regulated service tiers. The cable operator must maintain a consistent method for determining the permitted per channel charge across all service tiers for a period of one year from the date that the cable operator first becomes subject to regulation on either the basic service or cable programming service tiers.

* * * * *

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

Comments

MM Docket No. 92–266

Austin, Texas, *et. al*
Cable Operators and Associations
Cablevision Industries, *et. al*
Community Antenna Television Association
Continental Cablevision, Inc.
Falcon Cable TV, *et. al*
GTE Service Corporation
Massachusetts Community Antenna Television Commission
Media General Cable of Fairfax County, Inc.
Municipal Franchising Authorities
National Association of Telecommunications Officers and Advisors, *et. al*
National Cable Television Association
New York State Commission on Cable Television
Tele-Communications, Inc.
Time Warner Entertainment Co., L.P.

Reply Comments

Austin, Texas, *et. al*
Cable Industries Corp., *et. al*
Continental Cablevision, Inc.
GTE Service Corporation
KBLCOM, *et. al*
Media General Cable of Fairfax County, Inc.
National Cable Television Association
Time Warner Entertainment Co., L.P.
Viacom International, Inc.

[FR Doc. 93–29325 Filed 11–29–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR parts 37 and 38

[Docket No. 48463]

RIN 2105–AB53

Transportation for Individuals with Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Americans with Disabilities Act (ADA) in several respects. The first change would extend until July 1994 the compliance date for retrofitting key rail station platforms with detectable warnings. The second modification would except a particular model of lifts from the requirement that transportation providers permit standees to use lifts. The third change would modify the Department's procedures for responding to requests for equivalent facilitation determinations. The fourth change clarifies the responsibility of transit providers to make seat or wheelchair securement space available to people who need it: The fifth amendment would reflect a recent statutory change in the name of the Department's transit agency from the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA). The sixth change would modify the good faith efforts that Amtrak and commuter rail operators would have to make in order to lease used rail vehicles. The Department is also making two minor technical corrections to its rule establishing standards for accessible vehicles.

EFFECTIVE DATE: This rule is effective December 30, 1993.

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). Copies of the final rule are available in alternative formats on request.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department published its notice of proposed rulemaking (NPRM) on the issues covered by this rule on November 17, 1992. At the request of commenters, the original January 19, 1993, comment closing date was extended through February 19, 1993. The Department received over 550 comments on the NPRM, most of which came from individuals with disabilities or organizations representing them, state and local agencies working on disability matters, state and local transportation agencies, and equipment manufacturers.

I. Detectable Warnings

Background

Under appendix A of part 37, which adopts as part of a DOT regulation the Architectural and Transportation Barriers Compliance Board (Access Board) guidelines for accessible facilities, sections 10.3.1 and 10.3.2, require that an accessible rail station have a 24-inch wide detectable warning strip running the entire length of the platform edge. The warning strip must include a pattern of "truncated domes" (i.e., small raised rounded surfaces) as required by section 4.29 of appendix A. The purpose of the detectable warning is to inform blind or visually impaired passengers that they are nearing the platform edge. The warning must be of a contrasting color (i.e., dark vs. light) and texture (i.e., truncated domes vs. smooth surface), as well as (in the case of interior surfaces) differing from the platform in resiliency and sound-on-cane contact.

The Department stated in the NPRM that having an adequate detectable warning system to warn blind and visually impaired passengers that they are near a platform edge is a vital safety matter for these passengers. For example, in one rapid rail system lacking adequate detectable warnings, according to testimony from blind passengers at a 1992 public hearing on the system's proposed key station plan, 15 blind or visually impaired passengers have fallen off the platform in recent years (at least one of them was killed by a train). At the same time, the Department was aware that rail operators had expressed a number of concerns about the detectable warnings requirement. For example, a petition that the Access Board and the Department received, prior to the issuance of the NPRM, from several rail operators cited what they called "extraordinary costs" and unanswered questions about the materials' "durability, maintainability * * * safety, and usability by persons with visual and mobility impairments." The petition requested that the detectable warnings standard be suspended, pending further research.

In issuing the NPRM, the Department stated that the existing design for detectable warnings standard fulfills detectability and safety requirements. Nevertheless, the Department said that rail operators may have legitimate concerns about the installation of detectable warning materials as they retrofit key stations for accessibility. These concerns include the possibility of adhesive failures and "lift-off" (i.e., the corners of segments of the materials may come up) as well as durability. For example, if the corners of a tile segment curl up, people can trip on them. If passengers expect detectable warning materials to be on the edge of the entire platform, and several feet of material is missing because the adhesive has failed, someone could fall off the platform because the expected warning was absent.

In the NPRM, the Department emphasized that its concerns were neither about the basic design of the

detectable warnings or their usefulness to people with vision impairments. Rather, they went to the question of how best to apply detectable warning materials to an existing station platform in a retrofit situation. The Department said that these concerns do not apply with the same force to a new construction situation, where detectable warnings can be made an integral part of the platform design (e.g., through concrete stamping or other methods not involving retrofit). The NPRM also noted that the Department's concerns did not relate to the cost of installing detectable warnings in key stations. To the extent that installation of detectable warnings involves an extraordinarily expensive structural change to a particular station, the rail operator could use the cost of the installation as part of its rationale for requesting an extension of time to make the key station accessible.

The Department's proposal was based on a belief that rail operators may need additional time to resolve concerns over adhesion, durability, and maintainability of detectable warning materials in the context of key station modifications. Consequently, the NPRM proposed to extend for 18 months the key station compliance date with respect to detectable warnings. Under the present rule, except where the Department has extended time for completion of modifications to a key station, rail operators had to make key stations accessible by July 26, 1993. This means, of course, that detectable warnings were to be in place by that date. Under the proposal, rail operators would have had until January 26, 1995, to *complete* installation of detectable warnings.

Comments

A substantial number of commenters opposed the Department's proposal, asserting that the detectable warnings requirement, as written, should go into effect without any postponement. We received this comment from 101 commenters, 80 of whom were disability organizations or individuals with disabilities. These were primarily, but not exclusively, from the blind community. Thirteen of the remaining comments were from manufacturers of detectable warnings and associated products, with four from state or local agencies working on disability matters and two each from state or local transportation agencies and other commenters.

The comments from the disability community emphasized the safety need for detectable warnings, particularly for blind and visually impaired persons. They mentioned numerous cases of persons falling off platforms in various rail systems (18 in a system other than the one mentioned in the NPRM), sometimes resulting in death or injury. These situations, some of which were recounted by fall victims themselves in detail, were in addition to cases in which visually-impaired passengers almost fell off, or had become very fearful of walking on, rail station platforms.

Some letters mentioned the need for detectable warnings for persons who use dogs, as well as those who use canes, as a mobility aid. A number mentioned the crowded, noisy, distracting atmosphere of rush hour train stations as being a situation in which a tactile cue like a detectable warning is particularly important. Comments mentioned successful experiences with detectable warnings in some systems. They also asked why we seemed to assume that detectable warnings shouldn't be installed until we were sure they were maintenance-free, when we do not assume this for any other component of a rail system.

