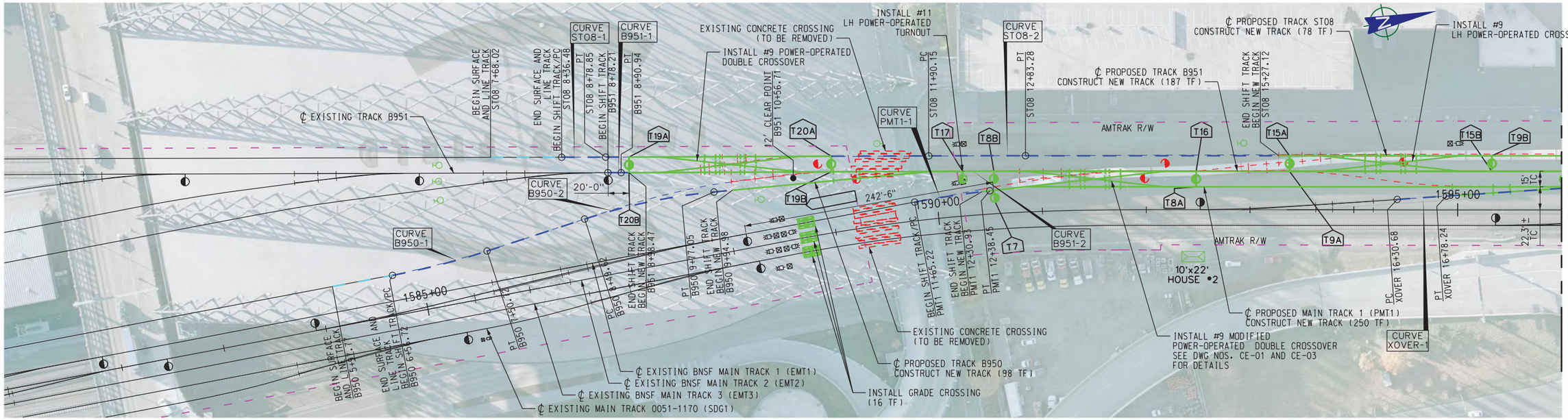
Exhibit A – King Street Station Overview Map

TO VANCOUVER, WA

RR SOUTH

TO EVERETT, WA

RR NORTH



50' 0 50' 100'

GRAPHIC SCALE: HORIZ. 1" = 50'

LEGEND:

- EXISTING TRACK
- PROPOSED TRACK
- SHIFT TRACK (EXISTING LOCATION)
- SHIFTED TRACK (PROPOSED LOCATION)
- REMOVE TRACK
- SURFACE AND LINE TRACK
- EXISTING STATION PLATFORM
- PROPOSED STATION PLATFORM

NOTES:

1. REMOVE AND REPLACE EXISTING CROSSOVER WITH NEW TURNOUTS T20A AND T20B. SHIFT EXISTING TRACK TO JOIN NEW CROSSOVER LOCATION.
2. SIGNAL LOCATIONS SHOWN ARE APPROXIMATE. SEE SIGNAL DRAWINGS FOR SIGNAL LAYOUT.

PLAN

AMTRAK KING STREET STATION TURNOUT TABLE

Turnout Designation	TO Number	TO Direction	Northing	Easting	PS Stationing	PITO Stationing
T19A	#9	RH	219424.66	1270942.89	ST08 9+01.25	ST08 9+31.42
T20B	#9	LH	219421.62	1270957.58	B951 8+98.47	B951 9+28.64
T19B	#9	RH	219612.50	1270997.03	B951 10+93.38	B951 10+63.22
T20A	#9	LH	219615.54	1270982.34	ST08 10+96.17	ST08 10+66.00
T17	#11	LH	219736.47	1271022.66	B951 12+19.93 = B950 12+17.60	B951 11+88.72 = B950 11+86.34
T8B	#9	RH	219765.76	1271028.78	B951 12+49.90	B951 12+80.06
T7	#9	RH	219762.16	1271046.76	PMT1 12+42.49	PMT1 12+72.66
T15A	#9	RH	220047.64	1271072.91	ST08 15+37.66	ST08 15+67.83
T8A	#9	RH	219953.38	1271083.69	PMT1 14+37.41	PMT1 14+07.24
T16	#9	LH	219956.48	1271069.01	B951 14+44.81	B951 14+14.64
T9A	#9	LH	220044.54	1271087.59	B951 15+34.81	B951 15+64.98
T15B	#9	RH	220235.26	1271127.82	B951 17+29.73	B951 16+99.56
T9B	#9	LH	220238.36	1271113.14	ST08 17+32.57	ST08 17+02.41

AMTRAK KING STREET STATION CURVE TABLE

Curve Number	Degree of Curve	Delta	Radius (Feet)	Tangent (Feet)	Length (Feet)	E_e (Inches)	E_a (Inches)	E_u (Inches)	V (mph)
B950-1	8°00'00"	7°31'11"	716.78	47.1	94	1.26	0	1.26	15
B950-2	10°00'00"	12°44'33"	573.69	64.06	127.42	1.57	0	1.57	15
B951-1	0°25'00"	0°03'11"	13751.02	6.37	12.73	0.07	0	0.07	15
B951-2	0°50'00"	0°13'58"	6875.55	13.97	27.94	0.13	0	0.13	15
PMT1-1	6°00'00"	4°23'38"	955.37	36.65	73.23	0.94	0	0.94	15
ST08-1	0°15'00"	0°06'21"	22918.33	21.18	42.37	0.04	0	0.04	15
ST08-2	0°15'00"	0°13'58"	22918.33	46.57	93.13	0.04	0	0.04	15
X-OVER	0°15'00"	0°07'08"	22918.33	23.78	47.56	0.04	0	0.04	15

pw:\\JLPV005.jlpatterson.net:ProjectWise\Documents\Engineering\Amtrak\040 - King Street Station\Drawings\RP01.sht
5/26/2015 4:43:42 PM

WORK ELEMENT	PHYSICAL ENTITY	CONTRACT DESIGNATOR	LINE ITEM	COST ELEMENT	PROJECT NUMBER

90% SUBMITTAL

NOT FOR BID OR CONSTRUCTION

REV	DATE	DESCRIPTION	BY / SUB	APP

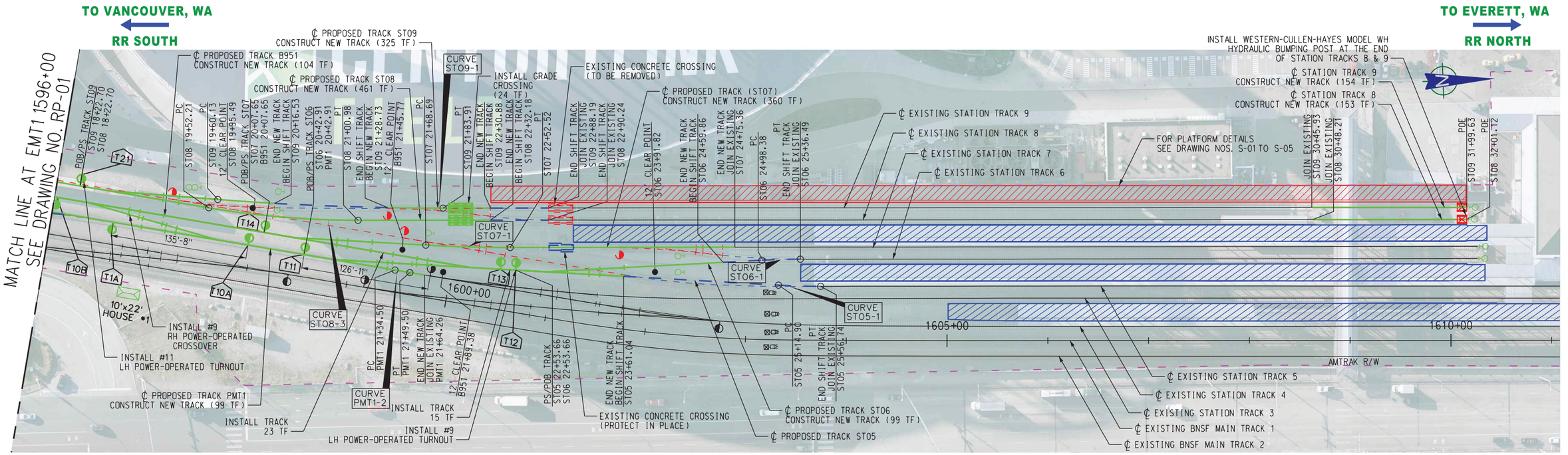
Information confidential all plans, drawings, specifications, and/or information furnished herewith shall remain the property of Amtrak and shall be held confidential; and shall not be used for any purpose not provided for in agreements with Amtrak.

DESIGNED BY	MTO
DRAWN BY	MTO
CHECKED BY	MAC
APPROVED BY	CEB
DATE	MAY 26, 2015

PATTERSON & ASSOCIATES, INC. CIVIL/TRANSPORTATION ENGINEERING
725 TOWN & COUNTRY RD SUITE 300 ORANGE, CA 92868

NATIONAL RAILROAD PASSENGER CORPORATION
SEATTLE SUBDIVISION MP 2.3X TO SCENIC SUBDIVISION MP 1.7 NORTH OF NORTH PORTAL
KING STREET STATION TRACK IMPROVEMENTS
TRACK PLAN - SHEET 1 OF 2
EMT2 1586+20.77 TO EMT2 1596+00

CONTRACT NO.	
DRAWING NO.	RP-01
REVISION	SHEET NO.
SCALE	AS SHOWN



PLAN

GRAPHIC SCALE: HORIZ. 1" = 50' (50' 0 50' 100')

LEGEND:

- EXISTING TRACK
- PROPOSED TRACK
- SHIFT TRACK (EXISTING LOCATION)
- SHIFTED TRACK (PROPOSED LOCATION)
- REMOVE TRACK
- SURFACE AND LINE TRACK
- EXISTING STATION PLATFORM
- PROPOSED STATION PLATFORM

NOTES:

1. SIGNAL LOCATIONS SHOWN ARE APPROXIMATE. SEE SIGNAL DRAWINGS FOR SIGNAL LAYOUT.

AMTRAK KING STREET STATION TURNOUT TABLE

Turnout Designation	TO Number	TO Direction	PS Northing	PS Easting	PS Stationing	PITO Stationing
T1A	#15	LH	220358.08	1271169.06	PMT1 18+51.01	PMT1 18+11.04
T21	#11	LH	220326.54	1271131.74	ST09 18+22.70= ST08 18+22.70	ST09 18+53.95= ST08 18+53.95
T10B	#9	RH	220303.19	1271142.15	B951 17+99.15	B951 18+29.32
T10A	#9	RH	220490.81	1271197.05	PMT1 19+86.66	PMT1 19+56.50
T14	#9	LH	220507.20	1271185.18	ST07 20+07.65= B951 20+06.13	ST07 20+37.82= B951 20+36.30
T11	#9	LH	220545.85	1271208.67	ST06 20+42.91= PMT1 20+42.91	ST06 20+73.08= PMT1 20+73.08
T13	#9	RH	220740.17	1271230.91	ST06 22+38.66	ST06 22+08.49
T12	#9	LH	220755.10	1271232.36	ST05 22+53.66= ST06 22+53.66	ST05 22+83.83= ST06 22+83.83

AMTRAK KING STREET STATION CURVE TABLE

Curve Number	Degree of Curve	Delta	Radius (Feet)	Tangent (Feet)	Length (Feet)	E_e (Inches)	E_a (Inches)	E_u (Inches)	V (mph)
ST05-1	8°00'00"	3°20'50"	716.78	20.94	41.84	1.26	0	1.26	15
ST06-1	8°00'00"	3°02'56"	716.78	19.08	38.11	1.26	0	1.26	15
ST07-1	4°00'00"	3°21'12"	1432.69	41.94	83.83	0.63	0	0.63	15
ST08-3	6°30'25"	9°40'49"	881.00	74.60	148.77	1.02	0	1.02	15
ST09-1	2°00'00"	4°28'32"	2864.93	111.95	223.78	0.32	0	0.32	15
PMT1-2	0°57'03"	0°08'33"	6025.57	7.50	15.00	0.15	0	0.15	15

90% SUBMITTAL
NOT FOR BID OR CONSTRUCTION
RP-01

REV	DATE	DESCRIPTION	BY	SUB	APP

Information confidential all plans, drawings, specifications, and/or information furnished herewith shall remain the property of Amtrak and shall be held confidential and shall not be used for any purpose not provided for in agreements with Amtrak.

DESIGNED BY	MTO
DRAWN BY	MTO
CHECKED BY	MAC
APPROVED BY	CEB
DATE	MAY 26, 2015

PATTERSON & ASSOCIATES, INC. CIVIL/TRANSPORTATION ENGINEERING
725 TOWN & COUNTRY RD SUITE 300 ORANGE, CA 92868

NATIONAL RAILROAD PASSENGER CORPORATION
SEATTLE SUBDIVISION MP 2.3X TO SCENIC SUBDIVISION MP 1.7 NORTH OF NORTH PORTAL
KING STREET STATION TRACK IMPROVEMENTS
TRACK PLAN - SHEET 2 OF 2
EMT2 1596+00 TO EMT2 1610+15

CONTRACT NO.	
DRAWING NO.	RP-02
REVISION	SHEET NO.
SCALE	AS SHOWN

PROJECT NUMBER | COST ELEMENT | LINE ITEM | CONTRACT DESIGNATOR | PHYSICAL ENTITY | WORK ELEMENT

pw:\\JLPV005.jlpatterson.net:ProjectWise\Documents\Engineering\Amtrak\040 - King Street Station\Drawings\RP02.sht
5/28/2015 3:38:14 PM

Exhibit B – Freighthouse Square Station Overview Map

Central Amtrak Station Location
Owner: TBD
User(s): Amtrak

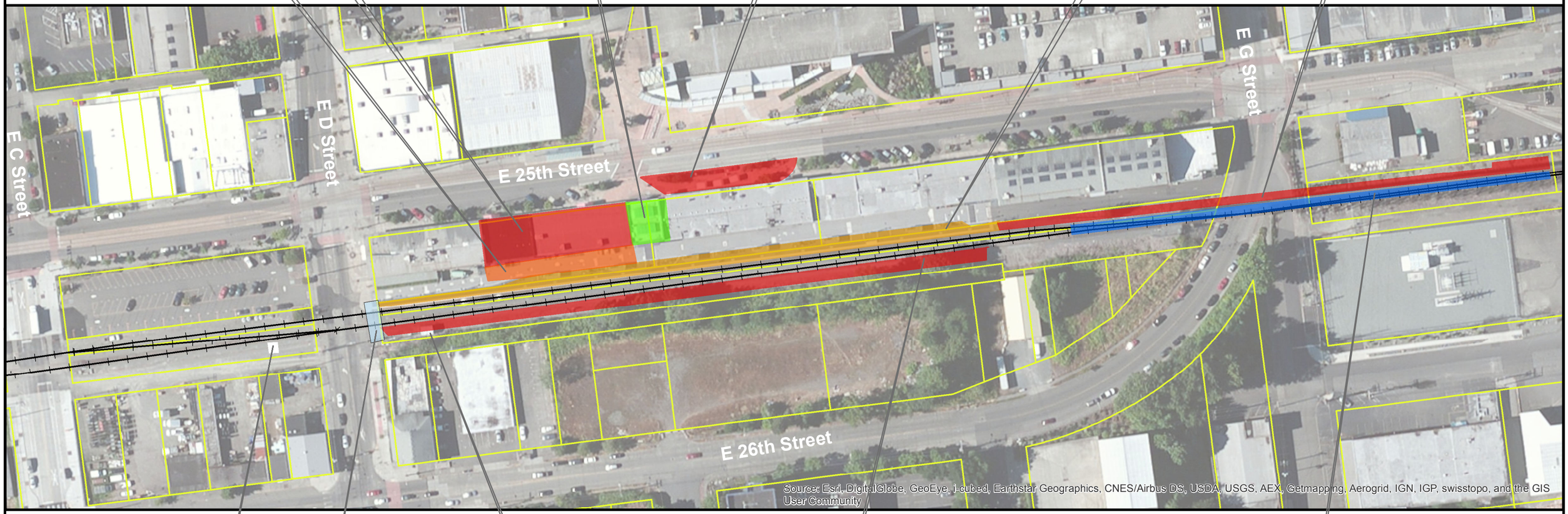
Canopy

Existing Sound Transit Station
Owner: FHS, ST Lease
User(s): ST

Proposed Expanded KISS-N-RIDE Location
Owner: City of Tacoma
User(s): ST/Amtrak/FHS Custumers

Existing Station Platform
Owner: Sound Transit
User(s): ST/Amtrak

Proposed Platform Extension
Owner: Sound Transit
User(s): Amtrak Coast Starlight



Proposed relocated bungalow

D Street pedestrian crossing

Existing bungalow to be relocated

Proposed 2nd Platform
Owner:Sound Transit
User(s): ST/Amtrak Cascades

Tacoma Trestle
Owner: Sound Transit
User(s): ST/ Amtrak /Tacoma Rail

N

Washington State Department of Transportation

Pacific Northwest High Speed Rail Program - Point Defiance Bypass

Freighthouse Square Right of Way Ownership Map

September 26, 2014

Data Source: Primary Datasources are ArcGIS and Pierce County GIS.

