

develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045 applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, 5/22/01) because it is not a “significant regulatory action” as defined under Executive Order 12866.

*9. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve “technical

standards” as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

*10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses authorizing pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

*11. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on the December 29, 2006.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 18, 2006.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. E6–18222 Filed 10–27–06; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**49 CFR Part 37**

[Docket OST–2006–26035]

RIN 2105–AC86

**Transportation for Individuals With Disabilities; Adoption of New Accessibility Standards**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Department is amending its Americans with Disabilities Act (ADA) regulations to adopt, as its regulatory standards, the new Americans with Disabilities Act Accessibility Guidelines (ADAAG) recently issued by the Access Board, including technical amendments the Access Board subsequently made to the new ADAAG. In adopting the new ADAAG as its standards, the Department is making minor modifications to some of the Guidelines and is providing further guidance concerning its newly-adopted standards.

**DATES:** This rule is effective November 29, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:** Under the ADA, the Access Board has the responsibility of creating “guidelines” for the accessibility of buildings, facilities, and vehicles subject to ADA requirements (the Americans with Disabilities Act Accessibility Guidelines, or ADAAG). It is then the responsibility of the Department of Transportation and Department of Justice to incorporate into their ADA regulations accessibility “standards” consistent with the Access Board’s minimum guidelines.

The Department met this obligation in its 1991 ADA regulations through verbatim incorporation of the original ADAAG in Appendix A to part 37. The Access Board issued a major revision to

ADAAG two years ago (69 FR 44084; July 23, 2004), after an extensive notice and comment proceeding and an assessment of the costs of the revisions. In addition, the Board has issued technical amendments to the new ADAAG.

Through this amendment, the Department is incorporating the new ADAAG, including the Board's subsequent technical amendments, into part 37 as the new standards for accessible transportation facilities. In order to avoid duplication, since the entire text of the new ADAAG is available in materials published by the Access Board, the Department is not republishing the voluminous text of the Access Board document. Rather, we are adopting by cross-reference Appendices B and D to 36 CFR part 1191 (including the index), the codification of the revised ADAAG, into § 37.9 of the Department's ADA regulations. Appendix A to part 37, which formerly contained the old ADAAG, will now list a few minor additions or modifications that the Department is making in the standards in the context of transportation facility accessibility.

This DOT rulemaking applies only to facilities and systems that are subject to the DOT ADA regulations, 49 CFR parts 37 and 38. We note that the Department of Justice is conducting a separate rulemaking to incorporate the ADAAG into its ADA regulations, which cover a much wider variety of public and private sector facilities.

The Department issued a notice of proposed rulemaking proposing to adopt the Access Board's draft guidelines (65 FR 48444; August 8, 2000). The Department received only one comment, from a transit authority. That comment is accommodated by the new § 37.9(c), described in the following paragraph.

Section 37.9(a) adopts the new ADAAG by cross-reference as the new standards for accessible transportation facilities. References in paragraph (d) of this section to the old Appendix A have also been updated. One of the issues an agency always faces when updating standards is how to handle projects that are in progress at the time the new standards come into effect. The Department has determined that the clearest way of handling this issue is to provide in paragraph (c)(1) that if a project—either new construction or alteration of an existing facility—is already in progress (i.e., actual construction has already begun or the final design has received all necessary approvals) on the effective date of this amendment, and the work in progress would meet the requirements of the old

standards, the construction or alteration need not meet the requirements of the new standards. The entity or person constructing or altering the facility could also choose to comply with the new standards in such a case.

Paragraph (c)(2) similarly provides that an existing facility that complies with the old standards does not have to be retrofitted to comply with the new standards. Of course, any future alteration to an existing facility would have to comply with the new standards.