The manufacturers said that the problems the NPRM had cited with adhesion, lift-up, etc. of detectable warning materials had been the result of a combination of first-generation materials and improper installation and/or maintenance by rail properties. Current products (including some developed specifically for the rail platform market), they asserted, had solved these problems, and no delay in installation requirements was needed.

Fourteen commenters supported the NPRM provision as drafted. Nine of these were state or local transportation agencies, four were disability community commenters, and one was a state or local agency working on disability matters. Seven additional commenters favored longer delays.

The basic view of these commenters was that the proposed extension of the completion date was needed to address the concerns cited in the NPRM. In particular, transit authorities said that safety (e.g., a potential tripping hazard), durability, and maintainability questions about detectable warnings had not been answered satisfactorily. (Since few transit authorities have actually installed detectable warnings to date, most commenters could not assert that they had directly experienced problems, however.) One rail operator cited a 1991 study performed by a consultant for DOT that noted a number of problems that had occurred in early installations of detectable warnings. Some commenters expressed particular concern about detectable warnings at outdoor stations in the winter, with respect to snow and ice removal and potential slipping hazards to passengers.

Some commenters pointed out that the American National Standards Institute (ANSI) had not adopted a detectable warnings standard, drawing the conclusion that this placed the viability of the current Federal standard in question. Others said that they did not want to spend substantial sums of money on detectable warnings until there was certainty about what design would best answer the concerns that have been raised. Two organizations that represent a constituency consisting primarily of persons with mobility impairments said that additional research was needed on the issue of whether detectable warnings were an obstacle or hazard to persons with mobility impairments.

In support of its request for an indefinite, or, alternatively, five-year, postponement of the requirement, a rail operator cited the need to look at safety, durability, and maintainability issues, which it said current DOT research has not addressed. It said that while new products have been developed, they have not yet been independently tested. Another transit property also asked for a 5-year delay, while a third suggested making the requirement effective in July 1995, to coincide with the one-car-per-train requirement. Making the requirements effective at the same time made sense, they said, because they relate to an accessible car-station interface. Four rail operators suggested that the 18 months should start to run from the time that FTA or the Access Board completed its research on detectable warnings.

A few comments alluded to reported opposition to detectable warnings on the part of one organization representing individuals with visual impairments. However, this organization did not comment on the NPRM, and there were no comments to the NPRM from any blind or visually impaired individuals or organizations representing them opposing detectable warnings on rail station platform edges.

Among other comments on this subject, one of the rail operators mentioned above thought that the postponement should apply to new and altered platforms as well as those being retrofitted. It also mentioned a technical safety concern relating to the interface of the detectable warning strip and the yellow safety stripe at the platform edge. A disability community commenter suggested handrails, as well as detectable warnings, at intervals along platforms. Another commenter said the Access Board specification for

detectable warnings should be made more precise, and that the "pathfinder" design had some international acceptance. A transit provider said that, in case the Access Board changed its standard, detectable warnings that had been installed in the meantime should be grandfathered.

DOT Response

This issue is a difficult one, because the comments favoring and opposing the proposed 18-month delay both make reasonable and persuasive points. It is important to remember that the NPRM never raised the issue of *whether* detectable warnings should be installed on rail platform edges, only the issue of *when* installation should be completed. The discussion below pertains to this timing issue.

While manufacturers' and consumers' comments assert that cited problems concerning the materials have largely been solved, it is clear that rail operators are not persuaded that their concerns about installation, safety, durability, and maintainability have been fully addressed. From a transportation policy point of view, requiring materials to be installed without providing a reasonable amount of time for rail operators to resolve these very practical issues could be counterproductive. Disability group comments expressing concern about the effects of detectable warnings on transit accessibility for persons with mobility impairments are also worthy of consideration. Finally, the need of transit properties for time to determine which specific detectable warning product is best for their systems and to go through their procurement processes is reasonable to take into account.

The rulemaking record also provides a sound basis for the propositions that detectable warnings address a significant safety need for persons with impaired vision and that an effective tactile cue that a person is reaching the platform edge is very important, particularly given factors in the rail station environment that may diminish the utility of aural and other cues to persons with impaired vision. It is fair to conclude from comments to the rule that one of the consequences of having a serious visual impairment is the need to concentrate very hard on mobility and orientation matters that sighted persons handle routinely. All it takes is a brief moment of fatigue, or distraction, or disorientation, in the complex and sometimes confusing environment of a rail station, and even a very experienced blind rail system user can make what, in context, is a fatal misstep. Detectable warnings can prevent that last mistaken step.

The drop-offs at the edges of rail station platforms create a clear, documented, and unacceptable hazard to persons with visual impairments. The Department believes that existing research adequately documents the detectability of warning materials meeting or exceeding the current Access Board requirement, and, therefore, that the materials will mitigate this hazard. These factors make a persuasive case for not unduly postponing the installation of detectable warning materials that can prevent death, injuries, and narrow escapes of the kind cited in the record.

The case of installing detectable warnings sooner, rather than later, is made stronger by three publicly reported deaths of visually impaired passengers in the time since the comment period for this rulemaking closed, of which the Department takes notice. In none of these cases did the platform edge have a detectable warning. In Boston, a blind individual received fatal injuries when she fell off a platform and received a shock from the electrified "third rail." According to a press report of the incident, the individual asserted that, had a detectable warning strip been in place, her fall would have been prevented. In New York, a blind passenger using a guide dog fell off a platform and was killed by an oncoming train. In this case, according to a press report, the platform's edge was "marked with abrasive material" in an attempt to provide a warning to persons with vision impairments. It is the Department's understanding that this material involves a flat, painted-on surface with a sandpaper-like texture, which does not meet the Federal standard for a detectable warning. In the most recent case, a visually impaired individual apparently fell onto the tracks of a Maryland commuter rail system and was also fatally injured by a train. In addition, in December 1992, a visually impaired passenger fell to the tracks on Baltimore's subway system, and was struck and injured by a train.

The 1991 study referred to by a commenter ("Innovative Solutions for Disabled Transit Accessibility" Thomas J. McGean, October 1991) evaluates detectable warning materials that had been installed up to that time. The study affirms the excellent detectability of materials meeting Federal standards. The study does not point to any safety problems created by the materials for passengers, beyond those that can be inferred from "lift-off." Different transit properties that have installed the tiles reported different experiences with cleaning and maintenance, some reporting substantial difficulty and others having few problems. (The study suggests that frequent cleaning is important.) Lift-off problems were reported in some stations (for example, one BART station had a high lift-off rate, of about a third of tiles after 18 months, while other BART stations had low lift-off rates in the 1–10 percent range.) The study identified cleaning, maintenance, and installation deficiencies as factors leading to lift-off, in addition to adhesive failure and temperature effects. The study also noted ongoing efforts at improving detectable warning materials. The conclusion the Department draws from this study is that there are documented practical problems with the installation and maintenance of some detectable warning materials, which it is necessary for transit properties to address if their installation of detectable warnings is to be successful. However, nothing in the study suggests that these problems appear insuperable; nor does the study suggest that a prolonged period of time (e.g., five years) is needed for rail operators to solve these problems.

