

the private sector, result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it merely proposes to conditionally approve state law as meeting federal requirements. Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–18570 Filed 8–21–24; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 37**

[Docket No. DOT–OST–2024–0090]

RIN 2105–AF05

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Department of Transportation (DOT or the Department) is proposing to amend its rules implementing the transportation provisions under Title II, Part B, and Title III of the Americans with Disabilities Act (ADA) by adopting as regulatory accessibility standards the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) issued by the Architectural and Transportation Barriers Compliance Board (Access Board) on August 8, 2023. This proposed rule would adopt the Access Board’s PROWAG into the Department’s ADA regulations. When adopted, DOT’s public right-of-way ADA standards will apply only to new construction and alterations of transit stops in the public right-of-way. For purposes of this rulemaking, transit stops in the public right-of-way are facilities in the public right-of-way used in the provision of designated or specified public transportation, as defined in DOT’s existing ADA regulations.

**DATES:** Comments must be received on or before September 23, 2024. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number DOT–OST–2024–0090) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9

a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

*Instructions:* You must include the agency name and docket number DOT–OST–2024–0090 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Privacy Act:* Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

*Docket:* For internet access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov). Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Electronic Access and Filing:* A copy of the Notice of Proposed Rulemaking, all comments, final rule and all background material may be viewed online at: [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. A copy of this document will be placed in the docket and electronic retrieval help and guidelines are available on the website. The website is available 24 hours each day/365 days a year. An electronic copy of this document may be downloaded from the Office of the Federal Register's website at: [www.FederalRegister.gov](http://www.FederalRegister.gov).

**FOR FURTHER INFORMATION CONTACT:** For general questions, Holly Ceasar-Fox, Office of the General Counsel, U.S. Department of Transportation, (202) 366–7420, [holly.ceasarfox@dot.gov](mailto:holly.ceasarfox@dot.gov). For legal questions related to PROWAG, James T. Esselman, Office of Chief Counsel, Federal Highway Administration, (202) 366–6181, [james.esselman@dot.gov](mailto:james.esselman@dot.gov). For legal questions related to transit, Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, (202) 366–0944, [bonnie.graves@dot.gov](mailto:bonnie.graves@dot.gov). For questions related to intercity or high-speed rail, Linda Martin, Federal Railroad Administration, Office of Chief Counsel, 202–689–9408, [Linda.Martin@dot.gov](mailto:Linda.Martin@dot.gov).

**SUPPLEMENTARY INFORMATION:** The Americans with Disabilities Act (ADA)

directs the U.S. Access Board (the Board) to issue minimum guidelines for accessible design to guide the U.S. Department of Justice and the U.S. Department of Transportation in the development of ADA accessibility standards. *See* 42 U.S.C. 12204(a). In 1991, the Board issued an initial set of ADA accessibility guidelines (ADAAG) for buildings and facilities on sites, defined as “[a] parcel of land bounded by a property line or a designated portion of a public right-of-way.” *See* 56 FR 35408 (July 26, 1991). In 2004, the Board issued revisions to the ADAAG. *See* 69 FR 44084 (July 23, 2004). Neither version of the ADAAG specifically addresses the accessibility of facilities in the public right-of-way.

In 2011, the Board issued proposed accessibility guidelines for pedestrian facilities, including transit stops, in the public right-of-way (proposed PROWAG). 76 FR 44664 (July 26, 2011). The proposed rule defined “public right-of-way” as “[p]ublic land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes.” In 2013, the Board published a supplemental NPRM, to incorporate proposed accessibility guidelines for shared-use-paths into the proposed PROWAG. 78 FR 10110 (Feb. 13, 2013). Following consideration of public comments, the Board issued its final rule on Public Rights-of-Way Accessibility Guidelines (PROWAG) on August 8, 2023. (88 FR 53604). The final rule defines “public right-of-way” as “[p]ublic land acquired for or dedicated to transportation purposes, or other land where there is a legally established right for use by the public for transportation purposes.” This NPRM proposes to adopt the PROWAG into the Department's ADA regulations without substantive modification.

### Background

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

regulations must be “consistent with” final minimum accessibility guidelines adopted by the Access Board. *Id.* at §§ 12186(a), (c). These statutory directives require the DOT to develop and implement this proposed rule.

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

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

For purposes of this rule, DOT considers facilities in the public right-of-way used in the provision of designated or specified public transportation to be transit stops. The Access Board's PROWAG does not use the terms “designated public transportation” or “specified public transportation” in setting forth accessibility guidelines applicable to transit stops. The PROWAG defines “transit stop” as: “An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. This definition does not include intercity rail except where a stop is located in the public right-of-way.” PROWAG R104. DOT's existing ADA regulations do not define “transit stop.” To bridge the Access Board's PROWAG with DOT's existing ADA regulations applicable to public transportation facilities, DOT is proposing to add a definition of “transit stop” to its regulations at 49 CFR part

37 that adopts the PROWAG definition but clarifies that facilities in the public right-of-way used in the provision of designated or specified transportation are transit stops. Unless otherwise stated, DOT's use of the term "transit stop" in this preamble refers to this proposed definition.

