. 12866, as amended by E.O. 14094 ("Modernizing Regulatory Review"). The rule will not have an annual effect on the economy of \$200 million or more. The rule will not adversely affect in a material way the economy, any sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities. In addition, the changes will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

DOT estimates that this rulemaking will have minimal implementation costs, due to the close alignment between the requirements of the rule and existing guidance and industry practices for transit stops in the public

right-of-way. This is presented in further detail in the accompanying Regulatory Impact Analysis (RIA) document.

The rule benefits pedestrians with disabilities by establishing a clear set of accessible design and construction standards for transit stops in the public right-of-way with which public entities would be required to comply. The rule will ensure a more uniformly accessible public transportation system, which facilitates independent living and economic self-sufficiency. Other pedestrians may experience ancillary benefits as well if facilities are easier to use. These benefits are unlikely to be quantified or monetized. The full RIA is available in the docket.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has reviewed the analysis conducted by the Access Board and published with the final rule (88 FR 53604, August 8, 2023), and evaluated the effects of this rule on small entities and has determined that it is not anticipated to have a significant economic impact on a substantial number of small entities. DOT estimates that this rulemaking will have minimal implementation costs, due to the close alignment between the requirements of the rule and existing guidance and industry practices for transit stops in the public right-of-way. In addition, many small governmental jurisdictions are located in rural areas and do not have transit facilities that will be impacted by this rulemaking. This is presented in further detail in the accompanying RIA document. Therefore, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since DOT's adoption of the 2023 Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way Guidelines is done pursuant to the ADA, which prohibits discrimination on the basis of disability, an assessment of the rule's effect on State, local, and Tribal governments, and the private sector is not required.

#### *Executive Order 13132 (Federalism Assessment)*

DOT's rule will be applicable to public entities, including State and local governments, but any federalism implications are not significant. Public entities have been subject to the ADA since 1991, and the many public entities that receive Federal financial assistance have also been required to comply with the requirements of section 504 of the Rehabilitation Act of 1973. Both statutes have required accessibility of transit stops, even in the absence of enforceable standards. Many public entities, in fact, have independently applied the proposed 2011 PROWAG or similar transit stop provisions in DOT's 2006 ADA Standards or DOJ's 2010 ADA Standards. Thus, the adoption of PROWAG into DOT's ADA regulations, enforceable only with respect to transit stops, will not significantly alter existing practice. In addition, public entities previously had the opportunity to provide input and feedback during the development of the Access Board's PROWAG rule. As a result, DOT has determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

#### *Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. DOT has determined that this final rule does not contain collection of information requirements for the purposes of the PRA.

#### *National Environmental Policy Act*

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or

environmental impact statement (EIS). See 40 CFR 1501.4(a). Paragraph 4(c)(5) of DOT Order 5610.1C adopts by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, “[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .” 23 CFR 771.118(c)(4) and Federal Highway Administration's implementing procedures, “[p]romulgation of rules, regulations, and directives.” 23 CFR 771.117(c)(20).

In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. 40 CFR 1501.4(b). This rulemaking concerns civil rights protection for individuals with disabilities. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

#### *Executive Order 13175 (Tribal Consultation)*

DOT has analyzed this rule in accordance with the principles and criteria contained in E.O. 13175, “Consultation and Coordination with Indian Tribal Governments.” The rule establishes a regulation on the accessibility of transit stops in the public right-of-way.

This measure applies to public entities, as defined under the ADA, which does not include Tribal governments or other Tribal entities, and it 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. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

#### *Executive Order 12898 (Environmental Justice)*

E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. DOT has determined that this rule does not raise any environmental justice issues.

*Regulation Identifier Number*

A RIN is assigned 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 37**

Civil Rights, Individuals with disabilities, Transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.27(a).

**Subash Iyer,**

*Acting General Counsel, U.S. Department of Transportation.*

For the reasons set forth in the preamble, DOT amends 49 CFR part 37, as follows:

**PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)**

■ 1. The authority citation for part 37 continues to read as follows:

**Authority:** 42 U.S.C. 12101–12213; 49 U.S.C. 322.

■ 2. Amend § 37.3 by adding, in alphabetical order, the definitions for “Alteration of a transit stop”, “Public right-of-way”, and “Transit stop” to read as follows:

**§ 37.3 Definitions.**

\* \* \* \* \*

*Alteration of a transit stop* means a change to or an addition of a transit stop, or a part thereof, in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability. Alterations include, but are not limited to, the reconstruction of an existing transit stop, the addition of a new transit shelter, the addition of a new bench, fare vending machine, or transit sign that identifies a stop or route, reconfiguring the interface of a transit stop with the street or sidewalk network such as adding floating bus stops, adding a prepared surface for boarding and alighting, and rearrangement of transit stop elements, such as benches or fare vending machines. Normal maintenance such as painting transit shelters, replacing damaged transit shelter windows or screens, repairing a fare vending machine, replacing damaged sign posts, repairing existing curb, or repairing damaged benches or trash cans, are not alterations unless they affect the usability of the transit stop. Permanent closure of a transit stop

due to service changes is also not an alteration of a transit stop.

\* \* \* \* \*

*Public right-of-way* means public land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.

\* \* \* \* \*

*Transit stop* means an area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. This definition does not include intercity rail except where a stop is located in the public right-of-way.

\* \* \* \* \*

■ 3. Revise § 37.9 to read as follows:

**§ 37.9 Standards for accessible transportation facilities.**

(a) *Transportation facilities other than transit stops in the public right-of-way.*

(1) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by appendix A to this part.

(2) Facility alterations begun before January 26, 1992, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §§ 37.47 and 37.51, even if these alterations are not consistent with the requirements set forth in appendices B and D to 36 CFR part 1191 and appendix A to this part, if the modifications complied with the Uniform Federal Accessibility Standards (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(3)(i) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before November 29, 2006, are not required to be consistent with the requirements set forth in appendices B

and D to 36 CFR part 1191 and appendix A to this part, if the construction or alterations comply with the former appendix A to this part, as codified in the October 1, 2006, edition of the Code of Federal Regulations.

(ii) Existing buildings and facilities that are not altered after November 29, 2006, and which comply with the former appendix A to this part, are not required to be retrofitted to comply with the requirements set forth in appendices B and D to 36 CFR part 1191 and appendix A to this part.

(4)(i) For purposes of implementing the equivalent facilitation provision in ADA chapter 1, section 103, of appendix B to 36 CFR part 1191, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(A)(1) A public or private entity that provides transportation facilities subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

(2) With respect to airport facilities, an entity that is an airport operator subject to the requirements of part 27 of this title or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR part 382, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in a transportation facility or facilities.

(ii) The requesting party shall provide the following information with its request:

(A) Entity name, address, contact person and telephone;

(B) Specific provision(s) of appendices B and D to 36 CFR part 1191 or appendix A to this part concerning which the entity is seeking a determination of equivalent facilitation;

(C) [Reserved]

(D) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in appendices B and D to 36 CFR part 1191 or appendix A to this part; and

(E) Documentation of the public participation used in developing an alternative method of compliance.

(iii) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(A) The entity shall contact individuals with disabilities and groups representing them in the community.

Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(B) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(C) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(iv) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(v) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(vi)(A) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. Provided, however, that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

(B) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(C) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal Government, the Department of Transportation, or any of its operating administrations.

(b) *Transportation facilities (transit stops) in the public right-of-way.* (1) Except as set forth in paragraph (b)(2) of

this section, if new construction or alterations of a transit stop located in the public right-of-way commence after January 17, 2025, the new construction or alterations of the transit stop shall comply with the requirements set forth in the appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before January 17, 2025, are not required to be consistent with the requirements set forth in the appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities.

(3)(i) For purposes of implementing the equivalent facilitation provision in chapter 1, section R102.1, of the appendix to 36 CFR part 1190, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(A) A public or private entity that provides transit stops in the public right-of-way subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in a transit stop in the public right-of-way.

(ii) The requesting party shall provide the following information with its request:

(A) Entity name, address, contact person and telephone;

(B) Specific provision(s) of the appendix to 36 CFR part 1190 concerning which the entity is seeking a determination of equivalent facilitation;

(C) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in the appendix to 36 CFR part 1190; and

(D) Documentation of the public participation used in developing an alternative method of compliance.

(iii) In the case of a request by a public entity that provides transit stops in the public right-of-way, the required public participation shall include the following:

(A) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of

the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(B) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(C) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(iv) In the case of a request by a manufacturer or a private entity, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(v) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(vi)(A) Determinations of equivalent facilitation are made only with respect to transit stops in the public right-of-way, and pertain only to the specific situation concerning which the determination is made. Provided, however, that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

(B) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(C) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal Government, the Department of Transportation, or any of its operating administrations.

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