Disclaimer: Information illustrated on this exhibit is approximate and is for discussion purposes only. Not for construction.

Washington State Department of Transportation

G:\Project Files\730310A - Point Defiance Bypass - Task 2 (ARRA)\GIS Graphics\PDB Graphics\FHS_Right_of_Way_Ownership_Map_11x17_2014-09-26.mxd

Exhibit C – 49 CFR Parts 37 & 38: Transportation for Individuals with Disabilities at Intercity, Commuter, and High Speed Passenger Railroad Station Platforms; Miscellaneous Amendments

terrestrial repeaters are not used to transmit local programming or advertising.

47 CFR 25.144(e)(3)—SDARS licensee shall, before deploying any new, or modifying any existing, terrestrial repeater, notify potentially affected WCS licensees pursuant to the procedure set forth in 25.263.

47 CFR 25.144(e)(8)—SDARS licensees must file an earth station application using Form 312 to obtain blanket authority for terrestrial repeaters operating at 12 kW EIRP (average) or less and in compliance with FCC rules; application must include certain parameters of operation and a certification that the proposed SDARS terrestrial repeater operations will comply with all the rules adopted for such operations.

47 CFR 25.144(e)(9)—The operation of non-compliant repeaters and/or repeaters operating above 12 kW EIRP (average) must be applied for and authorized under individual site-by-site licenses using Form 312 and appropriate waiver of the Commission's rules.

47 CFR 25.263(b)—SDARS licensees are required to provide informational notifications as specified in 25.263, including requirement that SDARS licensees must share with WCS licensees certain technical information at least 10 business days before operating a new repeater, and at least 5 business days before operating a modified repeater.

47 CFR 25.263(c); Recordkeeping/ Third party disclosure—SDARS licensees operating terrestrial repeaters must maintain an accurate and up-to-date inventory of terrestrial repeaters operating above 2 W EIRP, including the information set forth in 25.263(c)(2) for each repeater, which shall be made available to the Commission upon request. Requirement can be satisfied by maintaining inventory on a secure Web site that can be accessed by authorized Commission staff.

Not codified (para. 278 of Order)—SDARS licensees must provide potentially affected WCS licensees with an inventory of their terrestrial repeater infrastructure.

Federal Communications Commission.

Avis Mitchell,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–23846 Filed 9–16–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 37 and 38

[Docket OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities at Intercity, Commuter, and High Speed Passenger Railroad Station Platforms; Miscellaneous Amendments

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its Americans with Disabilities Act (ADA) regulations to require intercity, commuter, and high-speed passenger railroads to ensure, at new and altered station platforms, that passengers with disabilities can get on and off any accessible car of the train. Passenger railroads must provide level-entry boarding at new or altered stations in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations. For new or altered stations in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, passenger railroads will be able to choose among a variety of means to meet a performance standard to ensure that passengers with disabilities can access each accessible train car that other passengers can board at the station. These means include providing car-borne lifts, station-based lifts, or mini-high platforms. The Department will review a railroad's proposed method to ensure that it provides reliable and safe services to individuals with disabilities in an integrated manner. The rule also codifies the existing DOT mechanism for issuing ADA guidance, modifies provisions concerning the carriage of wheelchairs, and makes minor technical changes to the Department's ADA rules.

DATES: This rule is effective October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue, SE., Room 94–102, Washington, DC 20590. (202) 366–9306 (voice); (202) 366–7687 (TDD), *bob.ashby@dot.gov* (e-mail). You may also contact Bonnie Graves, in the Office of Chief Counsel, Federal Transit Administration, same mailing address, Room E56–306 (202–366–0944), e-mail *bonnie.graves@dot.gov;* and Linda Martin, of the Office of Chief Counsel, Federal Railroad Administration, same mailing address, room W31–304 (202–493–6062), e-mail *linda.martin@dot.gov.*

SUPPLEMENTARY INFORMATION: This rule makes final a variety of changes to the Department's ADA rules based on a notice of proposed rulemaking (NPRM) issued February 27, 2006 (71 FR 9761) and the over 360 comments to the NPRM. Comments came primarily from members of the transportation industry and the disability community. In addition, the Department held a public meeting on August 20, 2010, that resulted in in-person comments from transportation industry and disability community representatives and additional written comments. Generally, speakers at the public meeting and post-meeting written comments reiterated points made during the principal comment period on the NPRM.

The final rule modifies the NPRM's approach to ensuring nondiscriminatory access to rail service by establishing a performance standard that passenger railroads would have to meet at new and altered station platforms. The final rule does not require passenger railroads to retrofit existing platforms. The performance standard requires that passenger railroads ensure that passengers with disabilities can get on and off any accessible car that is available to passengers at a station platform. At stations where track adjacent to platforms is not shared with existing freight service, railroads must provide level-entry boarding. At stations where track adjacent to platforms is shared with freight railroads, passenger railroads can meet the performance standard through a variety of means, including level-entry boarding, car-borne lifts, portable station-based lifts, or mini-high platforms (with trains making multiple stops at such platforms when necessary). Passenger railroads that choose not to provide level-entry boarding at new or altered station platforms must get concurrence from the Federal Transit Administration (FTA) or Federal Railroad Administration (FRA) (or both, as the situation may warrant) for the means they choose to meet the performance standard. As part of this process, railroads would have to show how the means they chose to meet the performance standard ensured the reliability and safety of integrated service to passengers with disabilities.

In other provisions of the final rule, the Department has codified the existing Disability Law Coordinating Council (DLCC) as the Department's means of coordinating ADA guidance. The final rule also modifies the provisions of the

rule concerning transport of wheelchairs on transit providers' vehicles. In addition, the final rule makes minor technical updates and changes to provisions of 49 CFR parts 37 and 38.

The NPRM also proposed to add language, parallel to that in Department of Justice (DOJ) regulations, requiring transit providers to make reasonable modifications to policies and procedures in order to ensure nondiscriminatory service to persons with disabilities. In order to avoid delaying issuance of a final rule concerning nondiscriminatory access to rail cars while the Department continues to work on a regulatory evaluation on the reasonable modification proposal, the Department has deferred issuance of a final reasonable modification rule at this time. The Department is continuing to work on a final rule on this subject.

The following portion of the preamble discusses each of the issues involved in this final rule:

Access to Rail Cars at New or Altered Station Platforms

NPRM

The NPRM proposed that, at new or altered platforms in intercity and commuter rail stations, rail operators would have to ensure that passengers with disabilities would be able to board any car of the train that was made available for boarding to the general public. The NPRM would have required that railroads use level-entry boarding as the preferred means of ensuring nondiscriminatory access. In level-entry boarding, the height of the platform and the door height of the passenger car are aligned so that a passenger using a wheelchair can seamlessly move from one to the other (usually with the assistance of a bridge plate). Only if the rail operator could demonstrate that this approach was infeasible (*e.g.,* because of excessive curvature of the track at the station), could the rail operator use other solutions, such as lifts or mini-high platforms. The Department said in the NPRM that "the accessibility solution that provides service in the most integrated setting should be chosen" (71 FR 9764).

This proposal was made to ensure adherence to a basic norm of disability nondiscrimination law: that service be provided in the most integrated setting feasible. This principle is violated in any situation in which a railroad operator effectively limits people with disabilities to use of fewer accessible cars than are available to other passengers. The Department emphasized in the NPRM that this requirement was intended to apply only to new or altered stations, and the NPRM did not propose to require retrofit of existing stations for the purpose of providing level-entry boarding.

Comments

Disability community commenters unanimously supported the Department's proposal. In the absence of such a provision, they said, passengers with disabilities would be denied integrated service, instead often being confined to a single car, unlike other passengers. Accessibility approaches that limited access to a single car (sometimes referred to in comments as the "cattle car" approach) were unacceptable and discriminatory, they said. Level-entry boarding, disability community commenters said, was by far the most satisfactory solution, since it provided direct access to rail cars, while minimizing the chance of problems caused by malfunctioning or poorly-maintained equipment or ill-trained or unavailable employees. Among other means of access, these commenters generally preferred car-borne lifts to station-based lifts, because the latter were viewed as less reliable, safe, and secure.

Railroad industry commenters were just as unanimous in opposing the NPRM proposal. They cited a variety of reasons for their opposition. Many commenters assumed that the proposal would require level-entry boarding to be instituted at all or almost all stations, necessitating retrofit at many existing stations. Based on this assumption, many commenters predicted enormous costs for what they believed the proposed requirement to be. These commenters opposed any retrofit requirements, a few suggesting a that level-entry boarding requirement apply only to wholly new systems. In addition, some of these commenters believed that the NPRM would require lifts or bridge plates to be deployed for every car at every station, further driving up personnel costs and delaying trains.

Many commenters, especially freight railroads, asserted that platforms providing level-entry boarding would interfere with the passage of freight cars through passenger stations, since the width of freight cars (especially so-called "overdimensional" cars, like those used to transport airframe components for aircraft manufacturers or large military items) could create conflicts with higher platforms. On Department of Defense "STRACNET" lines, commenters said, it was particularly important to avoid the conflicts between freight cars and platforms that the commenters believed would occur under the NPRM proposal. According to railroad commenters, some means that could avoid such conflicts, like gauntlet or bypass tracks or moveable platform edges, were impractical and/or too expensive. Many of these commenters preferred a platform no more than 8 inches above top of rail (ATR), a height that would never permit level-entry boarding.

A number of commenters pointed out that more than one passenger railroad may use a given platform (*e.g.,* Amtrak and a commuter railroad) and that, in many cases, the floor heights of the various railroads' equipment are different. It would not be possible, commenters said, to have level-entry boarding on the same platform if the door height of one type of car using the platform is 25 inches ATR and the door height of a second type of car using the platform is 17 inches ATR. Commenters pointed to wide variations in car door heights as precluding any uniform approach to level-entry boarding. Moreover, some commenters said, the height of a platform providing level-entry boarding could exacerbate problems for passengers resulting from wide horizontal gaps between the platform edge and the car.

Railroad industry commenters had a number of comments about accessibility equipment. Some said bridge plates with a slope of one inch in height for every eight inches in length were too steep to permit independent access for wheelchair access and would require staff assistance. For this reason and because of the need to cover wide horizontal gaps, there would need to be personnel available in a high level platform situation just as there would be if car-borne or station-based lifts were used, with attendant costs and potential dwell time delays. A number of railroads said that car-borne lifts were in use and had many advantages, such as being able to adjust and provide access to platforms of various heights. Some railroads rely on station-based lifts and stated that they are planning to order more of them. A number of railroad commenters supported the use of mini-high platforms, generally preferring to have only one such platform.

Some commenters preferred to make only one stop at such a platform while others were willing to make multiple stops, as needed. A number of commenters expressed concern about the provision of the NPRM saying that mini-high platforms and other platform obstructions should be at least six feet back from the platform edge, to avoid channeling passengers into a narrow,

unsafe space in front of the obstructions. These commenters said that a longer setback would make bridge plates impracticably long; that it was not always practicable to fit a six-foot setback into a platform, given stairways, columns, or other obstructions; or that a six-foot setback could create other safety problems.

Finally, some railroad commenters opposed the idea that passengers with disabilities should be able to access every car of a train that was available to other passengers. Some of these commenters said they were not aware of significant demand from riders to provide accessible boarding at each train car. Others cited concerns that they would need costly additions to staff, or that integrated service would lead to additional dwell time, interference with schedules, safety problems in evacuating passengers with disabilities if they were scattered among all the cars of the train, or difficulty in figuring out at which stations passengers with disabilities wanted to leave the train. Other commenters made legal arguments, such as that the NPRM stretched the concept of "integrated setting" too far or that Congress, by allowing railroads to meet rail car accessibility standards by having one accessible car per train, intended to limit railroads' obligation to serve disabled passengers to that one car.

DOT Response

If a railroad provides to people who cannot climb steps access to only one car in a multi-car train, it is not providing service in an integrated setting. Such service is segregated, not integrated. If Person A is a wheelchair user and Person B is ambulatory, denying A the opportunity to enter any accessible car of a train that B can enter is discriminatory and contrary to the requirements of disability access law.

Commenters' arguments that the ADA permits service to passengers with disabilities to be limited to a single car are not persuasive. At the time the ADA was enacted, Congress was aware that some railroads had legacy equipment that was inaccessible. While Congress required railroads to acquire only accessible new cars after the ADA went into effect, Congress did not wish to make railroads retrofit or replace large numbers of old, inaccessible cars. Consequently, Congress required that, by July 26, 1995, railroads provide at least one accessible car per train, while not having to make all existing cars accessible or obtain accessible replacement cars by that date. This was solely an interim equipment requirement, which virtually all U.S. intercity and commuter railroads have met. Meeting this equipment requirement does not negate the obligations of railroads, under the ADA and section 504, to provide service in a nondiscriminatory and integrated manner.

In large part because of the ADA requirement that all new cars meet these accessibility requirements (*i.e.*, compliance with the requirements of 49 CFR part 38, the Department's accessibility standards for transportation vehicles), a significant portion of cars on American railroads are now accessible. The point of the requirement to obtain accessible new rail cars is to make sure that ultimately each car on a train is accessible to and usable by people with disabilities, including those who cannot climb steps. For a railroad to say to a passenger with a disability, in effect, that "we have a car that meets accessibility requirements for use by passengers with disabilities but we will not provide any way of letting you use the accessible car" would undermine the purpose of the requirement to obtain accessible cars.

Like the NPRM, the final rule requires operators to provide access only to accessible, available cars that people with disabilities are trying to access at a given station. If a train has eight accessible cars, and wheelchair users want to enter only cars 2 and 7 (see discussion of passenger notification below), then railroad personnel need to deploy lifts or bridge plates only at cars 2 and 7, not at the other cars. Concerns expressed in comments about the number of new personnel that would have to be hired appear to have been based on misunderstandings of this point. Similarly, the rule requires operators to provide access only to available cars at a station. If a train has eight accessible cars, but the platform only serves cars 1 through 6, then railroad personnel need to deploy lifts or bridge plates only at cars that people with disabilities are trying to access and that are available to all passengers. We would also point out that wheelchair positions on rail passenger cars are intended to serve wheelchair users, and railroad operators should take steps to ensure that these spaces are available for wheelchair users and not for other uses. For example, it would be contrary to this rule for a wheelchair user to be told that he or she could not use car 7 because the wheelchair spaces were filled with other passengers' luggage from a previous stop. We would also point out that railroads are not required to retrofit train cars, since railroads can choose among a variety of approaches to meet the performance standard.

In order to ensure that access was provided, passengers would have to notify railroad personnel. For example, if a passenger at a station wanted to use a station-based lift to access car 6, the passenger would request the use of car 6 and railroad personnel would deploy the lift at that car. Likewise, at a station using a mini-high platform, a passenger on this platform would inform train personnel that he or she wanted to enter car 5, whereupon the train would pull forward so that car 5 was opposite the mini-high platform. We contemplate that these requests would be made when the train arrives, and railroads could not insist on advance notice (*e.g.*, the railroad could not require a passenger to call a certain time in advance to make a "reservation" to use a lift to get on a particular car). As part of its submission to FTA or FRA, the railroad would describe the procedure it would use to receive and fulfill these requests.

The NPRM did not propose to require any stations to be retrofitted for level-entry boarding. The proposal concerning level-entry boarding was always forward-looking, intended to apply to stations constructed or altered after the rule went into effect. The final rule makes this point explicit. In addition, the NPRM did not propose to require level-entry boarding as a solution in every instance, permitting other solutions where level-entry boarding was infeasible. Consequently, comments projecting enormous costs based on the assumption that the NPRM proposed requiring extensive retrofitting of existing stations to provide level-entry boarding everywhere were based on a misunderstanding of the NPRM. Like the NPRM, the final rule applies to new construction and alterations and does not require retrofitting.