The Department is also making a clarifying change to its procedures for equivalent facilitation determinations. Paragraph (d)(6)(i) provides that equivalent facilitation determinations are case-by-case, site-specific decisions that apply only to the particular situation to which they pertain. With respect to facilities, in which equivalent facilitations are by nature unique, this provision makes sense. However, there may be some situations concerning manufactured products or accessibility features in which an equivalent facilitation can reasonably apply to a class of situations. For example, if a feature of a bus lift or detectable warning tile used in transit facilities receives an equivalent facilitation determination from the Federal Transit Administration, it is possible that the determination can reasonably apply to transit vehicles or transit facilities other than the one in which the issue arose. We are adding language to this paragraph giving Administrators the discretion to permit broader applications of equivalent facilitation determinations when doing so would be appropriate in these kinds of cases.

Former ADAAG 4.1.1(5) provided a "structural impracticability" exception to the requirements for new buildings and facilities. This exception does not exist in the new ADAAG. The reason the Access Board deleted this language was to avoid duplication with an existing requirement to the same effect in Department of Justice regulations (see 28 CFR § 36.401(c)). For consistency with the approach taken by the Access Board and Department of Justice, and to ensure consistency between facilities subject to Titles II and III of the ADA under part 37, the Department has added the language of the Department of Justice regulation to § 37.41 of this part. We would note that the "structural impracticability" exception should not be applied to a situation in which a facility is located in "hilly" terrain or on a plot of land on which there are steep grades. In such circumstances, accessibility can be achieved without destroying the physical integrity of the

structure, and is required in the construction of new facilities.

The Department is also adopting language that would continue in effect the current requirements of ADAAG concerning detectable warnings at curb ramps. Detectable warnings in curb ramps have long been required by ADAAG and DOT and DOJ regulatory standards that have long been, and remain, in effect. Currently, the Access Board is working on new public rights-of-way (PROW) guidelines, the current proposed version of which would retain a detectable warnings requirement.

Because the Access Board is proposing this requirement in the PROW document, the July 2004 ADAAG did not include a parallel detectable warning requirement. The unintended consequence of the relationship between the Access Board's timing with respect to the ADAAG and PROW issuances is that, if the Department adopts the new ADAAG, the current detectable warnings requirement for curb ramps would disappear, only to reappear in a few years if the current Access Board PROW proposal is adopted. (If the Access Board deletes or modifies its current proposal concerning detectable warnings in final PROW guidelines, the Department will modify part 37 accordingly.)

The Department, along with an overwhelming majority of Access Board members, believes that detectable warnings are a very useful design feature that makes the built environment safer and more accessible for persons with impaired vision. It would be undesirable, as a policy matter, to permit the Department's current detectable warnings requirement to lapse, particularly since the Department has never sought or received comment on the merits of ending this existing requirement. The Department will therefore maintain the status quo with respect to detectable warnings in this rule. Doing so will not add any burdens for regulated parties, or create any new or increased costs for them: regulated parties will just continue complying with precisely the same requirements that have applied to them (with a brief interruption during a 1998–2001 suspension of these requirements) since 1991.

The Department is correcting a typographical error in § 37.131(b)(4). A citation in that paragraph should refer to § 37.137 (b) and (c) rather than to § 37.131 (b) and (c).

In the new Appendix A, the Department provides web site addresses for the incorporated Appendices B and D to 36 CFR Part 1191 and lists three sections of the new ADAAG to which

the Department is making minor alterations. With respect to § 206.3, the Department adds language, drawn from the old standards, emphasizing that the distance that persons with disabilities must travel to use various important station elements must be minimized. In § 810.2.2, the Department adds a provision from the former § 37.9 (c) of this part that public entities must ensure bus boarding and alighting areas comply with the required dimensions to the extent construction specifications are within their control. In § 810.5.3, the Department is incorporating language from former ADAAG § 10.3.1(9), concerning the coordination of platform and rail car door height. The intent of this addition is to preserve existing regulatory language pending further regulatory action by the Department to amend 49 CFR part 37 regulatory requirements concerning rail platforms. These modifications are explained in more detail in a new section of Appendix D to the regulation. Section 810.5.3 and related Appendix D language may subsequently be changed to be consistent with future changes to Part 37 in the rail platform area.