In order to avoid duplication, since the entire text of the PROWAG is available in materials published by the Access Board, the Department is proposing to adopt the PROWAG into Section 37.9 of the Department's ADA regulations at 49 CFR part 37 by cross-reference to 36 CFR part 1190. If adopted as proposed, DOT's public right-of-way ADA standards would apply only to new construction and alterations of transit stops in the public right-of-way. The Department may pursue a separate rulemaking in the future to address application of its public right-of-way ADA standards to existing transit stops not otherwise undergoing alterations and to adopt its public right-of-way ADA standards into DOT's regulations implementing Section 504 of the Rehabilitation Act of 1973 at 49 CFR part 27.

This proposed rule would adopt the PROWAG issued by the Access Board into DOT's ADA regulations at 49 CFR part 37. Although DOT proposes to adopt the entirety of the PROWAG into its ADA regulations, DOT's independent enforcement authority under the ADA extends only to the accessibility of public transportation facilities. *See* 42 U.S.C. 12149(a), 12186(a), (c). As a result, DOT would enforce only those provisions of DOT's public right-of-way ADA standards applicable to new construction and alterations of transit stops in the public right-of-way. As set forth in PROWAG R309, elements required to be accessible at a transit stop in the public right-of-way include the boarding and alighting area at a sidewalk or street-level transit stop or the boarding platform, pedestrian access routes (PARs) that connect altered boarding and alighting areas or altered boarding platforms with existing pedestrian circulation paths, and, if provided, transit shelters and PARs connecting transit shelters with boarding and alighting areas or boarding platforms they serve. The PROWAG contains other provisions applicable to transit stops in the public right-of-way that would be subject to DOT enforcement under this rule: fare vending machines (R210); operable parts of other fixed elements (R210); detectable warnings for boarding platforms (R205.5) and sidewalk and street-level rail boarding and alighting areas (R205.6); pedestrian signs (R208);

connections to accessible facilities subject to the ADA for newly constructed transit stops (R203.2.1); alternate transit stops (R204.2); and benches (R209.6.1).

The term "transit stop" is not intended to include other separate elements of the public right-of-way, such as on-street parking spaces, crosswalks, or sidewalks (with the exception of the PAR connections mentioned above: PARs between transit stops and transit shelters, PARs between altered boarding and alighting areas or altered boarding platforms and existing pedestrian circulation paths, and PARs between newly constructed transit stops and accessible elements, spaces, and pedestrian facilities required to be accessible). Such other elements in the public right-of-way fall under the jurisdiction of the Department of Justice under Title II, Part A, of the ADA.

We request comments on whether the Department's accessibility standards should differ from the Access Board's PROWAG, noting that the Department's standards must be "consistent with" the Access Board's PROWAG. That is, the Department may not adopt standards that provide less accessibility for individuals with disabilities than what is provided in the PROWAG. The Department may adopt modifications, however, that provide greater accessibility than the PROWAG or that clarify application of certain PROWAG provisions.

Specifically, the Department is considering whether it should add restrictions on the location of transit stop boarding and alighting areas to provide greater accessibility. The Department is concerned that certain transit stop designs locate the boarding and alighting area so that it coincides with vehicular lanes, including bicycle facilities, which may impede accessibility. An example is where a bicycle lane is located between the bus stop and the sidewalk, and the boarding and alighting area of the bus stop extends into the bicycle lane.

The Department has identified various potential accessibility concerns regarding boarding and alighting areas that are co-located with a vehicular way. Co-location of the boarding area with a vehicular lane, including a bicycle lane, may put a transit user with disabilities at risk of being struck while waiting to board. Individuals who are blind or have low vision or who use wheelchairs often wait for transit vehicles within the portion of the boarding and alighting area closest to the curb to ensure that the driver sees them. Where the boarding and alighting area overlaps a bicycle lane or other vehicular lane,

these individuals may be at greater risk of being struck. When alighting from the transit vehicle, passengers who are blind or have low vision may be unable to detect a motorist or bicyclist approaching, and the motorist or bicyclist may not see that a passenger is about to alight the transit vehicle, particularly a passenger in a wheelchair who is lower to the ground and thus less visible. Pedestrians with mobility issues may have difficulty moving out of the way quickly enough to avoid injury. In addition, if the transit vehicle needs to deploy a ramp so a passenger using a wheelchair can board or alight, the ramp may conflict with vehicular, including bicycle, traffic.