Many of the comments opposing level-entry boarding asserted that higher platforms would interfere with actual or potential freight movements. The FRA has reviewed these claims and has determined that while there could be some risk to a railroad employee riding on the bottom step of some freight equipment with platforms at the 15-inch level, this risk is normally addressed in the freight railroad's operating rules and would be taken into consideration during the review conducted by FRA for each new or altered platform. Having examined the dimensions of even the overwidth freight cars used to transport loads such as defense cargoes and airplane components, FRA found that there are no freight cars that would conflict with level-entry boarding platforms at 15–17 inches ATR. In the Northeast Corridor, where long-existing platforms are often 48 inches ATR,

solutions to overdimensional freight movements on shared track that passes through stations are already in place.

Nevertheless, it is clear from comments to the docket of this rulemaking that freight railroads are adamant that they will not permit passenger railroads to construct platforms more than 8 inches ATR adjacent to tracks they own and control and are shared with passenger railroads. The Department does not currently have legal tools to overcome this refusal. In particular, section 37.57 of the Department's ADA regulation, "Required cooperation," applies to owners or persons in control of a station, not to owners or persons in control of track that passes through a station.

For this reason, and to avoid the potentially high costs of building gauntlet or bypass tracks at existing stations being altered, the Department is modifying the NPRM's proposal. The final rule will establish a performance standard: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars in each train using the station. This performance standard will apply at stations where construction or alteration of platforms begins 135 days or more after the rule goes into effect. The requirement is prospective, and section 37.42 does not require retrofit of existing stations (though compliance with existing disability nondiscrimination requirements not being altered in this final rule is still required). To meet this performance standard on lines or systems where track passing through stations and adjacent to platforms is shared with freight railroad traffic, passenger railroads that do not choose to provide level-entry boarding may, after obtaining FRA and/or FTA approval, use car-borne lifts, mini-high platforms (making multiple stops where necessary to accommodate passengers wishing to use different cars of the train), or portable station-based lifts.

On commuter, intercity, or high-speed rail lines or systems in which track passing through stations and adjacent to platforms is not shared with existing freight rail operations, the performance standard *must* be met by providing level-entry boarding to all accessible cars in each train that serves new or altered stations on the line or system. For example, if a new commuter or high-speed rail line or system is being built, and the track adjacent to platforms is not shared with freight traffic (*e.g.*, it is a passenger rail-only system, or a bypass or gauntlet track exists for freight traffic), then the stations would have to provide level-entry boarding. Other options would not be permitted.

If a platform being constructed or altered is not adjacent to track used for freight, but the track and platform are used by more than one passenger railroad (*e.g.*, Amtrak and a commuter railroad), the possibility of the platform serving cars with different door heights exists. In this situation, the level-entry boarding requirement continues to exist. Generally, the platform should be level with respect to the system that has the lower boarding height. This is because it is not good safety practice to make passengers step down (or be lifted down or use ramps to get down) to board a train. For example, if Amtrak operates through a station with cars that are 15 inches ATR, and a commuter railroad uses the same platform with cars that are 25 inches ATR, the platform would be level with respect to the Amtrak cars. The commuter railroad would have to provide another means of access, such as lifts. In all such cases where mixed rail equipment will be used, the rule requires that both FRA and FTA be consulted by the railroads involved. As in other cases where level-entry boarding is not used, the railroad must obtain FTA and/or FRA approval for the means the railroad wants to use to meet the performance standard.

The performance standard approach avoids the objections to the NPRM based on allegations of conflict between higher-level platforms and freight traffic, since platforms being constructed or altered in stations where tracks adjacent to the platforms are shared with freight would not have to provide level-entry boarding. Other solutions could be used at such stations.

The details of the "track passing through stations and adjacent to platforms is shared with existing freight rail operations" language are important. There may be some stations that serve lines that are shared by passenger and freight traffic. However, if freight traffic does not actually go through a particular station (*e.g.*, because freight traffic bypasses the station), level-entry boarding is still required. There could also be situations in which multiple tracks pass through a station, and freight traffic uses only a center track, not a track which is adjacent to a platform. In such cases, the new or altered platform would have to provide level-entry boarding. It is important to note that this language refers to "existing" freight rail traffic, as opposed to the possibility that freight traffic might use the track in question at some future time. Likewise, if freight trains have not used a track passing through a station in a significant period of time (*e.g.*, the past 10 years), the Department does not view this as constituting "existing freight rail traffic."

Where a railroad operator wishes to provide access to its rail cars through a means other than level-entry boarding, it is essential that it provide an integrated, safe, timely, reliable, and effective means of access for people with disabilities. A railroad is not required to choose what might be regarded as a more desirable or convenient method over a less desirable or convenient method, or to choose a more costly option over a less costly option. What a railroad must do is to ensure that whatever option it chooses works. However, to assist railroads in choosing the most suitable option, the rule requires that a railroad not using level-entry boarding, if it chooses an approach other than the use of car-borne lifts, must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts versus the means preferred by the railroad operator, as well as a comparison of the relative ability of each of the two alternatives (*i.e.*, car-borne lifts and the railroad's preferred approach) to provide service to people with disabilities in an integrated, safe, reliable, and timely manner. The railroad must submit this comparison to FTA and FRA at the same time as it submits its plan to FRA and/or FTA, as described below, although the comparison is not part of the basis on which the agencies would determine whether the plan meets the performance standard. In creating this comparison, railroads are strongly encouraged to consult with interested individuals and groups and to make the comparison readily available to the public, including individuals with disabilities.

To ensure that the railroad's chosen option works, the railroad must provide to FRA or FTA (or both), as applicable, a plan explaining how its preferred method will provide the required integrated, safe, reliable, timely and effective means of access for people with disabilities. The plan would have to explain how boarding equipment (*e.g.*, bridge plates lifts, ramps, or other appropriate devices) and/or platforms will be deployed, maintained, and operated, as well as how personnel will be trained and deployed to ensure that service to individuals with disabilities was provided in an integrated, safe, timely, effective, and reliable manner. FTA and/or FRA will evaluate the proposed plan and may approve, disapprove, or modify it. It should be emphasized that the purpose of FTA/FRA review of this plan is to make sure that whatever approach a railroad chooses will in fact work; that is, it will

really result in an integrated, safe, reliable, timely and effective means of access for people with disabilities. If a plan, in the view of FRA or FTA, fails to meet this test, then FTA or FRA can reject it or require the railroad to modify it to meet the objectives of this provision.

In considering railroads' plans, the agencies will consider factors including, but not limited to, how the proposal maximizes integration of and accessibility to individuals with disabilities, any obstacles to the use of a method that could provide better service to individuals with disabilities, the safety and reliability of the approach and related technology proposed to be used, the suitability of the means proposed to the station and line and/or system on which it would be used, and the adequacy of equipment and maintenance and staff training and deployment. FTA and FRA will evaluate railroads' plans with respect to whether they achieve the objectives of the performance standard.

For example, some commenters have expressed significant concerns about the use of station-based lifts, noting instances in which such lifts have not been maintained in a safe and reliable working order. A railroad proposing to use station-based lifts would have to describe to FTA or FRA how it would ensure that the lifts remained in safe and reliable operating condition (such as by cycling the lift daily or other regular maintenance) and how it would ensure that personnel to operate the lift were available in a timely manner to assist passengers in boarding a train. This demonstration must clearly state how the railroad expects that its operations will provide safe and dignified service to the users of such lifts.

FRA and FTA are committed to providing timely responses to railroads' proposals. Consequently, FRA/FTA will provide initial written responses within 30 days of receiving railroads' written proposals. These responses will say either that the submission is complete or that more information is needed. Once the requested additional information is received, and/or a complete package has been made available to FTA/FRA for review, as acknowledged by FRA/FTA in writing, FRA/FTA will provide a substantive response accepting, rejecting, or modifying the proposal within 120 days. There may be circumstances (*e.g.*, the necessity for site visits, engaging a consultant to assist FRA/FTA, consultation with other agencies such as the Access Board or the Department of Justice) that will force FRA/FTA to take longer to respond. In such a case, FRA/FTA will provide a written communication to the railroad setting forth the reasons for the delay and an estimate of the additional time (not to exceed an additional 60 days) that FRA/FTA expect to take to finalize a substantive response to the proposal. While the Department is committed to meeting these timeframes, delays in responding do not imply approval of a railroad's plan.

Railroads have the responsibility of making sure that their means of providing access work in practice as well as in concept. Railroads are reminded that FTA and FRA conduct regular compliance reviews of their grantees, and take enforcement actions if they find noncompliance with a rule. For example, if it appears that, in practice, a railroad is unable successfully to provide safe and reliable service using station-based lifts, even if its plans for doing so had been approved (*e.g.*, the railroad is unable to deliver on a consistent basis the service to which it has committed in its approved plan, because its maintenance or staffing efforts are inadequate), then the Department can find the railroad in noncompliance with its ADA and section 504 obligations and require the railroad to take corrective action to ensure that the performance standard is met. The Department also retains the ability to propose additional rulemaking to address problems in railroads' performance and the methods railroads use to ensure nondiscriminatory access to their services.

In existing stations where it is possible to provide access to every car without station or rail car retrofits, rail providers that receive DOT financial assistance should be mindful of the requirement of 49 CFR 27.7(b)(2), which requires that service be provided "in the most integrated setting that is reasonably achievable." For example, if a set of rail cars has car-borne lifts that enable the railroad to comply with section 37.42 at new or altered station platforms, it is likely that deployment of this lift at existing stations will be reasonably achievable. The use of a station-based lift at an existing station to serve more than one car of a train may well also be reasonably achievable (*e.g.*, with movement of the lift, as needed). Similarly, it is likely that, in a system using mini-high platforms, making multiple stops at existing stations would be reasonably achievable. Such actions would serve the objective of providing service in an integrated setting. In addition, in situations where a railroad and the Department have negotiated access to every accessible car in an existing system (*e.g.*, with car-borne lifts and mini-high platforms as a back-up), the Department expects the railroads to continue to provide access to every accessible car for people with disabilities. As noted above, passengers with disabilities would request access to the particular car they were interested in boarding where a means like a mini-high platform or station-based lifts was being used.

The Department is also providing, in section 37.42(f), for a maximum gap allowable for a platform to be considered "level." However, this maximum is not intended to be the norm for new or altered platforms. The Department expects transportation providers to minimize platform gaps to the greatest extent possible by building stations on tangent track and using gap-filling technologies, such as moveable platform edges, threshold plates, platform end boards, and flexible rubber fingers on the ends of platforms. The Department encourages the use of Gap Management Plans and consultation with FRA and/or FTA for guidance on gap safety issues.

The final rule includes the NPRM's proposal for a safety requirement concerning the setback of structures and obstacles (*e.g.*, mini-high platforms, elevators, escalators, and stairwells) from the platform edge. This provision is based on long-standing FRA recommendations and the expertise of the Department's staff. The Department believes that it is inadvisable, with the exception of boarding and alighting a train, to ever have a wheelchair operate over the two-foot wide tactile strips (*i.e.*, detectable warning surfaces) that are parallel to the edge of the platform. This leaves a four-foot distance for a person in a typical wheelchair to maneuver safely past other people on the platform, stair wells, elevator shafts, *etc.* It also is important because a wheelchair user exiting a train at a door where there is not a six-foot clearance would likely have difficulty exiting and making the turn out of the rail car door. The requirement would also avoid channeling pedestrians through a relatively narrow space where, in crowded platform conditions, there would be an increased risk of someone falling off the edge of the platform. Since the rule concerns only new and altered platforms, the Department does not believe the cost or difficulty of designing the platforms to eliminate this hazard will be significant.

Even where level-entry boarding is provided, it is likely that, in many instances, bridge plates would have to be used to enable passengers with disabilities to enter cars, because of the

horizontal gaps involved. Section 38.95(c)(5), referred to in the regulatory text, permits various ramp slopes for bridge plates, depending on the vertical gap in a given situation. In order to maximize the opportunity of passengers to board independently, the Department urges railroads to use the least steep ramp slope feasible at a given platform.

Mobility Device Size and Type

NPRM

Under the Department's current ADA rule, transportation providers are required to permit only wheelchairs meeting the definition of a "common wheelchair" onto their vehicles. A common wheelchair is defined by weight (not more than 600 pounds, including the occupant) and dimensional (30 x 48 inches) criteria. The "common wheelchair" originated as a design concept, answering the question of what a vehicle lift should be designed to accommodate, but has also been applied as an operational concept, permitting a transit operator to exclude from its vehicles wheelchairs that do not meet the weight and dimensional criteria. This effect of the current regulation was confirmed in *Kiernan* v. *Utah Transit Authority* (339 F.3d 1217, 10th Cir., 2003), where the court determined that the transit authority could exclude from its vehicles a wheelchair that did not meet the common wheelchair criteria, even if the vehicle could physically accommodate the device. The NPRM asked for comment on this and related issues.

Comments

As the Department is aware and as many commenters pointed out in response to the NPRM question on the subject, in the nearly 20 years since the Department issued its ADA regulation there has been a proliferation of different types of wheelchairs, including some models that may not meet the common wheelchair criteria. Most disability community commenters believed that the operational use of the concept was an unnecessary obstacle to transportation opportunities for people with mobility disabilities and that this use of the term should be dropped. They preferred a requirement that would direct transportation providers to carry any wheelchair that the provider's equipment could in fact accommodate. For example, if a lift could carry an 800-pound wheelchair, and there was room on the vehicle for the wheelchair, the provider would have to permit the device onto the vehicle.

Some commenters cited problems that transportation providers' implementation of the common wheelchair provision had caused. For example, someone who had a wheelchair that reclined, but did not recline it when boarding, was told she could not bring the wheelchair on board a paratransit vehicle because, when reclined, it exceeded the dimensional envelope, even though there was room for it to recline. Other passengers complained of being denied rides because a footrest exceeded the dimensional envelope or because their weight, combined with that of their wheelchair, exceeded the common wheelchair weight limit, even though they had ridden the system's vehicles for years without any problem.

Transportation providers generally preferred to retain either the operational effect of the common wheelchair definition or to use some other way of limiting the size and weight of wheelchairs brought onto the vehicle. Some commenters mentioned safety and potential damage to vehicles and equipment as concerns if larger or more irregularly shaped wheelchairs were permitted. The difficulty of securing such wheelchairs was one concern that commenters mentioned. In addition to weight, some commenters mentioned clearance concerns in the vehicle, such as difficulty in getting a wheelchair around a wheel well, driver station, or fare box. A number of transportation providers asked for flexibility in terms of the type of mobility aids they are required to carry.

A number of transportation commenters suggested that a longer-term solution to the problem would be to work with wheelchair manufacturers and the Department of Health and Human Services to establish standards for wheelchairs (or at least wheelchairs that would be purchased via Medicare or Medicaid). Such standards, they suggested, could address not only size and weight but also the ability of wheelchairs to be secured on vehicles. Additional research and consultation with stakeholders was also recommended.

In September 2005, the Department issued guidance concerning non-traditional mobility devices. It said, in essence, that under existing DOT nondiscrimination rules, regulated entities must accept such non-traditional devices (*e.g.,* Segways) as long as the devices could be physically accommodated and accepting them did not cause a direct threat to safety. Some disability community commenters supported this approach, citing the increased mobility that these devices offered persons with mobility impairments, while some transportation industry commenters did not want to have to accept such devices, based on concerns about safety, space, and securement.

DOT Response

The Department continues to believe that standards based on Access Board guidelines for transportation vehicles are the appropriate basis for requirements pertaining to the design and construction of vehicles. To the extent that Access Board vehicle guidelines (currently in a process of revision) retain the "common wheelchair" definition, or another set of specifications for lifts and other aspects of vehicles, the Department anticipates continuing to incorporate those guidelines for vehicle design and construction for purposes of 49 CFR part 38. (See also 36 CFR part 1191.) The Department is not contemplating any actions that would require transportation providers and manufacturers to modify existing vehicles or design and construct new vehicles in a way that departs from standards incorporating Access Board guidelines.