The Department is also correcting an editing or printing error that has crept into recent editions of the Code of Federal Regulations in the Appendix D discussion of the service area paratransit criterion. The sentence in question concerns the effect of political boundaries on the paratransit obligations of transit providers. The correction restores the original language of the Appendix, as published in the Department's 1991 ADA rule.

#### Regulatory Analyses and Notices

This is a nonsignificant rule for purposes of Executive Order 12886 and the Department's Regulatory Policies and Procedures. The Office of Management and Budget has concurred in its designation as nonsignificant. The Access Board has already conducted a regulatory assessment of the costs and other effects of changes in the ADAAG, which the Office of Management and Budget has reviewed and approved. The Department believes that the changes in ADAAG, as they affect transportation entities covered by the Department's rules, will have so minimal an incremental economic impact on regulated parties that further economic analysis is unnecessary. For this reason, the Department certifies that this rule will not have significant economic effects on a substantial number of small entities. In addition, we have determined that the rule will not have sufficient Federalism impacts to warrant

the production of a Federalism assessment.

Issued this 26th day of September, 2006, at Washington DC.

**Maria Cino,**

*Acting Secretary of Transportation.*

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

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

■ 1. The authority citation for 49 CFR part 37 continues to read as follows:

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

■ 2. Section 37.9 is revised to read as follows:

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

(a) 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.

(b) 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 of this part, 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.

(c) (1) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before [insert effective date of this amendment] 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.

(2) 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.

(d)(1) 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:

(i)(A) 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.

(B) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR part 27 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.

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

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

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

(ii) 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.

(iii) [Reserved]

(iv) 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

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

(3) 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:

(i) 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.

(ii) 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.

(iii) 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.

(4) 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.

(5) 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.

(6)(i) 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.

(ii) 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.

(iii) 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.

■ 3. Amend § 37.41 by designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

**§ 37.41 Construction of transportation facilities by public entities.**

(a) \* \* \*

(b) (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

**§ 37.131 [Amended]**

■ 4. Amend section 37.131(b)(4) by removing the words “§ 37.131(b) and (c)” and adding, in their place, the words “§ 37.137(b) and (c)”.

■ 5. Revise Appendix A to Part 37 to read as follows:

**Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities**

The Department of Transportation, in § 37.9 of this part, adopts as its regulatory standards for accessible transportation facilities the revised Americans with Disabilities Act Guidelines (ADAGG) issued by the Access Board on July 23, 2004. The ADAGG is codified in the Code of Federal Regulations in Appendices B and D of 36 CFR part 1191. Note the ADAAG may also be found via a hyperlink on the Internet at the following address: <http://www.access-board.gov/ada-aba/final.htm>. Like all regulations, the ADAAG also can be found by using the electronic Code of Federal Regulations at <http://www.gpoaccess.gov/ecfr>. Because the ADAAG has been established as a Federal consensus standard by the Access Board, the Department is not republishing the regulations in their entirety, but is adopting them by cross-reference as permitted under 1 CFR 21.21(c)(4). In a few instances, the Department has modified the language of the ADAAG as it applies to entities subject to 49 CFR part 37. These entities must comply with the modified language in this Appendix rather than the

language of Appendices B and D to 36 CFR part 1191.

**206.3 Location—Modification to 206.3 of Appendix B to 36 CFR Part 1191**

Accessible routes shall coincide with, or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior. Elements such as ramps, elevators, or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

**406.8—Modification to 406 of Appendix D to 36 CFR Part 1191**

A curb ramp shall have a detectable warning complying with 705. The detectable warning shall extend the full width of the curb ramp (exclusive of flared sides) and shall extend either the full depth of the curb ramp or 24 inches (610 mm) deep minimum measured from the back of the curb on the ramp surface.