Any decision in a matter of this kind requires the Department to strike a balance between the legitimate concerns that commenters have expressed. We believe that a reasonable balance is best achieved, in this case, by allowing transit authorities a limited period of time to resolve practical problems concerning detectable warnings. Doing so will increase the likelihood that, when installed, detectable warnings do their intended job well without creating unnecessary problems for either passengers or transit providers. In other words, we believe it is more important to do the job right than to do it immediately. Given the urgency of the concerns expressed by disability community comments and the strong safety rationale for installing detectable warnings, the Department will not adopt the proposed 18-month extension, however.

The Department will extend the required completion date for the installation of detectable warnings in existing key stations to July 26, 1994. The Department believes that this period should give transit properties sufficient time to work out the installation and related problems to which the comments referred, without unduly delaying the addition of this important safety feature. The Department encourages rail operators to install detectable warnings before the required date.

This extension applies only to detectable warnings. Other key station accessibility requirements, if not covered by a time extension for

"extraordinarily expensive" changes, must still have been completed by July 26, 1993. For any key station modification which, because of an extension of time for extraordinarily expensive changes, does not have to be completed until after July 26, 1994, detectable warnings would have to be installed on the same date as other modifications had to be completed.

The existing detectable warning requirement, without change or postponement, will continue to apply to construction of new stations and alterations of existing stations platforms. One commenter suggested that the postponement apply here, as well. Given that installation methods not raising the technical problems said to affect retrofit are possible in this situation (even though retrofit-like methods could also be used), the Department does not believe that a postponement is necessary.

The Department believes that, given the safety-related reasons for a detectable warning requirement documented in the rulemaking record, deleting the requirement postponing it indefinitely, or postponing it for a lengthy period (e.g., five years) would be inadvisable. (Deletion or indefinite suspension, in any case, would appear to exceed the scope of the notice for this rulemaking.) Moreover, unlike the falls of visually-impaired persons from platforms, allegations mentioned by some commenters that properly installed detectable warnings cause safety problems (e.g., for persons using crutches or walkers, or pedestrians wearing high heels) are not supported by any evidence of these problems actually having occurred. It would not be appropriate for the Department to indefinitely suspend a requirement that addresses a known safety problem on the basis of speculation about a safety problem that has not been shown to exist.

The Department is aware that the Access Board (along with the Department of Justice and Department of Transportation) proposed to suspend, until January 1995, the requirement for detectable warnings in contexts such as curb ramps and parking lots, with the expectation of conducting further research. The Access Board's proposed action does not apply to detectable warnings on rail platform edges. Even should the ultimate result of the Access Board's rulemaking process be to delete or modify the requirement for detectable warnings in other contexts, there would not be any inconsistency between the Access Board guidelines and DOT regulations, since the guidelines serve as minimum requirements that DOT may exceed in its standards.

The situations covered by the Access Board proposal are distinguishable from the situation of rail platform edges, and a decision by the Access Board to delete the detectable warning requirement in the former would not affect the requirement in the latter for detectable warnings on platform edges, particularly given the safety consequences of falls from rail station platforms. The Department is free to consider safety or reliability information that may be developed by the Access Board as it reviews detectable warnings.

If, as the result of research the Department is conducting, or further research or determinations by the Access Board, some change in the technical standard for detectable warnings may be indicated, the Department is free to propose changes, which can exceed the minimum requirements of the Access Board guidelines. If the technical standard changes at this or any future point, the Department could, in appropriate situations, apply the grandfathering provision in the Department's ADA rule (49 CFR 37.9) to avoid making rail operators re-install detectable warnings meeting the revised standard.

We decline to adopt suggestions that the completion date for installation of detectable warnings be established only after certain research is completed. Rail properties need to begin working now with manufacturers and construction contractors to ensure that materials are installed in the way that best serves everyone's interest in adhesion, durability, and maintainability. (It is our understanding that a number of rail properties have begun this task.) It is not fair to burden research with the expectation that it will solve all practical problems, which probably are best worked out in actual planning and installation. The extension we have provided in this rule should be adequate to permit an aggressive effort by rail properties to address successfully practical concerns about installation. We also do not believe there is a strong connection between the July 1995 one car per train deadline (which pertains mostly to making service for persons with mobility impairments accessible) and the installation of detectable warnings (which pertains mostly to making platforms safe for visually impaired passengers).

In response to the disability group concerns about possible problems detectable warnings may create for people with mobility impairments, the FTA is available to work with rail properties that have installed or are testing detectable warning systems (and users of these systems who have mobility impairments) to determine whether such problems exist and merit any change in the detectable warning requirement. The ability to gather this information is an additional reason for providing the extension.

The Department believes that one commenter's concerns about the relationship of the yellow safety strip or "bumpers" (i.e., strips of material along the outward-facing edges of platforms to protect the rail cars and platform edges from abrasion) on some of its platforms can be addressed successfully without regulatory change, and the Department will work with rail operators to that end. Safety railings on platforms, while perhaps useful for safety of visually impaired passengers, could create crowding and obstacles for other passengers, and might not be practical given that train doors do not always stop at the same point on a platform.

II. Use of Lifts by Standees

Background

The background of this issue is the following: § 37.165 of the Department's final ADA rule (49 CFR part 37; 56 FR 45584, 45640; September 6, 1991) provides that

> The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.

In the preamble to the final rule, the Department made the following comments on the origin of this provision:

> In the NPRM, the Department neglected to discuss the use of lifts by standees, an oversight that was brought to our attention by a substantial number of disability community commenters. Some comments from transit providers suggested there be limits on the use of lifts by standees (e.g., only where there are handrails, only in a wheelchair provided by the transit authority). Other transit provider comments opposed all standee lift use on safety grounds.
>
> Consistent with requirements of the ADA discussed above, persons who use canes or walkers and other standees with disabilities who cannot readily climb steps into a vehicle must be permitted to use lifts. This is important, among other reasons, because based on the premise that standees can use lifts, the Access Board found it unnecessary to establish a standard for stair riser heights in vehicles that use lifts. Lifts meeting Access Board standards will have handrails. We have some doubts about the practicality of providers carrying wheelchairs on their vehicles to use for standees who are trying to access a vehicle via the lift. (56 FR 45618).

The explanatory appendix to part 37 made the following comment on the regulatory requirement:

People using canes or walkers and other standees with disabilities who do not use wheelchairs but have difficulty using steps (e.g., an elderly person who can walk on a plane without use of a mobility aid but cannot raise his or her legs sufficiently to climb bus steps) must also be permitted to use the lift, on request. (56 FR 45755).

Before the issuance of the NPRM, the Department of Transportation received a number of inquiries from transportation providers concerning whether the regulatory provision on standees applies to all existing bus lifts, or only to lifts meeting the requirements of 49 CFR part 38 (the Department's adoption as its standards of the Architectural and Transportation Barriers Compliance Board accessibility guidelines for vehicles). The concern expressed by these providers was essentially that some older models of lifts have no handrails or other means of preventing a standee user from losing his or her balance and falling while the lift is in operation. For safety and liability reasons, they would prefer not to carry standees on such lifts. DOT staff were also contacted by a disability group representative who believes that standees should be accommodated on all lifts.