Operational requirements are a different matter. If a transportation provider has a vehicle and equipment that meets or exceeds the Access Board's guidelines, and the vehicle and equipment can in fact safely accommodate a given wheelchair, then it is not appropriate, under disability nondiscrimination law, for the transportation provider to refuse to transport the device and its user. Consequently, the final rule deletes the operational role of the "common wheelchair" design standard and deletes the sentence concerning "common wheelchair" from the part 37 definition of wheelchair, as well as from section 37.165(b) and the Appendix D explanatory text. We are also making one other modification in the definition of "wheelchair," changing "three- or-four wheeled devices" to "three- or more-wheeled devices." This change recognizes that, in recent years, devices that otherwise resemble traditional wheelchairs may have additional wheels (*e.g.,* two guide wheels in addition to the normal four wheels, for a total of six). The Department believes that devices of this kind should not be excluded from the definition of "wheelchair" solely on the basis of a larger number of wheels.

With respect to the size and weight of wheelchairs, the final rule requires transportation providers to carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user

and there is space for the wheelchair on the vehicle. However, a transportation provider would not be required to carry a wheelchair if in fact the lift or vehicle is unable to accommodate the wheelchair and its user, consistent with legitimate safety requirements.

For example, suppose that a bus or paratransit vehicle lift will safely accommodate an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds. The lift is one that exceeds the part 38 design standard, which requires lifts to be able to accommodate a 600-pound wheelchair/passenger combination. The transportation provider could limit use of that lift to a combination of 800 pounds or less. Likewise, if a wheelchair or its attachments extend beyond the 30 x 48 inch footprint found in part 38's design standards but fit onto the lift and can fit into the wheelchair securement area of the vehicle, the transportation provider would have to accommodate the wheelchair. However, if such a wheelchair was of a size that would block an aisle or not be able to fully enter a rail car, thereby blocking the vestibule, and interfere with the safe evacuation of passengers in an emergency, the operator could deny carriage of that wheelchair, if doing so was necessary as the result of a legitimate safety requirement.

This approach will not force transportation providers to redesign or modify vehicles, but it will prevent arbitrary actions of the kind mentioned by commenters. In addition, transportation providers should be aware that to be a legitimate safety requirement, any limitation must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or their mobility devices. The transportation provider bears the burden of proof of demonstrating that any limitation on the accommodation of a wheelchair is based a legitimate safety requirement.

Beginning with the Department's initial ADA regulation in 1991, the Department has taken the position that a transportation provider cannot deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system (see 49 CFR 37.165(d)). Consequently, a transit provider could not, consistent with this regulatory requirement, impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the transportation provider. The Department agrees that it would be useful for wheelchair manufacturers and the Department of Health and Human Services to work to design wheelchairs that are more compatible with vehicle securement devices, and with third-party funding resources such as Medicare and Medicaid to ensure that they are eligible under their guidelines. However, the Department of Transportation does not have authority to compel such developments, and it would be inconsistent with nondiscrimination requirements to allow transportation providers to deny service to people who use wheelchairs just because particular devices may be problematic from a securement point of view.

We recognize that persons with mobility disabilities use devices other than wheelchairs to assist with locomotion. Canes, crutches, and walkers, for example, are often used by people whose mobility disabilities do not require use of a wheelchair. These devices must be accepted under the same conditions as wheelchairs, just as DOJ rules require in other contexts. However, the Department does not interpret its rules to require transportation providers to accommodate devices that are not primarily designed or intended to assist persons with mobility disabilities (*e.g.*, skateboards, bicycles, shopping carts), apart from general policies applicable to all passengers who might seek to bring such devices into a vehicle. Similarly, the Department does not interpret its rules to require transportation providers to permit an assistive device to be used in a way that departs from or exceeds the intended purpose of the device (*e.g.*, to use a walker, even one with a seat intended to allow temporary rest intervals, as a wheelchair in which a passenger sits for the duration of a ride on a transit vehicle).

With respect to Segways or other non-traditional powered devices that do not fit the definition of "wheelchair," the Department's position has been influenced by the approach taken by the DOJ in its recently-issued ADA rules. DOJ has created the category of "other power-driven mobility devices" (OPMDs). DOJ does not require OPMDs necessarily to be accommodated in every instance in which a wheelchair must be accommodated, but provides that entities must allow such devices unless the entity demonstrates that allowing the device would be inconsistent with legitimate safety requirements. Legitimate safety requirements must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or about the devices they use for mobility purposes. We believe that language based on the DOJ approach is a good way of addressing the issues discussed by the Department in its September 2005 guidance and in comments to the docket for this rulemaking. Consequently, we are modifying the 2005 guidance to follow the DOJ approach.

We note that this approach does not give transportation providers unfettered discretion to deny transportation to Segways and other OPMDs. Transportation providers should accept such devices in most cases. Only if the transportation provider can demonstrate—with respect to a particular type of device in a specific facility or type of vehicle—that it would be infeasible (*e.g.*, the device could not physically fit onto a vehicle) or contrary to legitimate safety requirements (*e.g.*, prohibiting devices powered by internal combustion engines) could it be appropriate for a transportation provider to deny transportation to the OPMD and its user. The transportation provider bears the burden of proof for demonstrating that any limitation on the accommodation of an OPMD is based on a legitimate safety requirement.

Definition of "Direct Threat"

NPRM

The definition of "direct threat" has long been a key provision of this and other disability nondiscrimination regulations. "Direct threat" has been the Department's primary reference point in deciding several issues in which there has been tension between the safety concerns of transportation providers and the rights of persons with disabilities to access public transportation, such as prohibitions on wheelchair users being able to use certain bus stops, use of lifts by standees, and carriage of three-wheeled scooters that are not easily secured by existing bus securement devices. A key element of the concept is that, to justify a limitation on individuals with disabilities, there must be a significant threat to others—as distinct from to the individual with a disability—that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services. The NPRM indicated that the Department intended to add a definition of direct threat to 49 CFR 37.3 that would track the definition in DOJ's regulation, which defines direct threat in terms of a threat to the health and safety of others.

Comments

Disability community commenters favored retaining the requirement that a direct threat can only be a threat to the health or safety of others. A number of transportation industry commenters, however, believed that the definition should be modified to permit consideration of threats to the safety of the disabled person him- or herself. Both in the interest of protecting passengers with disabilities from potential harm and of protecting the transit authority from potential liability, these commenters believed that transportation providers should be able to impose certain restrictions on the transportation of some passengers with disabilities if there was danger to the passengers themselves. One example that some commenters cited was a paratransit passenger with dementia who, once dropped off at his or her destination, could become disoriented and wander off if no one at the destination was present to take care of him or her.

DOT Response

The Department has determined that in the transportation context the appropriate definition of direct threat is one that only considers safety threats to others. This approach is consistent with DOJ's regulations. Therefore, we will define direct threat as "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services" and add this definition to our regulation.

We recognize that the situation of paratransit service to a person with dementia or another severe cognitive impairment presents unique problems. The primary risk (*e.g.,* of becoming disoriented and wandering away) is to the passenger, rather than to others, but, in the absence of a personal care attendant or a contact with someone at the destination point, the risk to the safety, or even the life, of the passenger could be very high. This is an issue that should be addressed during the application process and eligibility interview. At that time, the paratransit provider, the applicant, and the person responsible for the applicant's well-being should discuss the parameters of paratransit service, the paratransit agency's policies regarding attended transfers, and the procedures that will be followed in the event that there is no one available to meet the applicant when the vehicle arrives.

The Department has added language to Appendix D of part 37 to make it clear that the concept of "direct threat" in this rule is intended to be interpreted consistently with the same term in DOJ rules.

Other Definitions

The DOJ published, on September 15, 2010, new ADA Title II and Title III regulations (75 FR 56164). These rules define certain terms, such as "disability," "auxiliary aids" and "service animals," differently from the existing definitions in part 37. Generally, these definitional differences are at the level of detail and wording, and the definitions are not vastly different in concept. The Department will consider whether, in the future, to propose changes to part 37 to parallel the new DOJ definitions. Meanwhile, the existing DOT definitions continue in effect. Regulated entities should not change policies based on the DOJ rules, since it is the DOT rules that apply to them.

Counting Trip Denials and Missed Trips

NPRM

In the preamble to the NPRM, the Department discussed how complementary paratransit systems should count trip denials and missed trips. This is an important issue because the rate of trip denials can affect determinations by the Department and, in some cases, the courts about whether a paratransit operator is complying with its obligations under the Department's paratransit service criteria. Too many denials can result in a finding that the operator either has a capacity constraint or is otherwise falling short of its obligation to provide timely service to eligible passengers.

In many cases, there is no difficulty in determining how to count trip denials. If a passenger asks for a one-way trip from Point A to Point B and is told that a ride is unavailable, or the vehicle does not show up, then one trip has been denied or missed. (A denied trip is one the provider declines to schedule for an eligible rider. A missed trip is one that the provider scheduled for which the vehicle never arrives, or arrives outside of the pickup window, and the passenger does not take the trip.) In the case of requests for round trips or multi-leg trips, the situation is less straightforward. Suppose a passenger asks for a round trip from Point A to Point B and back to Point A, or asks for a trip from Point A to Point B to Point C, with a return to Point A. The first leg of the trip is denied or missed, with the result that the passenger never is able to get to Point B. Clearly, at least one trip—from Point A to Point B—has been denied or missed. In addition, the opportunity to make the subsequent trips in the itinerary has also been lost. In this case, the Department suggested in the NPRM, the trips from Point B back to Point A, or from Point B to Point C and then back to Point A, should also be tallied as denied trips, because the action of the paratransit operator in denying or missing the first trip cost the passenger the chance to take those trips.

Comments

Generally, transit authority commenters believed that only the trip that was actually denied or missed—in the example, the first trip from Point A to Point B—should be counted as a denied or missed trip. Doing otherwise, they said, would unfairly exaggerate the performance problems of the operator. In addition, these commenters said, there might be cases in which operators, while unable to provide transportation from Point A to Point B, would be able to provide transportation from Point B to Point A later in the day, if the passenger had found an alternative way of getting to Point B. Moreover, some commenters said, there could be some situations in which it could be difficult to determine whether the denial of one trip led to the inability to take a subsequent trip, making the counting process problematic.

Disability community commenters, on the other hand, supported treating as denials foregone opportunities for subsequent trips resulting from denied or missed trips. Under the ADA, these commenters believe, eligible passengers are required to receive trips they request. If a denial of one trip makes a second requested trip impossible, then two opportunities to travel required by the regulation have been lost, and should be counted as such. Both trips should be counted as denied, lest paratransit operators evade accountability for their failure to provide required service.

DOT Response

The Department believes that when a denied or missed trip makes a subsequent requested trip impossible, two opportunities to travel have been lost from the point of view of the passenger. In the ontext of a statute and regulation intended to protect the opportunities of passengers with disabilities to use transportation systems in a nondiscriminatory way, that is the point of view that most matters. To count denials otherwise would understate the performance deficit of the operator. The paratransit

operator obviously would not need to count as a denial a trip that was actually made (*e.g.*, trip from Point A to Point B missed, passenger gets to Point B in a taxi, and paratransit operator carries him from Point B back to Point A). While there may be situations in which an operator would have to exercise judgment concerning whether the denial of one trip resulted in a lost opportunity for a subsequent trip, that is not sufficient reason, in the Department's view, to permit paratransit operators to generally avoid counting as denials lost opportunities for travel resulting from their own inability to provide previous trips. We also caution paratransit operators against declining to take reservations for round trips or "will call" trips in order to reduce missed or denied trip statistics.

It is also important for there to be a standardized way of counting missed trips and denials that the Department, passengers, and transit providers can rely upon. These statistics should be calculated on the same basis nationwide, in order to permit better program evaluation and comparisons across transit providers. The Department is issuing guidance on counting missed/denied trips, and the Federal Transit Administration can work further with transit providers on appropriate statistical measures.

Disability Law Coordinating Council (DLCC)

NPRM Proposal

The NPRM proposed codifying the existing coordination mechanism for issuing guidance and interpretations of disability laws and regulations throughout the Department of Transportation. Known as the DLCC, this group consists of representation from the Office of the Secretary, Federal Transit Administration, Federal Highway Administration, Federal Aviation Administration, Federal Motor Carrier Safety Administration, National Highway Traffic Safety Administration, and Federal Railroad Administration. Before any guidance or interpretation documents developed by the DLCC are issued, they must be approved by the General Counsel on behalf of the Department of Transportation as a whole. This ensures that the Department speaks with one voice on important disability nondiscrimination issues.

The NPRM's proposal with respect to the DLCC is modeled on provisions in the Department's disadvantaged business enterprise (DBE) and drug and alcohol testing regulations, where similar mechanisms have worked well for many years. Like the Department's ADA and section 504 rules, these rules are Office of the Secretary regulations applying to parties subject to the programs of several DOT operating administrations.

Comments

Almost all comments from the disability community supported codifying the DLCC, for the reasons described in the NPRM. Most transit industry commenters opposed doing so, citing a variety of reasons. Some expressed concern that the DLCC would issue what amounted to legislative rules without an opportunity for public comment. Many of these commenters wanted the Department to ensure that there would be an opportunity for public comment on guidance and interpretations in any case. Others wanted guidance and interpretations of the DOT ADA concerning transit matters to come from FTA, rather than from the Department as a whole. Several commenters believed that a provision of SAFETEA–LU that directed FTA to seek notice and comment on guidance that had binding effect should apply to DOT guidance.

DOT Response

Coordination of interpretations and guidance, so that the Department of Transportation speaks with a single, reliable voice on disability law matters, is essential to the reasoned application of the ADA and section 504 of the Rehabilitation Act of 1973. The Department's experience in the past has been that, in the absence of such a coordination mechanism, various DOT offices and staff members have offered differing or inconsistent views on important disability law matters. In some cases, one office may not even have been aware of a response another office had given concerning the implementation of the same provision of a DOT regulation. The lack of a coordinating mechanism like the DLCC creates an opportunity for forum shopping, in which interested parties can call or write a series of DOT offices or staff personnel until they get the answer they want to a question. It also increases the likelihood of inconsistent practice among DOT recipients.

The Department does not find the transit industry objections to codifying the DLCC to be well-taken. The same transit industry parties that objected to the DLCC mechanism have accepted the same mechanism in the DBE regulation since 1999 and the drug testing procedure regulations since 2000, and neither they nor the Department have experienced any significant problems in those contexts. While transit industry organizations may disagree with some guidance and interpretations that the Department as a whole has produced concerning the ADA, that is not a cogent criticism of the internal process that is common to all three rules.

Legislative rules—like parts 37 and 38—have the force and effect of Federal law and, with certain exceptions not germane to this discussion, are issued through the normal Administrative Procedure Act notice and comment process. Consistent with Executive Orders and OMB Bulletins, guidance questions and answers do not claim independently to have the force and effect of Federal law, but rather set forth the Department's interpretations of its own rules and the Department's understanding of and recommendations for implementing provisions of rules and statutes. The Department's guidance, issued through the DLCC, consistently observes this distinction. It should be noted, however, that the Department's actions with respect to implementing and enforcing the provisions of part 37 and other legislative rules will be consistent with the Department's interpretations and understanding of those rules, as articulated in DOT guidance.

The internal organization of how the Department issues guidance, and the job of interpreting the meaning of DOT regulations and the statutes on which they are based, are inherently governmental functions. While the Department regularly discusses the interpretation and implementation of its rules with stakeholders, producing guidance on these matters is ultimately the Department's responsibility. The SAFETEA–LU provision that commenters mentioned (codified at 49 U.S.C. 5334) applies only to guidance issued by the Federal Transit Administration. It does not apply to guidance issued by the Department as a whole based on a regulation that is, and always has been, an Office of the Secretary rather than a Federal Transit Administration rule.

For all these reasons, the Department is adopting the DLCC provision as proposed. We note that a number of commenters asked for additional guidance concerning several issues in the regulation, such as how concepts like undue burden, direct threat, integrated settings, origin to destination, *etc.* are best understood. To the extent that issues like these require additional interpretation or guidance following the issuance of this rule, the Department will use the DLCC mechanism to craft well-coordinated responses to questions concerning issues of this kind.