The PROWAG transit stop provisions at R309.1 are silent on whether the co-location of boarding areas and vehicular lanes, including bicycle facilities, is permitted. The Department seeks comment on whether allowing boarding and alighting areas to overlap vehicular lanes presents accessibility concerns, and whether it should consider adding a provision to R309.1 when it adopts the PROWAG into its standards restricting such co-location. The Department is interested in whether there are solutions short of prohibiting co-location that would address accessibility concerns, such as alternative designs that prevent vehicular passage when riders are boarding or alighting from a transit vehicle. The Department also seeks any data, research, or studies concerning this issue, as well as comment on costs and benefits of approaches to the co-location of boarding and alighting areas with vehicular lanes, including bicycle lanes, that would ensure accessibility. The Department's Draft Regulatory Impact Assessment identifies preliminary unit costs for elements in the public right-of-way that may be affected if modifications to R309.1 with respect to co-location of boarding areas and vehicular lanes are adopted in the Department's final rule.

Because the Department, as a member of the Access Board, has already had the opportunity to review comments provided to the Access Board during its development of the PROWAG, it is not necessary to resubmit any comments to the Department that were already provided to the Access Board during its rulemaking process.

#### **Amendments to 49 CFR Part 37**

The Department proposes to codify the PROWAG by revising our regulations at title 49, Code of Federal Regulations, part 37.

We propose to keep the existing regulatory provisions at section 37.9, but to create a paragraph (a) for those

provisions with the paragraph heading of “Transportation facilities other than transit stops in the public right-of-way.” This revision would clarify that the provisions under section 37.9(a) apply to public transportation facilities that are buildings or located on sites, including buildings or sites located in the public right-of-way, such as transit and rail stations. As is currently the case under existing section 37.9, transportation facilities subject to new section 37.9(a) would be considered readily accessible to and usable by individuals with disabilities if they meet the requirements of 49 CFR part 37 and meet the requirements of the Access Board’s 2004 ADA Accessibility Guidelines (2004 ADAAG), set forth in Appendices B and D of 36 CFR 1191, as amended by 49 CFR part 37, Appendix A. This is consistent with PROWAG provision R201.3.<sup>1</sup> The new section 37.9(a) would not apply to pedestrian facilities in the public right-of-way, including transit stops.

The Department also proposes to create a new paragraph at section 37.9(b), “Transportation facilities (transit stops) in the public right-of-way,” that would adopt the PROWAG as regulatory standards for new construction or alterations of transit stops located in the public right-of-way by cross-reference to the Access Board’s codification of the PROWAG in the Appendix at 36 CFR part 1190. The Department proposes, as well, to add definitions of “transit stop,” “public right-of-way,” and “alteration of a transit stop” to 49 CFR 37.3. The proposed definition of “transit stop” mirrors the definition of “transit stop” in the PROWAG but clarifies that a facility used in the provision of designated or specified public transportation in the public right-of-way is a transit stop. The proposed definition of “public right-of-way” mirrors the definition in the PROWAG. DOT proposes to add a definition of “alteration of a transit stop” to distinguish such alterations, which would be subject to DOT’s public rights-of-way standards adopted under this rule, from the existing definition of “alteration” in DOT’s ADA regulation, which are subject to accessibility standards applicable to buildings and

sites (the 2004 ADAAG adopted by DOT, as modified by Appendix A of 49 CFR part 37).

One of the issues an agency always faces when adopting or updating standards is how to handle projects that are in progress at the time the new standards come into effect. The Department proposes that the clearest way of handling this issue is to provide in section 37.9(b)(2) that a transit stop project located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before the effective date of the final rule are not required to be consistent with the requirements set forth in the Appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. This approach would provide needed clarity to regulated entities, but the Department does not expect significant impacts on accessibility. Even in the absence of enforceable standards, public entities are prohibited from discriminating against individuals with disabilities in the provision of designated or specified public transportation. See 49 CFR 37.5(a). Public entities retain flexibility in how to ensure that their facilities are accessible, but, as documented in the accompanying Draft Regulatory Impact Assessment, most public entities are already designing and building transit stops in the public right-of-way in line with guidelines that are similar to those in the PROWAG. The entity or person constructing or altering a transit facility could also choose to comply with the new proposed standards in such a case.

The Department is proposing an effective date of the final rule of 30 days after publication of its final rule. Given that the public and regulated entities have been aware of the proposed PROWAG’s provisions related to transit stops since 2011, which are generally unchanged in the PROWAG, and that many entities have relied on the Department of Justice’s similar 2010 ADA Standards for boarding and alighting areas or boarding platforms as references for transit stops in the public right-of-way, we do not anticipate entities requiring additional time to become familiar with the Department’s ADA public right-of-way standards before compliance is required for new construction and alterations. DOT seeks comment on whether the proposed compliance date is appropriate.