The NPRM proposed to modify the existing regulatory language to require transit providers to allow standees on lifts which meet part 38 specifications, or which are equipped with handrails or other devices that can assist standees in maintaining their balance. The Department sought comment on whether this change would improve safety significantly, what the effect would be on consumer access to vehicles, and any other measures that could mitigate any potential safety problems involved with the use of existing lifts while having less significant effects on access.

Comments

This issue attracted, by far, the greatest number of comments of any issue raised by the NPRM. A total of 434 commenters opposed the NPRM's proposal, asserting that the existing regulatory provision should be retained. The bulk of these—388 comments—were from individuals with disabilities or organizations representing them. Many of these letters appeared to be generated by a letter-writing campaign organized by the Disability Rights Education and Defense Fund (DREDF), whose comment is probably the most thorough and typical statement of the disability community's objections to the proposal.

The DREDF comment asserted, first, that there was no documentation of actual safety problems—data or even anecdotes—necessitating a restriction on the kinds of lifts that standees should be allowed to use. It is inappropriate under a nondiscrimination statute like the ADA, DREDF argued, to restrict the availability of a service to persons with disabilities based only on speculation or apprehension about possible risks. DREDF also cited ADA legislative history favoring use of lifts by standees, the practices of some transit agencies which allow standees to use lifts, extra costs to paratransit systems if ridership on fixed route systems by standees were limited, and a general concern that ADA regulations' protections should not be weakened. DREDF also alluded to a DOT study which found that standees could use lifts successfully.

Five transit agencies noted that they provided lift service to standees without significant problems. Thirty-one state and local agencies working with disability matters, three private transportation providers, three members of Congress (Senators Harkin and Kennedy and Representative Mineta), and four other commenters also advocated not changing the existing rule.

Seventeen commenters supported restricting the access of standees to lifts. Thirteen of these, including ten state or local transportation agencies, supported the NPRM proposal. (An equipment manufacturer, a person with a disability, and one other commenter also took this position). Four transit agencies went further, asserting that standees should be permitted to use only those buses that fully meet the requirements of 49 CFR part 38 (the Department's ADA vehicle standards). The latter group of commenters said that, in a vehicle that did not meet part 38 standards, there were safety concerns relating to door height, smoothness of operation etc. that continued to exist even if the lift had a handrail.

The main point of all commenters supporting a restriction on the use of lifts by standees was the safety risk that they believe to exist. That is, they were concerned that passengers would lose their balance and fall, hit their head, or otherwise suffer injury, as the result of using the lift. These commenters, while making clear their concern about safety, did not present any data or anecdotal information that would demonstrate that an actual safety problem existed. Their focus was on what could happen.

One partial exception to this pattern was a comment from the New York State Public Transportation Safety Board (PTSB). PTSB described, in some detail, how the design and operation of a particular lift model (a front door "arcing" lift manufactured by EEC, Inc., Model 141) could create specific hazards for standees. The problematical features of this lift, as described by the PTSB, include an unusually low head clearance, the tilting action of the lift as it enters the bus, and a "pit" between the lift and the bus entrance when the lift is fully raised but has not entered the bus. All of these, in PTSB's view, present clear safety hazards to standees. The Department understands that this lift model is no longer being manufactured, but remains in use on some buses.

Three commenters suggested that buses carry an on-board wheelchair that standees could choose to use. Five requested that handrails be retrofitted on existing lifts, and one commenter opposed this idea. One disability community commenter said it was inappropriate for a transit authority to require a standee to use the handrail (i.e., because it might be more dangerous for the passenger to release his or her grip on a walker or crutch to grasp the handrail); one transit authority wanted to be able to impose such a requirement. A disability community commenter suggested that if a passenger decided using a lift was too dangerous, that passenger should be eligible for paratransit.

DOT Response

The key point in the comments, from the Department's point of view, is the absence of information documenting a safety problem resulting from standees' use of lifts. The ADA is a nondiscrimination statute, intended to ensure, among other things, that people with disabilities have access to transportation services. To permit a transportation provider to exclude a category of persons with disabilities from using a device that provides access to a vehicle on the basis of a perceived safety hazard, absent information in the rulemaking record that the hazard is real, would be inconsistent with the statute (c.f., the discussion of the transportation of three-wheeled mobility devices in the preamble to the Department's September 6, 1991, final ADA rule (56 FR 45617)). While we understand the concerns of transit agency commenters about the potential safety risks that may be involved, the Department does not have a basis in the rulemaking record for authorizing a restriction on lift use by standees.

The DOT study alluded to by commenters, with some qualifications, does support the proposition that standees may use lifts safely and successfully. The qualifications are that, in the situations studied, both drivers

and standee users were trained in the proper use of lifts, handrails were available on the lifts, and operators were not required to transport a standee who refused to use the handrail. The Department strongly urges such training programs to transit providers, both as a way of improving customer service and of reducing any risks which transit providers believe may be created by the use of lifts by standees.

With the exception noted below, the existing § 37.165(g)—which requires transportation providers to permit standees to use lifts, without restriction—will remain in effect. The one exception concerns the EEC, Inc. "arcing" lift cited in the New York PTSB comment. The information cited in the comment—which is consistent with the Department's information about this lift model—provides a reasonable basis for believing that its operation may be particularly hazardous to standees. For this reason, the final rule will permit transit providers who operate buses having this lift model to deny its use to standees (who would, of course, be eligible for paratransit as a result). The transit provider would notify users (e.g., via signage on affected buses) that this particular bus lift was not available to standees.

Transit providers may, if they choose, provide additional accommodations, such as retrofitted handrails on existing lifts or on-board wheelchairs. The Department encourages the use of such accommodations, in the interest of improving safe and convenient service to passengers. We do not believe that such accommodations should be required, however. Requirements by transportation providers that passengers use a particular accommodation are also inappropriate under the ADA. For example, if a transit authority provides an on-board wheelchair for use by standees on lifts, the transit authority could not insist that a standee sit in the wheelchair in order to use the lift.

III. Equivalent Facilitation

Background

Part 38 and appendix A to part 37 both contain provisions concerning equivalent facilitation. The language reads as follows:

> Departures from particular technical and scoping requirements of these guidelines by the use of other designs or technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility [vehicle]. (49 CFR part 37, Appendix A, § 2.2; 49 CFR part 38, 38.2)

Further, 49 CFR 37.7 and 37.9 establish a procedure through which an entity may obtain a determination of equivalent facilitation for vehicles and facilities, respectively:

> For purposes of implementing the equivalent facilitation provision * * * a determination of compliance will be made by the (Federal Transit) Administrator or the Federal Railroad Administrator, as applicable, on a case-by-case basis. An entity wishing to employ equivalent facilitation * * * shall submit a request to UMTA or FRA, as applicable, and include the following information: (list of five items of information).

When it drafted these provisions, the Department contemplated a small number of requests from transit providers concerning individual facility or vehicle problems on which flexibility in applying accessibility standards could be provided without negative effects on accessibility. The Department, instead, received a substantial number of requests for equivalent facilitation determinations from manufacturers relating to approvals of particular products. The NPRM proposed to amend the rule to reflect this situation, allowing equivalent facilitation requests to be made by manufacturers and by transportation entities in other modes.