Miscellaneous Provisions

Consistent with guidance issued in September 2005, the Department is amending § 37.23, in paragraphs (a), (c), and (d), to add the words "(including, but not limited to, a grant, subgrant, or cooperative agreement)" after the word "arrangement." The purpose of this amendment is to clarify that the term "other arrangement or relationship" refers to any means other than a contract through which a public entity works with a private entity to provide fixed route or demand responsive service. A private entity that receives a subgrant under 49 U.S.C. 5311 has an "arrangement or relationship" with the state agency involved. If a state provides § 5311 funding to a county government via a subgrant agreement, which then provides fixed route service, there is no dispute that eligible passengers must have ADA complementary paratransit service available. If a state provides § 5311 funding to a private entity via a contract, which then provides fixed route service, there is no dispute that eligible passengers must have ADA complementary paratransit service available. Likewise, eligible passengers must have ADA complementary paratransit service available if a state provides § 5311 funding to a private entity via a subgrant agreement; otherwise, passengers would be denied service solely on the basis of the state's administrative choice of a provider and a funding mechanism. Making the availability of ADA complementary paratransit service wholly contingent on the state's choice of administrative arrangements would be both arbitrary and inconsistent with the purpose of the ADA.

The Department is removing and reserving section 37.169 and portions of section 37.193. These are obsolete provisions concerning over-the-road buses that are no longer needed, given the passage of time since the promulgation of subpart H of part 37.

The Department is adding or altering language in a few places in 49 CFR part 38 to conform to Access Board language in parallel sections (*e.g.*, "unless structurally or operationally impracticable") or to refer to the new section 37.42.

Accessible Web Sites

NPRM and Comments

The Department asked about whether the Department should require that Web sites operated by transportation providers be made accessible to individuals who are blind or visually impaired or otherwise have difficulty using Web sites because of a disability. The Department received several comments from disability community persons or organizations, recommending that the final rule impose such a requirement.

DOT Response

The Department believes strongly that Web sites used by consumers of transportation providers should be accessible. Currently, the Department is considering this issue in the context of the Air Carrier Access Act, and the Department of Justice is reviewing it in the context of ongoing work on its ADA regulations. We believe that it is best to defer action on this issue until the DOT and DOJ work is further advanced, at which point we believe it appropriate to propose changes to our ADA rules consistent with the ACAA and DOJ approaches to the subject.

In any case, under existing rules a transportation entity has an obligation to provide effective communication to persons with disabilities. This obligation exists even if a provider's Web site is not yet fully accessible. If a transportation provider makes certain information available to the public through its Web site, it must make this information available to people who cannot use the Web site. If opportunities (*e.g.*, for discount programs) are made available through the Web site, then these same opportunities must be afforded to people with disabilities who are unable to use the Web site. These are basic nondiscrimination obligations under the ADA and section 504.

Bus Rapid Transit

NPRM and Comments

The NPRM asked whether there should be any specific requirements for bus rapid transit (BRT) systems, which share some of the characteristics of fixed-route bus systems and some characteristics of rail transit systems. Some transit authorities suggested using the bus requirements of the rule for BRT vehicles, since the vehicles are essentially buses. A few commenters suggested adding provisions concerning such subjects as securement. Others suggested that future guidance, rather than regulation, would be the best approach to take.

DOT Response

The Department has decided, for the present, not to propose any additional provisions concerning BRT beyond those that apply to buses, and will follow the recommendations of commenters to address any BRT-specific questions with guidance to the extent feasible.

Heritage Fleets

NPRM and Comments

In a few cities, there are systems that use vintage inaccessible vehicles to provide regular public transit service. The NPRM asked whether any new regulatory provisions should be applied to increase accessibility for such transportation. There were few comments on this matter. Some disability organizations recommended good faith efforts be used to secure accessible vehicles for such systems or that the vehicles be retrofitted for accessibility. Transit industry commenters suggested that no changes were needed from existing regulations and that there was not a problem that the Department need remedy if parallel accessible transit or paratransit were available for origins and destinations served by the heritage fleet lines.

DOT Response

On this matter, the Department believes that no change is necessary from the existing regulation. Sections 37.73 and 37.75 appear to adequately address such situations. Section 37.73 requires good faith efforts be employed to find accessible used vehicles prior to purchasing inaccessible vehicles, and 37.75 requires remanufactured vehicles to be made accessible unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Transit providers are reminded that complementary paratransit service must be provided when the fixed route system is inaccessible.

Used Demand-Response Vehicles

NPRM

The ADA and the Department's rule require that when a public transit provider acquires used vehicles for a fixed route system, the provider must make and document good faith efforts (GFE) to obtain an accessible used vehicle. This requirement does not apply, however, to vehicles acquired for demand-responsive systems for the general public. The NPRM asked whether the GFE requirement should be expanded to cover these systems.

Comments

Most of the comments on these issues were from the disability community, and they unanimously recommended that GFE be required. The rationale for doing so, they said, is the same as in the case of fixed route vehicles: simply acquiring inaccessible used vehicles perpetuates transportation that is not fully accessible to and usable by

passengers with disabilities. The few transit industry comments that addressed this subject objected to performing GFE in these cases, saying that doing so was unnecessary and could inhibit demand-responsive systems for the general public from using sedans or taxi services as part of their operation.

DOT Response

It is likely that today there may be a significant number of used accessible vans and small buses available that demand responsive systems for the general public could use. We believe that it is a best practice for such systems to make good faith efforts to acquire accessible vehicles when seeking used vehicles. However, the statute imposes a good faith effort requirement for acquiring used vehicles only on fixed-route systems, not demand-responsive systems for the general public. Consequently, the Department will not include a regulatory text provision mandating good faith efforts for used vehicles operated in demand-responsive systems for the general public.

Expansion of Key Station Requirements

NPRM and Comments

The NPRM asked whether requirements to retrofit stations for accessibility should be extended to include stations not originally designated as key stations (*e.g.*, stations that, because of changes in land use, had become higher passenger volume stations than they were in 1991). Disability community commenters and one transportation provider stated that all existing stations should be made accessible or, at least, that if an existing station began to meet key station criteria (*e.g.*, because of changes in usage patterns or in the configuration of a rail system), that station should be added to the list of key stations and modified to make it accessible. Most transportation providers either said that a requirement to this effect was unnecessary or that retrofitting additional stations for accessibility was a decision that should be made locally.

DOT Response

In the Department's view, the ADA does not provide a statutory basis for requiring the expansion of the list of key stations, renovation of which for accessibility was to have been completed within a stated amount of time after the statute became effective. By incorporating the key station concept, the ADA clearly did not take the view that all existing stations in pre-ADA systems had to be retrofitted. The Department agrees with transit industry commenters who said that local decisions to react to changes in a system, plus the requirement to make alterations to stations in an accessible way, should be sufficient.

Reasonable Modification of Policies

The NPRM proposed adding language to the rule, parallel to that in Department of Justice ADA rules, the Department's Air Carrier Access Act and, more recently, ADA passenger vessel rules, requiring regulated entities to make reasonable modifications to policies in order to ensure appropriate and nondiscriminatory service to persons with disabilities. This proposal attracted extensive comment. Generally, disability community commenters favored the proposal while transportation industry commenters opposed it.

The Department is continuing to work toward a final rule addressing this subject, including working on a regulatory evaluation concerning the costs and benefits of such a requirement. Because the work on a regulatory evaluation concerning rail service accessibility has occurred before work has been completed on the regulatory evaluation of the reasonable modification proposal, the Department is not issuing a final rule concerning reasonable modification at this time.

The Department notes that its September 2005 guidance concerning origin-to-destination service remains the Department's interpretation of the obligations of ADA complementary paratransit providers under existing regulations. As with other interpretations of regulatory provisions, the Department will rely on this interpretation in implementing and enforcing the origin-to-destination requirement of part 37. This application of the origin-to-destination service requirement of the existing rule is not dependent on the ultimate disposition of the NPRM's reasonable modification proposal.

Regulatory Analyses and Notices

Executive Order 12866

This final rule is significant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The NPRM clarifies the Department's existing requirements concerning new commuter and intercity rail platforms. The Department has conducted a regulatory evaluation of the costs of the requirements of the final rule version of section 37.42. The overall conclusion of the evaluation is that there will be no significant cost impacts as the result of provisions of the final rule for commuter rail operators and modest costs at a relatively small number of stations for Amtrak. The regulatory evaluation has been placed in the docket.

Other provisions of the final rule do not represent significant departures from existing regulations and policy and are not expected to have noteworthy cost impacts on regulated parties. The final rule also codifies existing internal administrative practices concerning disability law guidance. This proposal would have no cost impacts on regulated parties.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under the Order and have determined that it does not have implications for federalism sufficient to warrant the preparation of a Federalism Assessment, since it does not change the relationship between the Department and State or local governments, pre-empt State law, or impose substantial direct compliance costs on those governments.

Regulatory Flexibility Act (5 U.S.C. 601–612)

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rail operators affected by the boarding nondiscrimination portion of the rule are Amtrak and commuter authorities. Amtrak is a large entity. Commuter rail operators are large entities. Moreover, as the text of the rule and preamble make clear, there are no retrofit requirements that would increase costs for covered entities, regardless of size, as requirements apply only with respect to new and altered facilities. As the regulatory evaluation shows, costs for Amtrak will be modest and costs for commuter operators will be relatively low. None of the other provisions of the rule have any significant effect on entities' costs or operations. The wheelchair equipment provision applies only to how transportation providers, regardless of size, use the equipment they have. Again, no retrofit is required. The changes to part 38 are only in terminology. These facts support the Department's conclusion that there will not be significant economic effects from

the rule, and that a substantial number of small entities are not affected.

Unfunded Mandates Reform Act

Since the ADA and section 504 are nondiscrimination/civil rights statutes, the Unfunded Mandates Reform Act does not apply. In any case, since Amtrak and commuter rail authorities receive Federal funds for the operations to which this rule applies, the rule's requirements are properly considered as funded mandates.

Paperwork Reduction Act

Under this rule, railroads that choose to use a means of meeting the performance standard other than level-entry boarding would have to submit a proposed plan to FRA or FTA demonstrating that their chosen method would actually achieve the rule's objectives (see section 37.42(d)(2)). They would also have to make a comparison between using car-borne lifts and other means of meeting the regulatory performance standard (see section 37.42(d)(1)). These requirements constitute information collection requirements covered by the Paperwork Reduction Act of 1995 (PRA) and OMB rules implementing it. The Department will issue a separate 60-day notice seeking comment on these information collection requirements.

List of Subjects

49 CFR Part 37

Buildings, Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 38

Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Issued this 29th Day of August, 2011 at Washington, DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR parts 37 and 38 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. In § 37.3, add the definition "Direct threat" and revise the definition "Wheelchair" to read as follows:

§ 37.3 Definitions.

* * * * *

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.

* * * * *

Wheelchair means a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

■ 3. Revise § 37.15 to read as follows:

§ 37.15 Interpretations and guidance.

The Secretary of Transportation, Office of the Secretary of Transportation, and Operating Administrations may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance shall be developed through the Department's coordinating mechanism for disability matters, the Disability Law Coordinating Council. Written interpretations and guidance constitute the official position of the Department of Transportation, or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement: "The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR parts 27, 37, 38, and/or 39, as applicable."

■ 4. In § 37.23, in paragraphs (a), (c), and (d), add the words "(including, but not limited to, a grant, subgrant, or cooperative agreement)" after the word "arrangement."

■ 5. Add a new § 37.42, to read as follows:

§ 37.42 Service in an Integrated Setting to Passengers at Intercity, Commuter, and High-Speed Rail Station Platforms Constructed or Altered After February 1, 2012.

(a) In addition to meeting the requirements of sections 37.9 and 37.41, an operator of a commuter, intercity, or high-speed rail system must ensure, at stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012, that the following performance standard is met: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station.

(b) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the performance standard of paragraph (a) of this section must be met by providing level-entry boarding to all accessible cars in each train that serves the station.

(c) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, the railroad operator may comply with the performance standard of paragraph (a) by use of one or more of the following means:

(1) Level-entry boarding;

(2) Car-borne lifts;

(3) Bridge plates, ramps or other appropriate devices;

(4) Mini-high platforms, with multiple mini-high platforms or multiple train stops, as needed, to permit access to all accessible cars available at that station; or

(5) Station-based lifts;

(d) Before constructing or altering a platform at a station covered by paragraph (c) of this section, at which a railroad proposes to use a means other than level-entry boarding, the railroad must meet the following requirements:

(1) If the railroad operator not using level-entry boarding chooses a means of meeting the performance standard other than using car-borne lifts, it must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts and the means chosen by the railroad operator, as well as a comparison of the relative ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. The railroad operator must submit a copy of this analysis to FTA or FRA at the time it submits the plan required by paragraph (d)(2) of this section.

(2) The railroad operator must submit a plan to FRA and/or FTA, describing its proposed means to meet the performance standard of paragraph (a) of this section at that station. The plan must demonstrate how boarding equipment or platforms would be deployed, maintained, and operated; and how personnel would be trained and deployed to ensure that service to individuals with disabilities is provided in an integrated, safe, timely, and reliable manner.

(3) Before proceeding with constructing or modifying a station platform covered by paragraphs (c) and (d) of this section, the railroad must

obtain approval from the FTA (for commuter rail systems) or the FRA (for intercity rail systems). The agencies will evaluate the proposed plan and may approve, disapprove, or modify it. The FTA and the FRA may make this determination jointly in any situation in which both a commuter rail system and an intercity or high-speed rail system use the tracks serving the platform. FTA and FRA will respond to the railroad's plan in a timely manner, in accordance with the timetable set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of this paragraph.

(i) FTA/FRA will provide an initial written response within 30 days of receiving a railroad's written proposal. This response will say either that the submission is complete or that additional information is needed.

(ii) Once a complete package, including any requested additional information, is received, as acknowledged by FRA/FTA in writing, FRA/FTA will provide a substantive response accepting, rejecting, or modifying the proposal within 120 days.

(iii) If FTA/FRA needs additional time to consider the railroad's proposal, FRA/FTA will provide a written communication to the railroad setting forth the reasons for the delay and an estimate of the additional time (not to exceed an additional 60 days) that FRA/FTA expect to take to finalize a substantive response to the proposal.

(iv) In reviewing the plan, FRA and FTA will consider factors including, but not limited to, how the proposal maximizes accessibility to individuals with disabilities, any obstacles to the use of a method that could provide better service to individuals with disabilities, the safety and reliability of the approach and related technology proposed to be used, the suitability of the means proposed to the station and line and/or system on which it would be used, and the adequacy of equipment and maintenance and staff training and deployment.

(e) In any situation using a combination of high and low platforms, a commuter or intercity rail operator shall not employ a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform.

(1) Except as provided in paragraph (e)(2) of this paragraph, any obstructions on a platform (mini-high platforms, stairwells, elevator shafts, seats *etc.*) shall be set at least six feet back from the edge of a platform.

(2) If the six-foot clearance is not feasible (*e.g.*, where such a clearance would create an insurmountable gap on a mini-high platform or where the physical structure of an existing station does not allow such clearance), barriers must be used to prevent the flow of pedestrian traffic through these narrower areas.

(f) For purposes of this part, level-entry boarding means a boarding platform design in which the horizontal gap between a car at rest and the platform is no more than 10 inches on tangent track and 13 inches on curves and the vertical height of the car floor is no more than 5.5 inches above the boarding platform. Where the horizontal gap is more than 3 inches and/or the vertical gap is more than ⅝ inch, measured when the vehicle is at rest, the horizontal and vertical gaps between the car floor and the boarding platform must be mitigated by a bridge plate, ramp, or other appropriate device consistent with 49 CFR 38.95(c) and 38.125(c).

§ 37.71 [Amended]

■ 6. In § 37.71, remove the words "Except as provided elsewhere in this section" from paragraph (a) and remove paragraphs (b) through (g).

§ 37.103 [Amended]

■ 7. In § 37.103 (b) and (c), remove the words "or an over-the-road bus,".

■ 8. Revise § 37.165(b) to read as follows:

§ 37.165 Lift and securement use.

* * * * *

(b) Except as provided in this section, individuals using wheelchairs shall be transported in the entity's vehicles or other conveyances.

(1) With respect to wheelchair/occupant combinations that are larger or heavier than those to which the design standards for vehicles and equipment of 49 CFR part 38 refer, the entity must carry the wheelchair and occupant if the lift and vehicle can accommodate the wheelchair and occupant. The entity may decline to carry a wheelchair/occupant if the combined weight exceeds that of the lift specifications or if carriage of the wheelchair is demonstrated to be inconsistent with legitimate safety requirements.

(2) The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.

* * * * *

§ 37.169 [Removed and reserved]

■ 9. Remove and reserve § 37.169.