**810.2.2 Dimensions—Modification to 810.2.2 of Appendix D to 36 CFR Part 1191**

Bus boarding and alighting areas shall provide a clear length of 96 inches (2440 mm), measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm), measured parallel to the vehicle roadway. Public entities shall ensure that the construction of bus boarding and alighting areas comply with 810.2.2, to the extent the construction specifications are within their control.

**810.5.3 Platform and Vehicle Floor Coordination—Modification to 810.5.3 of Appendix D to 36 CFR Part 1191**

Station platforms shall be positioned to coordinate with vehicles in accordance with the applicable requirements of 36 CFR part 1192. Low-level platforms shall be 8 inches (205 mm) minimum above top of rail. In light rail, commuter rail, and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements of part 1192 or 49 CFR part 38, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates or similarly manually deployed devices, meeting the requirements of 49 CFR part 38, shall suffice.

EXCEPTION: Where vehicles are boarded from sidewalks or street-level, low-level platforms shall be permitted to be less than 8 inches (205 mm).

■ 6. In Appendix D to Part 37, in the sixth paragraph under the heading “Section 37.131 Service Criteria for Complementary Paratransit Service Area,” revise the last sentence and add a new section for “Appendix A to Part 37” at the end of the appendix to read as follows:

**Appendix D to Part 37—Construction and Interpretation of Provisions of 49 CFR Part 37**

\* \* \* \* \*

### Section 37.131 Service Criteria for Complementary Paratransit Service Area

\* \* \* \* \*

\* \* \* This exception to the service area criterion does not automatically apply whenever there is a political boundary, only when there is a legal bar to the entity providing service on the other side of the boundary.

\* \* \* \* \*

### Appendix A to Part 37—Standards for Accessible Transportation Facilities

Sections 504(a) and (b) of the Americans with Disabilities Act (ADA) require the Access Board to adopt accessibility guidelines; sections 204(c) and 306(c) of the ADA require the Department of Transportation to adopt regulatory standards “consistent with the minimum guidelines and requirements” issued by the Access Board. In the original 1991 publication of part 37, the Department complied with this requirement by reproducing the Access Board’s Americans with Disabilities Act Accessibility Guidelines (ADAAG) in their entirety as Appendix A.

The Access Board revised ADAAG in July 2004. ADAAG, including technical amendments issued in July 2005, is codified in Appendices B and D to 36 CFR part 1191. In order to avoid duplication of material that the Access Board has already included in the CFR, and which is now readily available on the Internet, the Department has adopted ADAAG by cross-reference in part 37, rather than reproducing the lengthy Access Board publication. However, there are certain provisions of ADAAG that the Department is modifying for clarity or to preserve requirements that have been in effect under the existing standards. Under the ADA, the Department, in adopting standards, has the discretion to depart from the language of ADAAG as long as the Department’s standards remain consistent with the Access Board’s minimum guidelines. In addition, this appendix provides additional guidance concerning some sections of the DOT standards as they apply to transportation facilities.

#### Section 201.1

The basic scoping requirement requires all areas of newly designed and newly constructed buildings and facilities to be accessible. Former § 4.1.1(5) provided a “structural impracticability” exception to the requirements for new buildings and facilities. The Access Board deleted this exception to avoid duplication with an existing requirement to the same effect in Department of Justice regulations (see 28 CFR § 36.401(c)). For consistency with the approach taken by the Access Board and Department of Justice, and to ensure consistency between facilities subject to Titles II and III of the ADA under part 37, the Department has added the language of the Department of Justice regulation to § 37.41 of this part.

#### Section 206.3

This section concerns the location of accessible paths. The Department is retaining language from former § 10.3.1(1), which

provides that “Elements such as ramps, elevators, or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.” This concept, in our view, is implicit in the language of § 206.3. However, we believe it is useful to make explicit the concept that, in transportation facilities such as rail stations, important facility elements are placed so as to minimize the distance persons with disabilities must travel to use them. This requirement is intended to affect decisions about where to locate entrances, boarding locations (e.g., where a mini-high platform is used for boarding), and other key elements of a facility.