In drafting the existing regulatory language, the Department also assumed that equivalent facilitation requests would be made in the rail and transit contexts. Consequently, the rule gives equivalent facilitation authority to the FTA and FRA Administrators. There could be other situations in which requests were made pertaining to airport, highway, or other DOT programs. To cover these situations, we proposed changing the rule to authorize the Administrator of the concerned operating Administration to make such a determination, with the concurrence of the Assistant Secretary for Policy and International Affairs in order to ensure consistency.

The NPRM also proposed to clarify the public participation obligations of parties asking for equivalent facilitation determinations. The obligations would differ depending on whether the requester is a transportation entity or a manufacturer (in the latter case, the requirement would be a consultation requirement, since there is not a single community whose representatives could be involved in the normal sense of public participation).

Comments

Commenters had a variety of points of view on this proposal. Sixteen commenters—including both transportation agencies and disability community commenters, among others—favored the NPRM's proposal. Most of these commenters did not provide a detailed basis for their position, essentially endorsing the NPRM's rationale. One of these commenters opposed the public hearing requirement, while another said public participation should receive greater emphasis.

Nine commenters, eight of whom were equipment manufacturers, said that there should not be separate equivalent facilitation procedures for public and private entities. They viewed the separate provision for private entities (such as manufacturers) as being a less stringent standard, which would allow manufacturers to circumvent the standards in the rule. The less stringent standard could also encourage misleading or unethical practices, they said. They suggested that public and private entities be subject to the same procedures. One of these commenters simply said that the current rule should be left in place, without change. Two manufacturers thought equivalent facilitation should be deleted from the rule altogether.

Four state or local transportation agencies asked that FTA (or perhaps APTA) publish, in the **Federal Register** or elsewhere, its approvals of requests for equivalent facilitation, so that other transit authorities would know what products or accommodations were acceptable.

Other comments addressed a variety of concerns. One transit authority thought it should be able to self-certify as to an equivalent facilitation, without FTA approval. A manufacturer said it should not have to consult with disability groups: it had tried, and had a hard time finding anyone who would respond or who was technically qualified to help. A transit authority and an "elderly and handicapped" advisory committee sought assurance that transit authorities and advisory committees, respectively, would be part of the public participation process. Other commenters expressed concern about delay (one suggesting a 90-day FTA deadline) or about misleading manufacturer claims of "DOT approved" products.

Four commenters—three disability community commenters and one manufacturer—said that there should be no equivalent facilitation available for detectable warning materials. The main reason for this was that, in the commenters' view, detectable warning materials need to be uniform nationwide. Moreover, some fairly subtle differences among designs could produce differences in effectiveness that might not be apparent to manufacturers or DOT.

DOT Response

The first issue to be considered is whether the Department should continue making equivalent facilitation determinations. The Department of Justice and the Access Board do not: In non-transportation contexts, if a facility owner determines that it has made an equivalent facilitation, if need not seek approval or confirmation from any Federal agency. The facility owner simply makes its own determination, which may be challenged in court or administrative proceedings as failing to comply with ADA requirements. The commenters who suggested that DOT not make equivalent facilitation determinations are suggesting, in effect, that DOT adopt this approach.

Taking this approach would have the advantage of reducing the Department's administrative workload. However, the Department continues to believe that making equivalent facilitation determinations available also has important advantages. It is a way of encouraging innovation and the application of newer technologies. It is a way of providing needed flexibility as entities find ways to achieve accessibility in ways that differ from existing design standards. It is a way of providing a reasonable sense of security to regulated parties that accessibility modifications they make will comply with ADA requirements. Making decisions about equivalent facilitation in advance, through an agency administrative process, seems more efficient than making them after the fact, through litigation.

For these reasons, the Department will continue to make equivalent facilitation determinations. We believe the changes to the process suggested in the NPRM—concerning the ability of the various DOT operating administrations to make these determinations and having different procedural steps for manufacturers and transportation providers—are reasonable. Manufacturers and transit providers are different kinds of entities, in different situations (e.g., a transit authority has a local "public" for which it makes sense to hold a public hearing; a manufacturer probably does not). Consequently, we have not adopted the comments of manufacturers that opposed different procedures for manufacturers and transportation providers. While the procedures differ, the substantive standard is not less stringent for manufacturers: any party seeking a determination of equivalent facilitation must convince the Department that its proposal really results in equivalent or greater access. If manufacturers or other parties have a problem in obtaining disability group input, they can document their efforts as part of their application for an equivalent facilitation determination. The Department can also attempt to assist in obtaining disability group input.

The equivalent facilitation sections for vehicles and facilities are basically parallel. In view of the close relationship between the coverage of airport facilities under the ADA, section 504 of the Rehabilitation Act, and the Air Carrier Access Act, the Department is clarifying the facilities section to specifically include requests for equivalent facilitation that arise concerning airport facilities under all three statutes. Since the situation of air carriers making equivalent facilitation requests concerning facilities at public airports is very similar to that of the airport sponsors themselves, we decided to apply the same procedural requirements to both.

The Department believes that the suggestion to publish its equivalent facilitation determinations is a good one. While it need not be part of this rule, the Department will take appropriate steps to provide general notice of these decisions. The Department will also endeavor to respond to requests for equivalent facilitation as soon as possible. A regulatory deadline would not be that useful, in our view.

We do not believe that it is necessary to prohibit applications for equivalent facilitation concerning detectable warnings. Equivalent facilitation is a useful provision of the Access Board guidelines and the Department's rules that applies to all accessibility features. Technology and product differentiation in the detectable warnings field does not stand still, and equivalent facilitation is an appropriate means to recognize evolution and innovation in these products. At the same time, as a matter of policy, the Department will scrutinize closely applications for equivalent facilitation concerning detectable warning materials to make sure that, in all respects, a proposed "equivalent" material truly provides equal or greater detectability and safety benefits. The uniformity considerations mentioned by commenters will be taken into account in this process.

The Department also wants to clarify an equivalent facilitation decision it had earlier made concerning detectable warnings. Engineered Plastics, Inc. (EPI) requested a finding of equivalent facilitation for its detectable warning product, "Armor-Tile." This product did not meet the original Access Board design requirement for detectable warnings. On January 10, 1992, the FTA Administrator determined that the criteria under 49 CFR 37.9 had been met, and he advised EPI that the detectability of the Armor-Tile warning strip was equivalent to those meeting the Access Board guidelines.

At the time the Access Board guidelines were published, the specifications for detectable warning surfaces were ambiguous, particularly concerning the pattern and design of the surfaces. This was due, in part, to the absence of a diagram illustrating the required pattern. Several manufacturers of detectable warning surfaces requested clarification. The FTA Administrator sent letter to a number of manufacturers to inform them that their designs appeared to meet the dimensional requirements intended by the Access Board.

The FTA has learned that some manufacturers have been marketing products as "U.S. Government-Approved" or "ADA-Approved." Other firms claim that their products comply, even though the products differ from those diagrams which were submitted to FTA. The FTA never intended its letters to be used as product endorsements or certifications of compliance. Any such use of these letters, or reliance on these letters in marketing materials, is unauthorized, and potential customers for these products should disregard claims of this kind. The final rule specifically bars claims by manufacturers that an equivalent facilitation determination constitutes a product endorsement by the Department.