■ 10. In § 37.193, remove paragraph (a)(2), remove and reserve paragraph (c), and redesignate paragraph (a)(3) as (a)(2).

■ 11. Appendix D to Part 37 is amended by:

■ A. Under Section 37.3 Definitions, remove the last two paragraphs and add four paragraphs in its place,

■ B. Add Section 37.42 in numerical order,

■ C. Revise the first paragraph under Section 37.71,

■ D. Under Section 37.93 remove the period at the end of last sentence in the third paragraph and replace with it comma, and add the following language: "except where doing is necessary to comply with the provisions of section 37.42 of this part."

■ E. Revise Section 37.165.

The revisions and additions read as follows:

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

* * * * *

Section 37.3 Definitions

* * * * *

The definition of "wheelchair" includes a wide variety of mobility devices. This inclusiveness is consistent with the legislative history of the ADA (See S. Rept. 101–116 at 48). While some mobility devices may not look like many persons' traditional idea of a wheelchair, three- and more-wheeled devices, of many varied designs, are used by individuals with disabilities and must be transported. "Wheelchair" is defined in this rule as a mobility aid belonging to any class of three-or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered. The "three- or-more-wheeled" language in the definition is intended to encompass wheelchairs that may have additional wheels (*e.g.*, two extra guide wheels in addition to the more traditional four wheels).

Persons with mobility disabilities may use devices other than wheelchairs to assist with locomotion. Canes, crutches, and walkers, for example, are often used by people whose mobility disabilities do not require use of a wheelchair. These devices must be accommodated on the same basis as wheelchairs. However, the Department does not interpret its rules to require transportation providers to accommodate devices that are not primarily designed or intended to assist persons with mobility disabilities (*e.g.*, skateboards, bicycles, shopping carts), apart from general policies applicable to all passengers who might seek to bring such devices into a vehicle. Similarly, the Department does not interpret its rules to require transportation providers to permit an assistive device to be used in a way that departs from or exceeds the intended purpose of the device (*e.g.*, to use a walker, even one with a seat intended to allow temporary rest intervals, as a wheelchair in

which a passenger sits for the duration of a ride on a transit vehicle).

The definition of wheelchair is not intended to include a class of devices known as "other power-driven mobility devices" (OPMDs). OPMDs are defined in Department of Justice ADA rules as "any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts * * * Segway[s]®, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair * * *." DOT is placing guidance on its Web site concerning the use of Segways in transportation vehicles and facilities.

The definition of "direct threat" is intended to be interpreted consistently with the parallel definition in Department of Justice regulations. That is, part 37 does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

* * * * *

Section 37.42

Service in an integrated setting to passengers at intercity, commuter, and high-speed rail station platforms constructed or altered after February 1, 2012.

Individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars in each train using a new or altered station. This performance standard will apply at stations where construction or alteration of platforms begins 135 days or more after the rule is published. The performance standard does not require rail operators to retrofit existing station platforms or cars. The requirement is prospective, and section 37.42 does not require retrofit of existing stations (though compliance with existing disability nondiscrimination requirements not being altered is still required). To meet this performance standard on lines or systems where track passing through stations and adjacent to platforms is shared with existing freight rail operations, passenger railroads that do not choose to provide level-entry boarding may, after obtaining FRA and/or FTA approval, use car-borne lifts, ramps or other devices, mini-high platforms (making multiple stops where necessary to accommodate passengers wishing to use different cars of the train), or movable station-based lifts.

On commuter, intercity, or high-speed rail lines or systems in which track passing through stations and adjacent to platforms is not shared with existing freight rail operations, the performance standard *must* be met by providing level-entry boarding to all accessible cars in each train that serves new or altered stations on the line or system. For example, if a new commuter or high-speed rail line or system is being built, and the track adjacent to platforms is not shared with freight traffic (*e.g.*, it is a passenger rail-only system, or a passing or gauntlet track exists for freight traffic), then the stations would have to provide level-entry boarding. Other options would not be permitted.

If a platform being constructed or altered is not adjacent to track used for freight, but the track and platform are used by more than one passenger railroad (*e.g.*, Amtrak and a commuter railroad), the possibility of the platform serving cars with different door heights exists. In this situation, the level-entry boarding requirement continues to exist. Generally, the platform should be level with respect to the system that has the lower boarding height. This is because it is not good safety practice to make passengers step down (or be lifted down or use ramps to get down) to board a train. For example, if Amtrak operates through a station with cars that are 15 inches ATR, and a commuter railroad uses the same platform with cars that are 25 inches ATR, the platform would be level with respect to the Amtrak cars. The commuter railroad would have to provide another means of access, such as lifts. In all such cases where mixed rail equipment will be used, the rule requires that both FRA and FTA be consulted by the railroads involved. As in other cases where level-entry boarding is not used, the railroad must obtain FTA and/or FRA approval for the means the railroad wants to use to meet the performance standard.

The details of the "track passing through stations and adjacent to platforms is shared with existing freight rail operations" language are important. There may be stations that serve lines that are shared, at some points, by passenger and freight traffic, but where the freight traffic does not go through the particular station (*e.g.*, because freight traffic bypasses the station), level-entry boarding is required. There could also be situations on which multiple tracks pass through a station, and freight traffic uses only a center track, not a track which is adjacent to a platform. In such cases, the new or altered platform would have to provide level-entry boarding. It is important to note that this language refers to "existing" freight rail traffic, as opposed to the possibility that freight traffic might use the track in question at some future time. Likewise, if freight trains have not used a track passing through a station in a significant period of time (*e.g.*, the past 10 years), the Department does not view this as constituting "existing freight rail traffic."

Passenger rail operators must provide access only to accessible, available cars that people with disabilities are trying to access at a given station. If a train has eight accessible cars, and wheelchair users want to enter only cars 2 and 7 (see discussion below of passenger notification), then railroad personnel need to deploy lifts or bridge plates only at cars 2 and 7, not at the other cars. Similarly, the rule requires operators to provide access only to available cars at a station. If a train has eight accessible cars, but the platform only serves cars 1 through 6, then railroad personnel need to deploy lifts or bridge plates only at cars that people with disabilities are trying to access and that are available to all passengers. We would also point out that wheelchair positions on rail passenger cars are intended to serve wheelchair users, and railroad operators should take steps to ensure that these spaces are available for wheelchair users and not for other uses. For example, it would be contrary to the rule for a wheelchair user to be told that he or she could not use car 7 because the wheelchair spaces were filled with other passengers' luggage from a previous stop.

In order to ensure that access was provided, passengers would have to notify railroad personnel. For example, if a passenger at a station wanted to use a station-based lift to access car 6, the passenger would request the use of car 6 and railroad personnel would deploy the lift at that car. Likewise, at a station using a mini-high platform, a passenger on this platform would inform train personnel that he or she wanted to enter car 5, whereupon the train would pull forward so that car 5 was opposite the mini-high platform. We contemplate that these requests would be made when the train arrives, and railroads could not insist on advance notice (*e.g.*, the railroad could not require a passenger to call a certain time in advance to make a "reservation" to use a lift to get on a particular car). As part of its submission to FTA or FRA, the railroad would describe the procedure it would use to receive and fulfill these requests.

Where a railroad operator wishes to provide access to its rail cars through a means other than level-entry boarding, it is essential that it provide an integrated, safe, timely, reliable, and effective means of access for people with disabilities. A railroad is not required to choose what might be regarded as a more desirable or convenient method over a less desirable or convenient method, or to choose a more costly option over a less costly option. What a railroad must do is to ensure that whatever option it chooses works. However, to assist railroads in choosing the most suitable option, the rule requires that a railroad not using level-entry boarding, if it chooses an approach other than the use of car-borne lifts, must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts versus the means preferred by the railroad operator, as well as a comparison of the relative ability of each of the two alternatives (*i.e.*, car-borne lifts and the railroad's preferred approach) to provide service to people with disabilities in an integrated, safe, reliable, and timely manner. The railroad must submit this comparison to FTA and FRA at the same time as it submits its plan to FRA and/or FTA, as described below, although the comparison is not part of the basis on which the agencies would determine whether the plan meets the performance standard. The Department believes that, in creating this plan, railroads should consult with interested individuals and groups and should make the plan readily

available to the public, including individuals with disabilities.

To ensure that the railroad's chosen option works, the railroad must provide to FRA or FTA (or both), as applicable, a plan explaining how its preferred method will provide the required integrated, safe, reliable, timely and effective means of access for people with disabilities. The plan would have to explain how boarding equipment (*e.g.*, bridge plates, lifts, ramps, or other appropriate devices) and/or platforms will be deployed, maintained, and operated, as well as how personnel will be trained and deployed to ensure that service to individuals with disabilities was provided in an integrated, safe, timely, effective, and reliable manner.

FTA and/or FRA will evaluate the proposed plan with respect to whether it will achieve the objectives of the performance standard and may approve, disapprove, or modify it. It should be emphasized that the purpose of FTA/FRA review of this plan is to make sure that whatever approach a railroad chooses will in fact work; that is, it will really result in an integrated, safe, reliable, timely and effective means of access for people with disabilities. If a plan, in the view of FRA or FTA, fails to meet this test, then FTA or FRA can reject it or require the railroad to modify it to meet the objectives of this provision.

In considering railroads' plans, the agencies will consider factors including, but not limited to, how the proposal maximizes integration of and accessibility to individuals with disabilities, any obstacles to the use of a method that could provide better service to individuals with disabilities, the safety and reliability of the approach and related technology proposed to be used, the suitability of the means proposed to the station and line and/or system on which it would be used, and the adequacy of equipment and maintenance and staff training and deployment.

For example, some commenters have expressed significant concerns about the use of station-based lifts, noting instances in which such lifts have not been maintained in a safe and reliable working order. A railroad proposing to use station-based lifts would have to describe to FTA or FRA how it would ensure that the lifts remained in safe and reliable operating condition (such as by cycling the lift daily or other regular maintenance) and how it would ensure that personnel to operate the lift were available in a timely manner to assist passengers in boarding a train. This demonstration must clearly state how the railroad expects that their operations will provide safe and dignified service to the users of such lifts.

In existing stations where it is possible to provide access to every car without station or rail car retrofits, rail providers that receive DOT financial assistance should be mindful of the requirement of 49 CFR 27.7(b)(2), which requires that service be provided "in the most integrated setting that is reasonably achievable." For example, if a set of rail cars has car-borne lifts that enable the railroad to comply with section 37.42 at new or altered station platforms, it is likely that deployment of this lift at existing stations will be reasonably achievable. Similarly, it is likely that, in a system using mini-high platforms, making multiple stops at existing stations would be reasonable achievable. The use of a station-based lift at an existing station to serve more than one car of a train may well also be reasonably achievable (*e.g.*, with movement of the lift or multiple stops, as needed). Such actions would serve the objective of providing service in an integrated setting. In addition, in situations where a railroad and the Department have negotiated access to every accessible car in an existing system (*e.g.*, with car-borne lifts and mini-high platforms as a back-up), the Department expects the railroads to continue to provide access to every accessible car for people with disabilities.

Section 37.42(e) provides a safety requirement concerning the setback of structures and obstacles (*e.g.*, mini-high platforms, elevators, escalators, and stairwells) from the platform edge. This provision is based on long-standing FRA recommendations and the expertise of the Department's staff. The Department believes that it is inadvisable, with the exception of boarding and alighting a train, to ever have a wheelchair operate over the two-foot wide tactile strips that are parallel to the edge of the platform. This leaves a four-foot distance for a person in a typical wheelchair to maneuver safely past stair wells, elevator shafts, *etc.* It also is important because a wheelchair user exiting a train at a door where there is not a six-foot clearance would likely have difficulty exiting and making the turn out of the rail car door. The requirement would also avoid channeling pedestrians through a relatively narrow space where, in crowded platform conditions, there would be an increased chance of someone falling off the edge of the platform. Since the rule concerns only new and altered platforms, the Department does not believe the cost or difficulty of designing the platforms to eliminate this hazard will be significant.

Section 37.42(f) provides the maximum gap allowable for a platform to be considered "level." However, this maximum is not intended to be the norm for new or altered platforms. The Department expects transportation providers to minimize platform gaps to the greatest extent possible by building stations on tangent track and using gap-filling technologies, such as moveable platform edges, threshold plates, platform end boards, and flexible rubber fingers on the ends of platforms. The Department encourages the use of Gap Management Plans and consultation with FRA and/or FTA for guidance on gap safety issues.

Even where level-entry boarding is provided, it is likely that, in many instances, bridge plates would have to be used to enable passengers with disabilities to enter cars, because of the horizontal gaps involved. Section 38.95(c)(5), referred to in the regulatory text, permits various ramp slopes for bridge plates, depending on the vertical gap in given situation. In order to maximize the opportunity of passengers to board independently, the Department urges railroads to use the least steep ramp slope feasible at a given platform.\

* * * * *

Section 37.71 Acquisition of Accessible Vehicles by Public Entities

This section generally sets out the basic acquisition requirements for a public entity purchasing a new vehicle. The section requires any public entity that purchases or leases a new vehicle to acquire an accessible vehicle.

* * * * *

Section 37.165 Lift and Securement Use

This provision applies to both public and private entities.

All people using wheelchairs, as defined in the rule, and other powered mobility devices, under the circumstances provided in the rule, are to be allowed to ride the entity's vehicles.

Entities may require wheelchair users to ride in designated securement locations. That is, the entity is not required to carry wheelchair users whose wheelchairs would have to park in an aisle or other location where they could obstruct other persons' passage or where they could not be secured or restrained. An entity's vehicle is not required to pick up a wheelchair user when the securement locations are full, just as the vehicle may pass by other passengers waiting at the stop if the bus is full.

The entity may require that wheelchair users make use of securement systems for their mobility devices. The entity, in other words, can require wheelchair users to "buckle up" their mobility devices. The entity is required, on a vehicle meeting part 38 standards, to use the securement system to secure wheelchairs as provided in that part. On other vehicles (*e.g.*, existing vehicles with securement systems which do not comply with part 38 standards), the entity must provide and use a securement system to ensure that the mobility device remains within the securement area. This latter requirement is a mandate to use best efforts to restrain or confine the wheelchair to the securement area. The entity does the best it can, given its securement technology and the nature of the wheelchair. The Department encourages entities with relatively less adequate securement systems on their vehicles, where feasible, to retrofit the vehicles with better securement systems, that can successfully restrain a wide variety of wheelchairs. It is our understanding that the cost of doing so is not enormous.

An entity may not, in any case, deny transportation to a wheelchair and its user because the wheelchair cannot be secured or restrained by a vehicle's securement system, to the entity's satisfaction. The same point applies to an OPMD and its user, subject to legitimate safety requirements.

Entities have often recommended or required that a wheelchair user transfer out of his or her own device into a vehicle seat. Under this rule, it is no longer permissible to require such a transfer. The entity may provide information on risks and make a recommendation with respect to transfer, but the final decision on whether to transfer is up to the passenger.

The entity's personnel have an obligation to ensure that a passenger with a disability is able to take advantage of the accessibility and safety features on vehicles.

Consequently, the driver or other personnel must provide assistance with the use of lifts, ramps, and securement devices. For example, the driver must deploy the lift properly and safely. If the passenger cannot do so independently, the driver must assist the passenger with using the securement device. On a vehicle which uses a ramp for entry, the driver may have to assist in pushing a manual wheelchair up the ramp (particularly where the ramp slope is relatively steep). All these actions may involve a driver leaving his seat. Even in entities whose drivers traditionally do not leave their seats (*e.g.*, because of labor-management agreements or company rules), this assistance must be provided. This rule overrides any requirements to the contrary.

Wheelchair users, especially those using electric wheelchairs, often have a preference for entering a lift platform and vehicle in a particular direction (*e.g.*, backing on or going on frontwards). Except where the only way of successfully maneuvering a device onto a vehicle or into its securement area or an overriding safety concern (*i.e.*, a direct threat) requires one way of doing this or another, the transit provider should respect the passenger's preference. We note that most electric wheelchairs are usually not equipped with rearview mirrors, and that many persons who use them are not able to rotate their heads sufficiently to see behind. 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 level surface 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.

A lift conforming to Access Board requirements has a platform measuring at least 30" x 48", with a design load of at least 600 pounds (*i.e.*, capable of lifting a wheelchair/occupant combination of up to 600 pounds). Working parts upon which the lift depends for support of the load, such as cables, pulleys, and shafts, must have a safety factor of at least six times the design load; nonworking parts such as the platform, frame, and attachment hardware, which would not be expected to wear, must have a safety factor of at least three times the design load.