#### Section 406.8

To maintain the *status quo* with respect to detectable warnings in pedestrian facilities, the Department is adding a provision (not found in the current version of the new ADAAG) requiring curb ramps to have detectable warnings.

#### Section 810.2.2

The Department recognizes that there will be some situations in which the full dimensions of a bus boarding and alighting area complying with the § 810.2.2 may not be able to be achieved (e.g., there is less than 96 inches of perpendicular space available from the curb or roadway edge, because of buildings or terrain features). The Department is adding language from former § 37.9 (c) of this part, which provides that “Public entities shall ensure the construction of bus boarding and alighting areas comply with 810.2.2, to the extent the construction specifications are within their control.” Where it is not feasible to fully comply with § 810.2.2, the Department expects compliance to the greatest extent feasible.

We note that there may be some instances in which it will be necessary to make operational adjustments where sufficient clearance is not available to permit the deployment of lifts or ramps on vehicles. For example, a bus driver could position the bus at a nearby point—even if not the precise location of the designated stop—so that a passenger needing a lift or ramp to get on or off the bus can do so. To avoid the need for such operational adjustments, it is important to place bus shelters, signs, etc. so that they do not intrude into the required clearances.

#### Section 810.5.3

This section concerns coordination between rail platforms and rail vehicles. The Department is adding language from the former § 10.3.1 (9) (Exception 2), which provides that “In light rail, commuter rail, and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates or similarly manually deployed devices, meeting the requirements of 49 CFR Part 38 shall be permitted.”

In September 2005, the Department issued guidance concerning the relationship of its ADA and 504 rules in the context of rail

platform accessibility. This guidance emphasized that access to all cars of a train is significant because, if passengers with disabilities are unable to enter all cars from the platform, the passengers will have access only to segregated service. This would be inconsistent with the nondiscrimination mandate of the ADA. It would also, in the case of Federal Transit Administration (FTA) and Federal Railroad Administration (FRA)-assisted projects (including Amtrak), be inconsistent with the requirement of the Department’s section 504 regulation (49 CFR § 27.7), which requires service in the most integrated setting reasonably achievable. This guidance states the Department’s views of the meaning of its existing rules, and the Department will continue to use this guidance in applying the provisions of this rule.

The Department notes that a related section of 49 CFR part 38 has been the source of some misunderstanding. Section 38.71(b)(2) provides that “Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level-entry boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with § 38.83 (b) or (c) of this part.” The Department has received some suggestions that this provision should be interpreted to mean that, if there is any portion of a system in which level-entry boarding is not practicable, then the *entire* system can use some method other than level-entry boarding. Such an interpretation is incorrect. The authority to use alternatives to level-entry boarding pertains only to those portions of a system in which rail vehicles are “operated on” an area where level-entry boarding is not practicable.

For example, suppose a light rail system’s first three stops are on a pedestrian/transit mall where it is infeasible to provide level-entry boarding. The transit system could use car-borne lifts, mini-high platforms, etc. to provide access at those three stops. The system’s next ten stops are part of a right-of-way in which level-entry boarding is practicable. In such a case, level-entry boarding would have to be provided at those ten stops. There is nothing inappropriate about the same system having different means of boarding in different locations, in such a case.

We also caution against a potential misunderstanding of the sentence in § 810.5.3 that provides that “Low-level platforms shall be 8 inches minimum (205 mm) above top of rail.” This does not mean that high-level platforms are prohibited or that low-level platforms are the only design consistent with the rules. It simply means that where low-level platforms are otherwise permitted, such platforms must be at least 8 inches above the top of rail, except where vehicles are boarded from the street or a sidewalk.

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