Since the FTA issued these letters, the Access Board published Bulletin #1 in May 1992, clarifying many of the ambiguities left by its original guidelines and containing a diagram illustrating the pattern prescribed for detectable warning surfaces. Bulletin #1 also contains a list of products which are claimed by their manufacturers to meet the technical specifications for detectable warnings, but the Access Board neither reviews products for compliance nor certifies the suitability of such products or systems for the purposes for which they are intended.

The Department believes that the ambiguities in the original Access Board guidelines have been resolved by Bulletin #1, and that FTA letters concerning compliance with the Access Board requirements are no longer necessary. Prospective purchasers are advised to evaluate carefully all proposed products and designs against the Access Board requirements for compliance with technical

specifications, applications, designs, and installations.

IV. Obligation To Ensure the Availability of Seating

Background

An FTA regulation (49 CFR 609.15(d)) requires FTA-assisted public transit authorities to designate priority seating near the front of vehicles for elderly and handicapped persons. Parts 37 and 38 require wheelchair securement locations in vehicles, though transit providers may have fold-down seats that other persons can use when there are no wheelchair users on the vehicle. Transit providers have asked the Department whether they have an obligation under the ADA to direct other passengers to move from designated priority seats or from fold-down seats over a wheelchair securement location when a passenger with a disability enters the vehicle.

There are reasons to have such a requirement. For example, a wheelchair user may not be able to use a bus safely and securely if he or she does not have access to the securement location. An ambulatory person with a disability may be unable to stand for long periods, meaning that the person would be effectively denied access to transportation if he or she could not sit down on a crowded bus. It is not enough, under the ADA, to permit a passenger with a disability to enter a vehicle; the person must be able to use the vehicle for transportation. The availability of seating or securement space is an integral part of accessibility (i.e., having a vehicle that is "readily * * * usable by" an individual with a disability).

To clarify this point, the NPRM proposed adding to § 37.167 a new paragraph spelling out this obligation, which would apply to private as well as public transportation entities.

Comments

Twenty-six commenters favored the NPRM approach. The proposal received support from both disability community commenters (12) and state or local transportation agencies (10), with the remainder of comments (4) coming from state or local agencies working on disability matters. These commenters generally viewed the proposal as a necessary step to make sure that passengers with disabilities actually received transportation service they could use. Only one commenter, a person with a disability, opposed the proposal, saying it could cause litigation and a backlash against disabled riders.

There were several suggestions for refining the NPRM proposal, some of which came from some of the same commenters who endorsed the proposal in general. Nine transit agencies and one state or local agency working on disability matters suggested that the final rule require the driver to ask someone sitting in a priority seat to move, or to make good faith efforts to clear the seat, but not to have to enforce the request. Some of these commenters expressed the concern that requiring enforcement could lead to confrontations between drivers and passengers or could disrupt service.

Two commenters suggested that it would help matters if the standard language on the sign above the priority seats was reworded to say that other passengers were expected to move if a disabled person showed up and needed the space. Two commenters suggested that, when possible, the driver seat disabled passengers on the right side of the bus, so that the driver could see if a passenger had problems with the securement device or needed a stop announcement. One transit agency asked that the rule state that non-disabled passengers do not have to get off the bus to let a disabled passenger on.

One transit agency suggested explicitly excluding paratransit vans used for passengers with disabilities from this policy. A disability community commenter objected to the "to the extent practicable" clause for rail systems. Commenters also asked for more clarification or guidance on certain subjects. Four transit agencies asked for guidance on how to identify people with hidden disabilities for priority seating purposes (one of these commenters suggested that such passengers self-disclose). Three transit agencies asked how to prioritize among different disabled passengers (e.g., ambulatory vs. non-ambulatory). One of these commenters also asked for guidance on how to treat non-disabled personal care attendants who may want to sit next to a disabled passenger.

DOT Response

Virtually all commenters supported the proposal, agreeing with the rationale articulated above. The Department will adopt the proposal, believing that requests by drivers that other passengers move from priority seats will assist in making transportation genuinely accessible for passengers with disabilities. At the same time, given the modification discussed below, it will not impose onerous new duties on transit personnel.

We agree with the commenters who suggested modifying the proposal to specify that drivers or other personnel on vehicles not be required to enforce a request for someone to move from a priority seat (e.g., by physically removing a recalcitrant passenger or parking the bus and calling the police.) This "ask, don't tell" approach should help to avoid confrontations and disruptions of service while resulting in seating being made available for passengers who need priority seating in the vast majority of instances. The rule would not impose a uniform procedure; each transit system may devise a means best suited to its operations to carry out the requirement. It would be appropriate for transit operators to establish a mechanism based on local circumstances, consultation with drivers, and input from the local community. The FTA will oversee such mechanisms as part of the triennial review process.

We also agree with the commenters who suggested that priority seating signs should specify that non-disabled persons should move to make room for someone who needs a priority seat. This will inform passengers that such a request may be made and that they should comply. The requirement will apply to newly acquired vehicles and to new or replacement signs in existing vehicles.

The Department is not making other suggested changes in the regulatory language, believing that reasonable implementation of the provision can address the issues commenters raised. As a matter of guidance, we believe it is reasonable that if a passenger with a "hidden" disability wants a driver to ask someone to make room for use of a priority seat, the individual should tell the driver about the disability. A driver cannot be expected to intuit the existence of a disability that is not apparent. A personal care attendant (as distinct from a friend or traveling companion) should be permitted to sit near a person with a disability, since the attendant may be needed to perform personal tasks for the individual with a disability during the course of the ride.

Priority seats are intended for people with disabilities in general; a seat near the front of the bus may be as important to a blind individual as to an individual with a mobility impairment. Obviously, a wheelchair user needs access to a securement location. It is appropriate for a driver, under this provision, to ask an ambulatory passenger with a disability to move to clear a wheelchair securement location when needed to accommodate a wheelchair user. If a van is being used for specialized paratransit service for individuals with disabilities, then this provision—which addresses only to those vehicles covered by FTA

regulations concerning priority seating—would not apply.

The language which applies the "driver request" provision to rail systems only to the extent practicable seems necessary. If, as in many systems, the only transit employee aboard the train is in the driver's compartment in the front car, the employee will not be in a position to see who is sitting in a priority seat in the third car in the train, let alone ask someone to move from it. If there are conductors or other transit personnel present in the passenger compartments, they would make the request when they saw a situation calling for it.

V. Name Change

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) changed the name of the former Urban Mass Transportation Administration (UMTA) to Federal Transit Administration (FTA). The NPRM proposed updating the terms used in the Department's ADA rules to conform to the ISTEA changes. FTA previously made this change for all the regulations in Subchapter VI of Title 49 of the Code of Federal Regulations. However, the ADA regulation is in Subchapter I of that Title. Not surprisingly, there were few comments on this matter; a handful of commenters noted it approvingly. The Department is adopting this proposal without change.

VI. Lease of Used Rail Cars by Amtrak and Commuter Rail Operators

Background

Section 37.87 of the Department's ADA regulation provides that when Amtrak or a commuter authority purchases or leases or used intercity or commuter rail car, it must either obtain an accessible car or demonstrate the good faith efforts it has made to do so. These good faith efforts are the same that apply to purchases of used rolling stock (e.g., buses) by mass transit systems—an initial solicitation for accessible vehicles, a nationwide search for accessible vehicles, including advertising in trade publications and contacting trade associations.