If a transportation provider has a vehicle and equipment that meets or exceeds standards based on Access Board guidelines, and the vehicle and equipment can in fact safely accommodate a given wheelchair, then it is not appropriate, under disability nondiscrimination law, for the transportation provider to refuse to transport the device and its user. Transportation providers must carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user and there is space for the wheelchair on the vehicle. However, if in fact a lift or vehicle is unable to accommodate the wheelchair and its user, the transportation provider is not required to carry it.

For example, suppose that a bus or paratransit vehicle lift will safely accommodate an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds (*i.e.*, a design load of 800 lbs.). The lift is one that exceeds the part 38 design standard, which requires lifts to be able to accommodate a 600-pound wheelchair/passenger combination. The transportation provider could limit use of that lift to a combination of 800 pounds or less. Likewise, if a wheelchair or its attachments extends beyond the 30 x 48 inch footprint found in part 38's design standards but fits onto the lift and into the wheelchair securement area of the vehicle, the transportation provider would have to accommodate the wheelchair. However, if such a wheelchair was of a size that would block an aisle and interfere with the safe evacuation of passengers in an emergency, the operator could deny carriage of that wheelchair based on a legitimate safety requirement.

PART 38—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES

■ 12. The authority citation for 49 CFR part 38 continues to read as follows:

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

§ 38.91 [Amended]

■ 13. In § 38.91:

■ A. Amend paragraph (c)(1) by removing the words "wherever structurally and operationally practicable" and adding in their place the words "unless structurally or operationally impracticable."

■ B. Amend paragraph (c)(2) by removing the words "not structurally or operationally practicable" and adding, in their place, the words "structurally or operationally impracticable".

§ 38.93 [Amended]

■ 14. In § 38.93(d)(3), remove the period at the end of the paragraph and add the following words: ",ensuring compliance with section 37.42, where applicable." in its place.

§ 38.95 [Amended]

■ 15. In § 38.95, amend the first sentence of paragraph (a)(2) by adding the words "level-entry boarding," before the words " portable or platform lifts" and by revising the second sentence to read "The access systems or devices used at a station to which section 37.42 applies must permit compliance with that section."

§ 38.111 [Amended]

■ 16. In § 38.111,

■ A. Amend paragraph (b)(1) by removing the words "If physically and operationally practicable" and adding in their place the words "Unless structurally or operationally impracticable."

■ B. Amend paragraph (b)(2) by removing the words ""not structurally or operationally practicable" and adding, in their place, the words "structurally or operationally impracticable".

§ 38.113 [Amended]

■ 17. In § 38.113, amend paragraph (d)(3) by removing the period at the end of the paragraph and adding the words "ensuring compliance with section 37.42, where applicable" in its place.

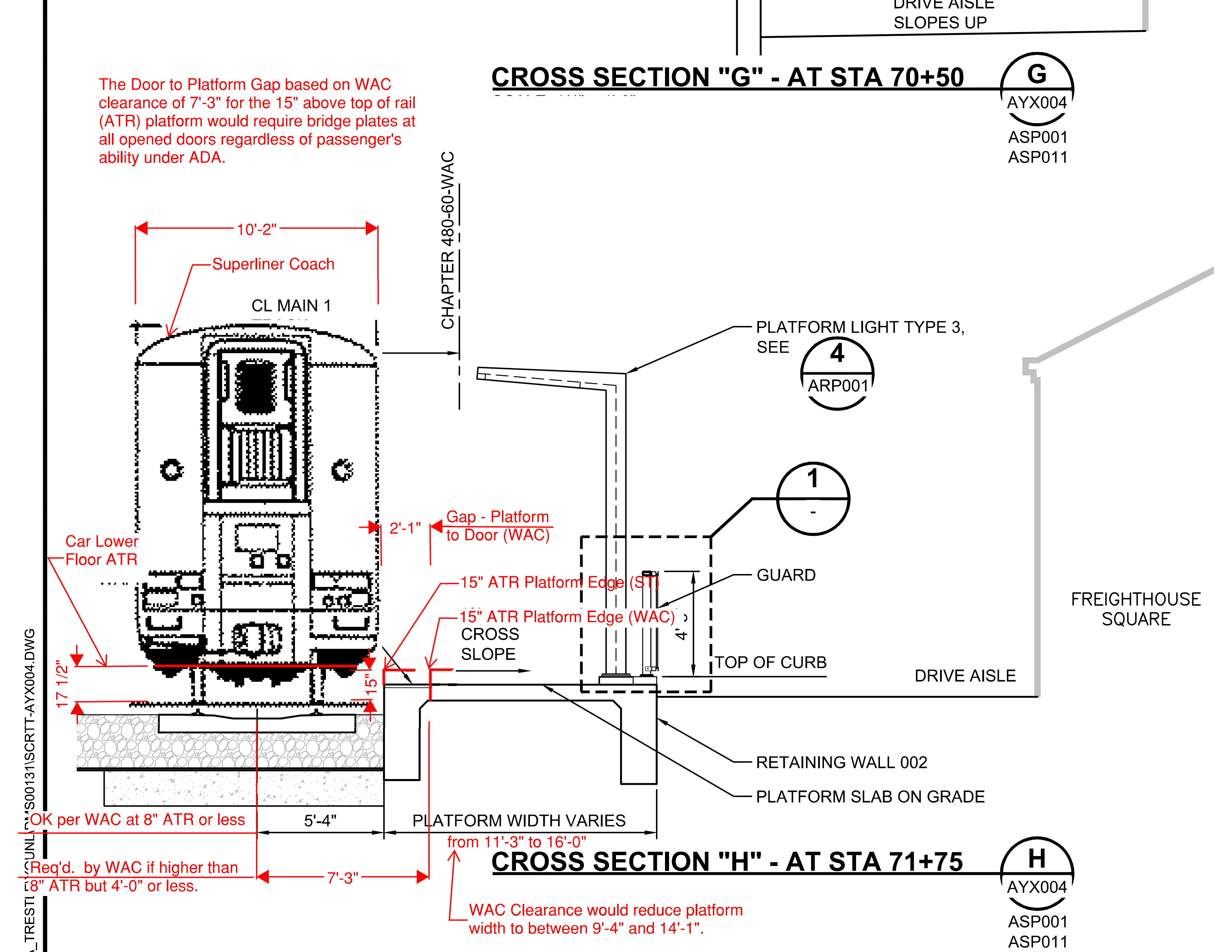
§ 38.125 [Amended]

■ 18. In § 38.125, amend the first sentence of paragraph (a)(2) by adding the words "level-entry boarding," before the words " portable or platform lifts" and by adding a second sentence "The access systems or devices used at a station to which section 37.42 applies must permit compliance with that section." at the end of the paragraph.

[FR Doc. 2011–23576 Filed 9–15–11; 11:15 am]

BILLING CODE 4910–9X–P

Exhibit D – 49 CFR vs. WAC 480-60, Amtrak Coast Starlight Illustration



DRIVE AISLE
SLOPES UP
CROSS SECTION "G" - AT STA 70+50
G
AYX004
ASP001
ASP011
The Door to Platform Gap based on WAC clearance of 7'-3" for the 15" above top of rail (ATR) platform would require bridge plates at all opened doors regardless of passenger's ability under ADA.
CHAPTER 480-60-WAC
10'-2"
Superliner Coach
CL MAIN 1
PLATFORM LIGHT TYPE 3, SEE
4
ARP001
1
-
2'-1"
Gap - Platform to Door (WAC)
Car Lower Floor ATR
15" ATR Platform Edge (ST)
15" ATR Platform Edge (WAC)
GUARD
CROSS SLOPE
TOP OF CURB
FREIGHTHOUSE SQUARE
DRIVE AISLE
17 1/2"
15"
RETAINING WALL 002
PLATFORM SLAB ON GRADE
OK per WAC at 8" ATR or less
5'-4"
PLATFORM WIDTH VARIES
from 11'-3" to 16'-0"
CROSS SECTION "H" - AT STA 71+75
H
AYX004
ASP001
ASP011
Req'd. by WAC if higher than 8" ATR but 4'-0" or less.
7'-3"
WAC Clearance would reduce platform width to between 9'-4" and 14'-1".

Exhibit E – WAC 480-60-050 Side Clearances

WAC 480-60-050

No agency filings affecting this section since 2003

Side clearances.

(1) General rule. Side clearances must be at least 8 feet 6 inches unless one of the provisions below applies. If exceptions in subsections (2) through (5) or (7) of this section apply, full side clearance of 8 feet 6 inches shall be provided on the opposite side of the track from the platform.

(2) Platforms - 8" or less above top of rail . . . .4'8"

(3) Platforms - 4'0" or less above top of rail . . . .7'3"

(4) Platforms - 4'6" or less above top of rail - When used principally for loading or unloading refrigerator cars . . . .8'0"

(5) Icing platforms and supports . . . .7'3"

(6) A retractable platform which is attached to a permanent structure must be designed so that when it is not in use no part of it shall fall within the clearance limits herein prescribed for a platform of that height above the top of the rail.

(7) Platforms - Combinations of any above.

Platforms defined under (2) above may be combined with either (4) or (3) if the lower platform has a level surface from a point not more than four feet eight inches from centerline of track to the face of the wall of the platform with which it is combined. No other combinations will be permitted.

(8) Bridges and tunnels . . . .8'0"

(9) Bridges and tunnels - Upper section (see WAC 480-60-040(3)).

Side clearance on bridges and in tunnels may be decreased to the extent defined by the half circumference of a circle having a radius of eight feet and tangent to a horizontal line twenty-two feet six inches above top of rail directly above centerline of track.

(10) Bridges - Lower section and structures 4' high or less. Bridges, hand rails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards and cattle chutes, or portions of those items, four feet or less above top of rail may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and five feet distant laterally from centerline of track to a point four feet above top of rail and eight feet distant laterally from centerline of track: Provided, That the minimum clearance for hand rails and water barrels must be seven feet six inches and the minimum clearance for fences of cattle guards must be six feet nine inches.

Unless previously approved, the clearances authorized in this subsection, except as provided for hand rails and water barrels, are not permitted on bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead.

(11) Side clearance - Engine house and car repair shop doors . . . .7'6"

(12) Side clearance - Interlocking mechanism, switch boxes, and other similar devices projecting 4" or less above the top of the rail . . . .3'0"

(13) Side clearance - Poles supporting trolley contact . . . .8'3"

(14) Side clearance - Signals and switch stands 3' high or less when located between tracks where not reasonably possible to provide clearances otherwise prescribed in these rules . . . .6'0"

(15) Side clearance - Signals and switch stands other than above . . . .8'0"

(16) Side clearances on curved track. Side clearances adjacent to curved track shall be increased as necessary to give the equivalent of tangent track clearances. As a general rule, the side clearance on curved track should be increased 1-1/2" for each degree of curvature.

(17) Side clearances - Material or merchandise adjacent to tracks.

No merchandise, material or other articles shall be placed or stored on ground or platforms adjacent to any track at a distance less than eight feet six inches from the centerline of track, except in cases of maintenance or emergency when such material is to be used within a reasonable period of time or where local conditions make compliance with this rule impossible.

(18) Clearances - Car puller units and appurtenances.

Clearances for car puller units and appurtenances must be approved by the commission through the process set forth in WAC 480-62-020.

[Statutory Authority: RCW 81.04.160 and 80.01.040. WSR 00-04-011 (Order No. R-469, Docket No. TR-981101), § 480-60-050, filed 1/21/00, effective 2/21/00; Order R-5, § 480-60-050, filed 6/6/69, effective 10/9/69.]

Exhibit F – Department of Defense, MIL-STD-1366E
Standard Plate

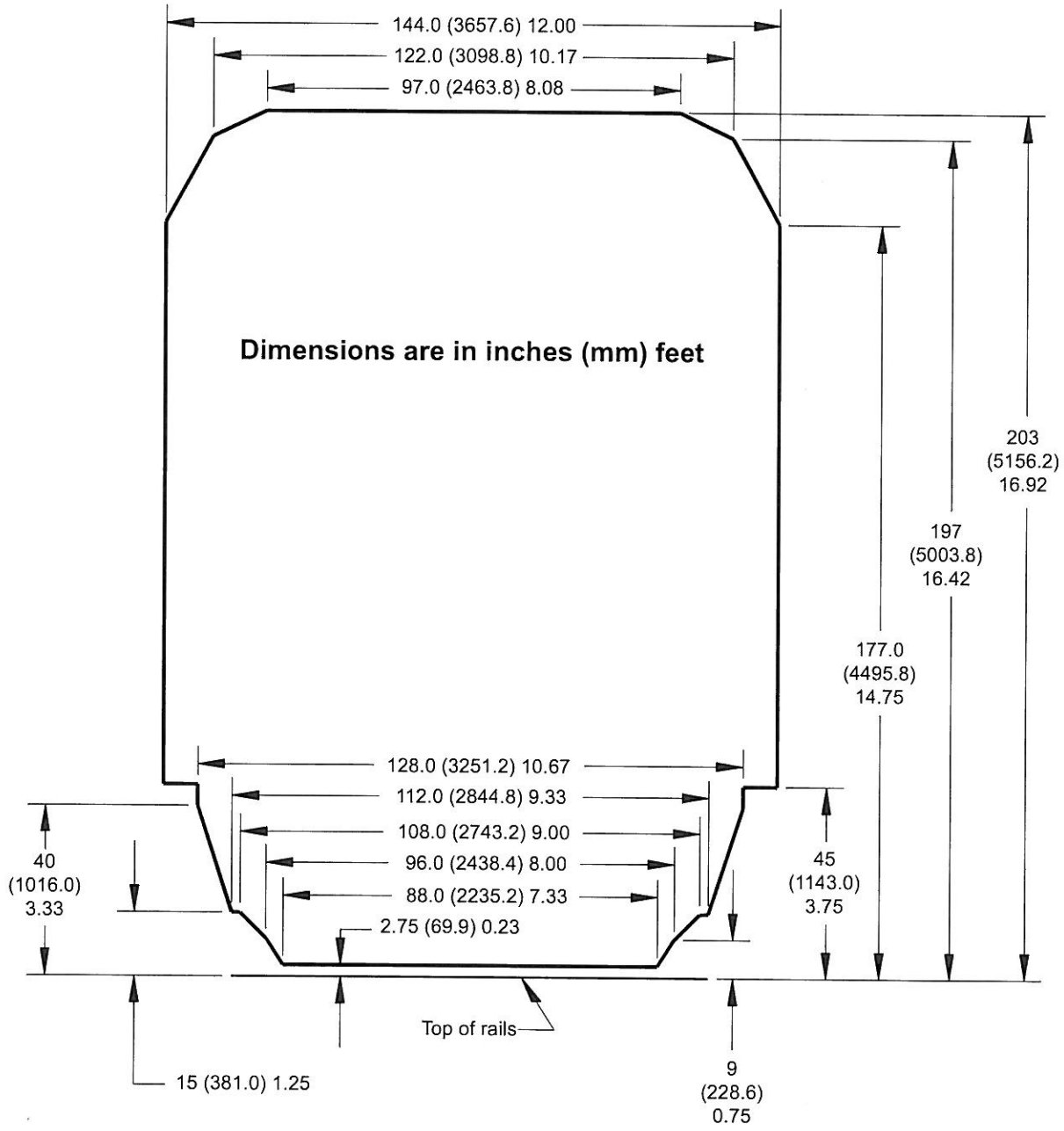
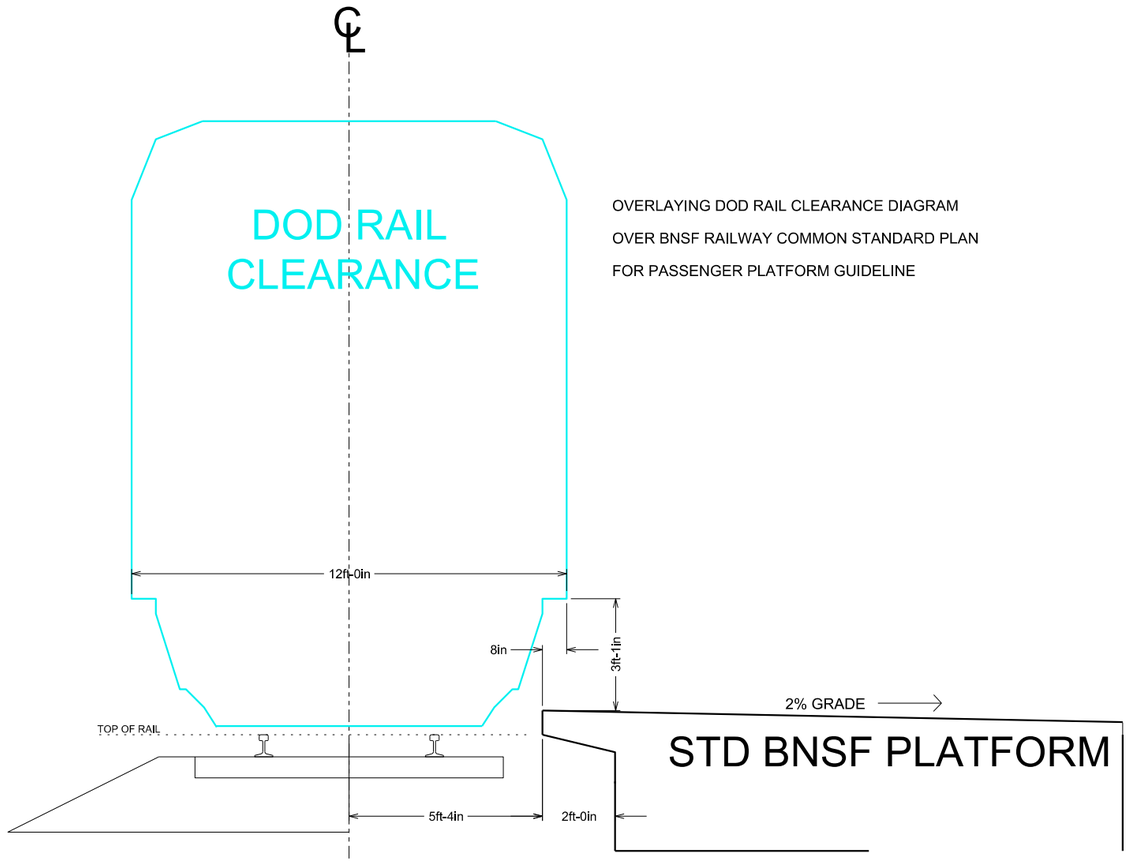


Figure 3. DOD rail clearance diagram.