## Rulemaking Analyses and Notices

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

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

DOT estimates that this rulemaking would have minimal implementation costs, due to the close alignment between the requirements of the rule and existing guidance and industry practices for transit stops in the public right-of-way. This is presented in further detail in the accompanying Draft Regulatory Impact Assessment (DRIA) document.

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

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has reviewed the analysis conducted by the Access Board and published with the final rule (88 FR 53604, August 8, 2023), and evaluated the effects of this proposed rule on small entities and has determined that it is not anticipated to have a significant economic impact on a substantial number of small entities. DOT estimates that this rulemaking would have minimal implementation costs, due to the close alignment between the requirements of the rule and existing

<sup>1</sup> PROWAG R201.3 provides: “R201.3 Buildings, Structures, and Elements. Buildings, structures, and elements in the public right-of-way that are not covered by the requirements in these guidelines shall comply with the applicable requirements in 36 CFR part 1191 (ADA & ABA Accessibility Guidelines). Examples include, but are not limited to, buildings, structures, and elements at safety rest areas or park and ride lots, temporary performance stages and reviewing stands.”

guidance and industry practices for transit stops in the public right-of-way. In addition, many small governmental jurisdictions are located in rural areas and do not have transit facilities that would be impacted by the proposed USDOT rulemaking. This is presented in further detail in the accompanying Draft Regulatory Impact Assessment (DRIA) document. Therefore, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

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

national government and the States, or on the distribution of power and responsibilities among various levels of government.

#### **Paperwork Reduction Act of 1995**

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

#### **National Environmental Policy Act**

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1501.4(a). Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . ." 23 CFR 771.118(c)(4) and Federal Highway Administration's implementing procedures, "[p]romulgation of rules, regulations, and directives." 23 CFR 771.117(c)(20).

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

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

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

This measure applies to public entities, as defined under the ADA, which does not include tribal governments or other tribal entities, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

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

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

#### **Regulation Identifier Number**

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

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

Civil rights, Individuals with disabilities, Transportation.

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

**Subash Iyer,**

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

For the reasons set forth in the preamble, DOT proposes to amend title 49, Code of Federal Regulations, part 37, as follows:

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

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

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

**§ 37.3 Definitions.**

\* \* \* \* \*

*Alteration of a transit stop* means a change to or an addition of a transit stop in an existing, developed public right-of-way that affects or could affect pedestrian access, circulation, or usability.

\* \* \* \* \*

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

\* \* \* \* \*

*Transit stop* means an area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms. Transit stops include, if provided, transit shelters and pedestrian circulation connections between transit shelters and bus boarding and alighting areas or boarding platforms they serve. This definition does not include intercity rail except where a stop is located in the public right-of-way. A facility used in the provision of designated or specified public transportation in the public right-of-way is a transit stop.

\* \* \* \* \*

■ 3. Revise § 37.9 to read as follows:

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

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

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

(2) Facility alterations begun before January 26, 1992, in a good faith effort to make a facility accessible to individuals with disabilities may be used to meet the key station requirements set forth in §§ 37.47 and 37.51 of this part, even if these alterations are not consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the modifications complied with the

Uniform Federal Accessibility Standards (UFAS) or ANSI A117.1(1980) (American National Standards Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped). This paragraph applies only to alterations of individual elements and spaces and only to the extent that provisions covering those elements or spaces are contained in UFAS or ANSI A117.1, as applicable.

(3) (i) New construction or alterations of buildings or facilities on which construction has begun, or all approvals for final design have been received, before November 29, 2006, are not required to be consistent with the requirements set forth in Appendices B and D to 36 CFR part 1191 and Appendix A to this part, if the construction or alterations comply with the former Appendix A to this part, as codified in the October 1, 2006, edition of the Code of Federal Regulations.

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

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

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

(2) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 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 a transportation facility or facilities.

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

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

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

(C) [Reserved]

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

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

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

(A) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

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

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

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

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

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

determination applying to that class of situations.

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

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

(b) Transportation facilities (transit stops) in the public right-of-way

(1) Except as set forth in paragraph (2), if new construction or alterations of a transit stop located in the public right-of-way commence after [Effective Date of Rule], the new construction or alterations of a transit stop shall comply with the requirements set forth in the Appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

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

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

(A) A public or private entity that provides transit stops in the public

right-of-way subject to the provisions of subpart C of this part, or other appropriate party with the concurrence of the Administrator.

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

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

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

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

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

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

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

(A) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

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

(C) The entity shall sponsor at least one public hearing on the request and

shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

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

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

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

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

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

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