Before the NPRM was issued, Amtrak told DOT staff that this provision is not appropriate in an important situation in which it leases rail cars. Frequently (e.g., at holiday times or other high-demand periods), Amtrak must obtain additional cars from nearby commuter rail authorities on short notice for a short period of time. For example, Amtrak may need a certain number of cars to carry overflow traffic at Thanksgiving or Christmas on the Northeast Corridor. Amtrak may have a standing reimbursable agreement with Boston or Washington/Baltimore area commuter authorities to borrow commuter rail cars on short notice in these situations. There is no time to make a nationwide search or advertise in trade publications, and no point in seeking cars from distant commuter authorities (which may not meet dimensional requirements for Northeast Corridor service and which would take too long to arrive).

To accommodate this situation, the Department proposed to add a new paragraph to this section, which would allow good faith efforts to be documented in a different way. For a short-term lease of commuter rail cars (i.e., for a period of seven days or less; the Department sought comment on whether this is the appropriate period), Amtrak and commuter authorities could have, in standing agreements with one another, a provision requiring available accessible cars to be provided before other cars in the donor agency's fleet. The proposal would also require that if the borrower had a choice of obtaining cars from more than one source, it would obtain the cars from a source that had accessible cars before it obtained inaccessible cars from the other source.

For example, suppose there is a standing agreement between Amtrak and Commuter Authority B. The agreement would provide that when Amtrak borrowed cars from B, B would make available and Amtrak would take its accessible cars first, to the extent they are available (e.g., B would not have to provide cars that were in the repair shop or that it was impossible to make available for Amtrak's use in a timely fashion). Also, if Amtrak could obtain cars for a particular area of its service from both Commuter Authority B and Commuter Authority C, and C had more accessible cars available than B, Amtrak would borrow C's accessible cars before it borrowed inaccessible cars from B.

Comments

Eleven commenters (eight disability community commenters, Amtrak and one other transit provider, and one state or local agency working on disability matters) favored the NPRM approach. Other commenters suggested adding safeguards to ensure accessibility. One disability community commenter and one state or local agency working on disability matters recommended that, regardless of other considerations, each train always have at least one accessible car (after July 1955, presumably). Another disability community commenter suggested a requirement that the lease of rail cars by Amtrak not be permitted to decrease the overall percentage of Amtrak's fleet that was accessible (i.e., that if Amtrak leased inaccessible cars from a commuter authority, Amtrak would have to obtain accessible cars elsewhere in order to maintain the same percentage of accessibility in its fleet that it had before the lease).

DOT Response

The Department will adopt the proposed provision, which appears workable both to Amtrak and disability community commenters. We do not believe it is necessary to add language concerning the "one car per train" requirement. The existing rule's one car per train requirement applies, after July 1995, both to Amtrak and the commuter authorities involved. Every train that Amtrak or a commuter authority operates after that date will have to have an accessible car. Even when Amtrak leases an entire consist from a commuter authority after that date, the consist will necessarily include at least one accessible car, assuming the commuter authority lessor is in compliance with the rule. We assume that Amtrak would prefer to lease trains from commuter authorities that comply with their ADA obligations. Given the differences between the bus and rail contexts, and the specific requirements that the ADA applies to rail, it does not seem appropriate to apply the "don't diminish fleet accessibility percentage" rule to this situation.

VII. Automatic Fare Vending Machines

Background

In Appendix A to part 37, section 10.3.1(7) requires automatic fare vending equipment and related devices to conform, among other things, to the requirements of sections 4.34.2–4.34.4, concerning automated teller machines (ATMs). Last fall, the Access Board proposed amending its guidelines for ATMs. See 57 FR 41006, September 8, 1992. The proposed changes concerned the "reach range" (e.g., how far a person must reach to operate the controls) of ATMs. The ADA requires the Department to adopt standards consistent with the Access Board guidelines. In the NPRM, the Department sought comment on how the proposed Access Board ATM standard modifications would affect automatic fare vending and collection systems.

Comments

Nine commenters supported the NPRM proposal to adopt the Access

Board proposed amendment for ATMs, which would also apply to fare vending systems. These commenters included four disability community commenters, two transit agencies, two state or local agencies working on disability matters, and one consultant. One commenter said that, if the specifications were changed, existing models of fare vending systems had installed should be grandfathered, so that retrofit was not necessary.

Five commenters (four transit agencies and a manufacturer) said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a different standard, at least with respect to some specifications. Five commenters (one of the above transit agencies plus four of the commenters who favored the NPRM provision) said that additional provision (e.g., a voice synthesizer system) was needed on fare vending systems to serve persons with visual impairments.

DOT Response

The Department believes that the Access Board proposal, which focuses on the reach range requirements for ATMs, is reasonable for fare vending machines as well. The two types of machines are similar enough in the operations that consumers must perform that the same requirements make sense in both contexts. Those commenters who asserted that the two types of machines should have different requirements did not provide sufficient information on which the Department or the Access Board could base a separate standard.

The Access Board standard already requires information about the machines to be provided in a way that persons with impaired vision can use; specifying a voice synthesis capability does not seem necessary and is, in any event, beyond the scope of a proposal focusing on reach range. The Department would apply 49 CFR 37.9, concerning grandfathering, to fare vending systems that meet the current ADA standard in the same way as that section applies to other features of transportation facilities.

In a joint Access Board/DOT rule issued prior to this document, the Department adopted the proposal discussed above. The comments to this docket were considered in context of that rulemaking and were reflected in its preamble. Because this action had already been taken, it is not necessary for this document to further amend the regulatory text.

VIII. Technical Corrections to 49 CFR Part 38

In the course of preparing this document, DOT staff noticed two technical errors in 49 CFR part 38. The first was the designation of the last paragraph of § 38.113 (concerning signage) as (3), rather than (e). The second was the omission of part of the language concerning wheelchair locations in § 38.125(d)(2). This language should parallel that of § 38.95(d). The rule makes these corrections, which have no substantive effects.

Regulatory Analyses and Notices

This rule is not a significant rule under the Executive Order on Regulatory Planning and Review. It is a significant rule under the Department's Regulatory Policies and Procedures, since it amends the Department's Americans with Disabilities Act rule, which is a significant rule. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the rule will not have a significant economic impact on a substantial number of small entities. This is because the economic effects of the rule in general should be minimal; to the extent that the rule reduces costs (e.g., by delaying the requirement for completing the installation of detectable warnings), this beneficial effect will affect only large entities.

Issued this 25th day of October, 1993, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the Preamble, the Department of Transportation amends 49 CFR parts 37 and 38 as follows:

PART 37—[AMENDED]

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

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. In 49 CFR part 37, the words "Urban Mass Transportation Administration" are changed to the words "Federal Transit Administration" in every instance in which those words appear; the letters "UMTA" are changed to the letters "FTA" in every instance in which those letters appear; and the words "UMT Act" and "Urban Mass Transportation Act" are changed to the words "FT Act" and "Federal Transit Act" in every instance in which those words appear, and the definition of "FT Act" is moved to the proper alphabetical order.

3. In § 37.7, paragraph(b) is revised to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b)(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

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

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

(ii) Specific provision of part 38 of this subtitle with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38 of this subtitle; 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 services subject to the provisions of subpart D of this part, 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 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 private entity that provides transportation services subject to the provisions of subpart E of this part or a manufacturer, the private entity or manufacturer 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 Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. 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.

* * * * *

4. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Standards for accessible transportation facilities.

* * * * *

(d)(1) For purposes of implementing the equivalent facilitation provision in section 2.2 of appendix A to this part, 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 this part, or other appropriate party with the concurrence of the Administrator;

(ii) 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.

(B) The manufacturer of a product or accessibility feature to be used in the facility of such entity to comply with this part.

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

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

(ii) Specific provision of appendix A to this part with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in 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 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 Policy and International Affairs.

(6) 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. Entities shall not cite these determinations as indicating that a products or methods constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. 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.

5. Section 37.47(c)(1) is revised to read as follows:

§ 37.47 Key stations in light and rapid rail systems.

* * * * *

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

6. Section 37.51(c)(1) is revised to read as follows:

§ 37.51 Key stations in commuter rail systems.

* * * * *

(c)(1) Except as provided in this paragraph, the responsible person(s) shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

7. Section 37.87 is amended by redesignating the present paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 37.87 Purchase or lease of used intercity and commuter rail cars.

* * * * *

(d) When Amtrak or a commuter authority leases a used intercity or commuter rail car for a period of seven days or less, Amtrak or the commuter authority may make and document good faith efforts as provided in this paragraph instead of in the ways provided in paragraph (c) of this section:

(1) By having and implementing, in its agreement with any intercity railroad or commuter authority that serves as a source of used intercity or commuter rail cars for a lease of seven days or less, a provision requiring that the lessor provide all available accessible rail cars before providing any inaccessible rail cars.

(2) By documenting that, when there is more than one source of intercity or commuter rail cars for a lease of seven days or less, the lessee has obtained all available accessible intercity or commuter rail cars from all sources before obtaining inaccessible intercity or commuter rail cars from any source.

* * * * *

8. In § 37.165, paragraph (g) is revised to read as follows:

§ 37.165 Lift and securement use.

* * * * *

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided*, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

9. In § 37.167, a new paragraph (j) is added, to read as follows:

§ 37.167 Other service requirements.

* * * * *

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

PART 38—[AMENDED]

10. The authority citation for 49 CFR part 38 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

§ 38.113 [Amended]

11. The last paragraph of § 38.113, entitled *Signage* and currently designated as paragraph (3), is redesignated as paragraph (e).

12. In § 38.125, paragraph (d)(2) is revised to read as follows:

§ 38.125 Mobility aid accessibility.

* * * * *

(d) * * *

(2) *Wheelchair or mobility aid spaces.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor space 48 inches by 30 inches. Such spaces shall adjoin, and may overlap, an accessible path. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Seating spaces may have fold-down or removable seats to accommodate other passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space provided (See Fig. 2).

* * * * *

[FR Doc. 93–29257 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–62–P–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282; Sub-No. 17]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the definition of "significant transaction" in rail carrier consolidation cases, and is eliminating certain requirements currently applicable to applications seeking approval of significant transactions. The revised definition will rationalize the rail carrier consolidation scheme, and the reduction of required information will relieve rail carriers of the burden of submitting information not relevant to the statutory standard applicable to such cases.

EFFECTIVE DATE: This action is effective on December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: On August 10, 1992, at 57 FR 35559, we requested comments on our proposals (1) to revise the 49 CFR 1180.2(b) "significant transaction" definition, and (2) to reduce the required contents of applications seeking approval for significant transactions.

Comments were filed by the Association of American Railroads (on behalf of itself and its member railroads) and by Patrick W. Simmons (on behalf of the Illinois Legislative Board of the United Transportation Union).

We have concluded that the 49 CFR 1180.2(b) "significant transaction" definition should be revised, and that the required contents of significant transaction applications should be reduced, as we proposed.

For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD service (202) 927–5721.

We reaffirm our preliminary conclusion that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our preliminary conclusion that this action will not have a significant impact on a substantial number of small entities. The revision of the "significant transaction" definition merely rationalizes our analysis of the dividing line between significant transactions and minor transactions. The reduction of the required contents of significant transaction applications may have a limited impact on small

entities, but that impact will be a positive one. The reduction of the information requirements applicable to significant transaction applications should reduce the expenses applicants must incur to process these transactions.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: November 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons and Commissioner Walden dissented in part with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Section 1180.0 is amended by removing the 7th and 8th sentences and by adding in lieu thereof three new sentences to read as follows:

§ 1180.0 Scope and purpose.

* * * A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7, 1180.8(a), and 1180.9. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7, and 1180.8(a). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(b). * * *

3. In § 1180.2, paragraph (b) is revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made.

* * * * *

4. In § 1180.4, paragraph (b)(1)(iv) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(b) * * *

(1) * * *

(iv) Indicate why the transaction is *major* or *significant.*

* * * * *

5. In § 1180.6, the introductory text of paragraph (b) is revised, and a new paragraph (c) is added, to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) In a *major* transaction, submit the following information:

* * * * *

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

6. In § 1180.9, the introductory text is revised to read as follows:

§ 1180.9 Financial information.

The following information shall be provided for *major* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR part 1201:

* * * * *

[FR Doc. 93–29324 Filed 11–29–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 112293C]

Atlantic Tuna Fisheries; Bluefin Tuna

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

ACTION: Notice of Closure of the Incidental Catch Category.

SUMMARY: NMFS closes the Incidental Catch category of the Atlantic bluefin tuna fishery, as required by regulations governing this fishery. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure of the Incidental Catch category is effective at 0001 hours local time November 27, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(e) provides for the total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b). The Incidental Catch category was adjusted by notice in the **Federal Register** (58 FR 32872) to a total of 89 metric tons (mt) effective June 8, 1993, under authority of § 285.22(h). The Incidental Catch quota was further adjusted to 84 mt effective October 8, 1993 (58 FR 53434), under authority of § 285.22(i). This quota was subdivided as follows: (1) 82 mt for longline vessels, of which not more than 54 mt may be taken in the area south of 36°00'N. latitude; and (2) 2 mt for vessels fishing for species of fish other than tuna. The quota for the southern area Incidental Catch category was attained and closed on May 4, 1993 (58 FR 26921, May 6, 1993).

The AA is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal its quota. The AA is further authorized under § 285.31(a)(2) to prohibit fishing for, catching, possessing, or landing Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22 except under the provisions of § 285.27. The AA has determined, based on the estimated catch, that the northern adjusted annual quota of the Incidental Catch category will be attained by November 27, 1993. Therefore, the entire Incidental Catch category, including the "Incidental other" category, will be closed effective at 0001 hours local time on November 27, 1993.

This closure will remain in effect for the remainder of 1993.

Classification

This action is taken under the authority of 50 CFR 285.20 (b)(1) and 50 CFR 285.22(e).

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, and Treaties.

Dated: November 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29195 Filed 11–23–93; 4:30 pm]

BILLING CODE 3510-22-P