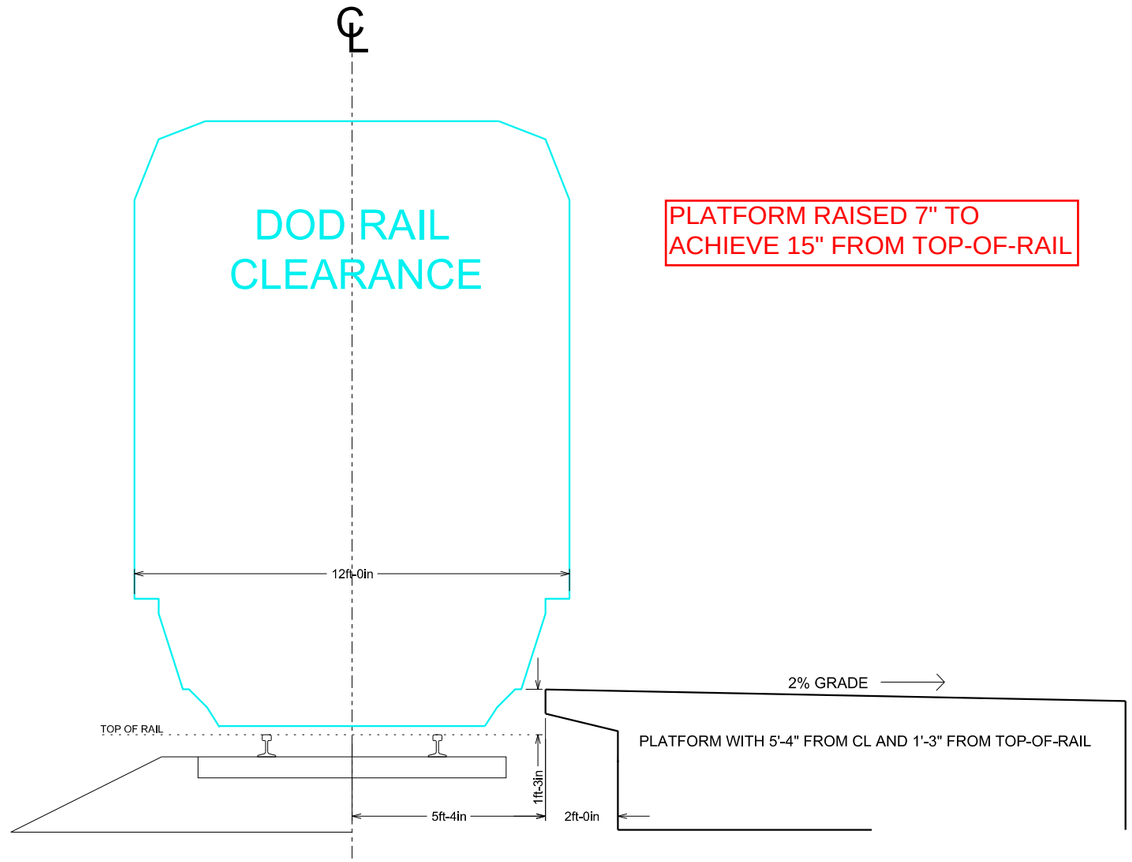
Exhibit G – BNSF Railway Passenger Platform Evaluation Graphic



OVERLAYING DOD RAIL CLEARANCE DIAGRAM

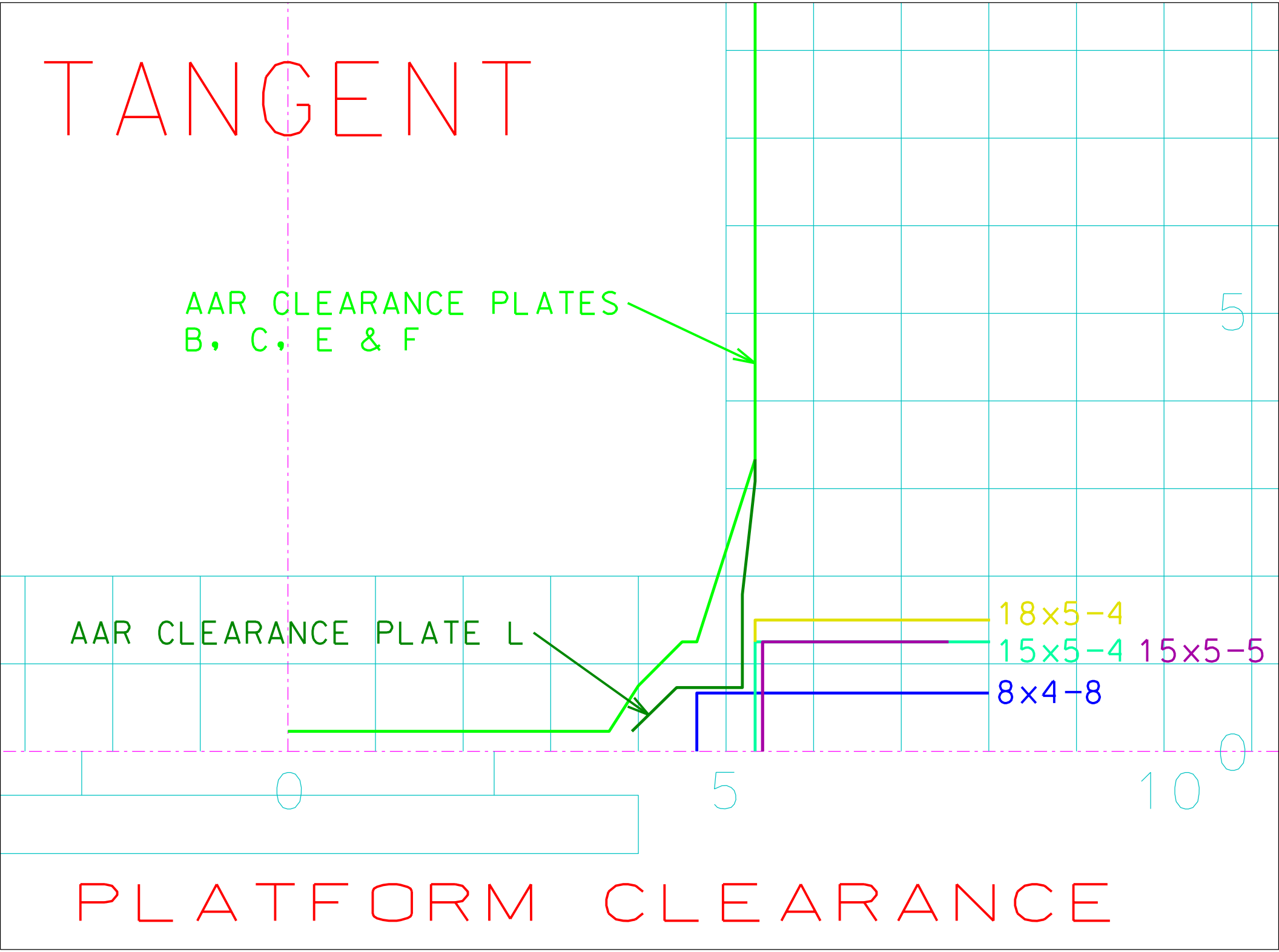
OVER BNSF RAILWAY COMMON STANDARD PLAN

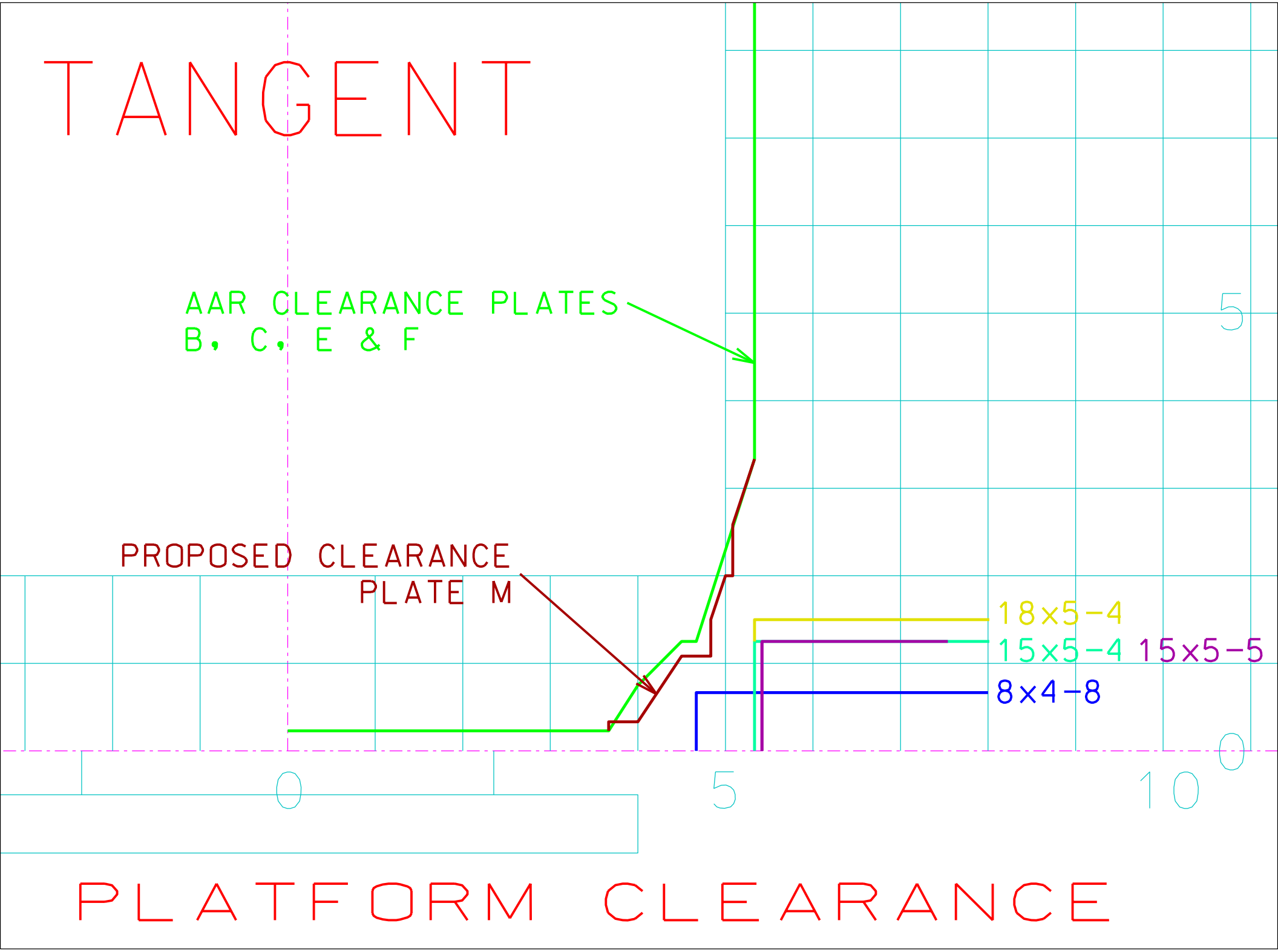
FOR PASSENGER PLATFORM GUIDELINE



PLATFORM RAISED 7" TO
ACHIEVE 15" FROM TOP-OF-RAIL

Exhibit H – BNSF Railway Evaluation of Passenger Platform Using AAR Plates


TANGENT
AAR CLEARANCE PLATES
B, C, E & F
AAR CLEARANCE PLATE L
18x5-4
15x5-4
15x5-5
8x4-8
5
0
0
5
10
PLATFORM CLEARANCE



PLATFORM CLEARANCE

Exhibit I – BNSF Railway & Tacoma Rail Concurrence Emails

Washington State Department of Transportation

Lynn Peterson
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

July 27, 2015

Mr. Walt Smith
BNSF Railway
2454 Occidental Ave. S #2D
Olympia, WA 98504-7407

Re: Side clearance waiver from WAC 480-60-050 (2) for proposed platform at King Street Station and Freighthouse Square

Dear Mr. Smith:

The Washington State Department of Transportation (WSDOT) was awarded an American Recovery and Reinvestment Act grant from the Federal Railroad Administration (FRA) to construct new passenger rail platforms and the modification of an existing at the Freighthouse Square Station in Tacoma, WA and King Street Station in Seattle, WA. This funding must be utilized in a manner consistent with the requirements of the Americans with Disabilities Act (ADA).

In order to satisfy ADA requirements for new and/or altered passenger rail platforms, we are governed by 49 CFR Parts 37 and 38 and more specifically 49 CFR 37.42(a) that states "individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station". The design requirement that results from the aforementioned criterion is a platform height that is 15" above top of rail (ATR) and a platform face that is 5'-4" from centerline of track.

The Washington Administrative Code (WAC) 480-60-050 states that a passenger rail platform constructed between 8" and 4'-0" ATR must have a minimum face of platform constructed at 7'-3" from centerline of track. If a passenger rail platform where to be constructed at 15" ATR and 7'-3" from centerline of track, meeting the requirements of the WAC, the result would be an approximate 2' horizontal gap between the platform and door of a passenger rail consist. This would not meet the requirements of 49 CFR Parts 37 and 38. It states that "level-entry boarding means a boarding platform design in which the horizontal gap between a car at rest and the platform is no more than 10 inches on tangent track and 13 inches on curves…".

WSDOT is preparing a waiver to the Washington State Utilities and Transportation Commission (WUTC) for a passenger rail platform constructed at 15" ATR with a face of platform at 5'-4" from centerline of track at both King Street Station and Freighthouse Square Station. WSDOT requests BNSF evaluate their typical freight, military, and maintenance of way train consists and provide concurrence to WSDOT that a passenger rail platform constructed at 15" ATR with a face of platform at 5'-4" from centerline of track would not conflict with the aforementioned BNSF freight consists.

Thank you for your consideration and we would appreciate a response from BNSF on or before July 29, 2015 so we may finalize our WUTC waiver submittal package. Please feel free to contact me at 360.905.1578 with any questions.

Respectfully,

Casey Liles, MSCE, PE
Point Defiance Bypass Project Lead
WSDOT Rail Division

CL:ts

Cc: David Smelser
Michael Coward
Chris Dunster
Devin Reck
Pani Saleh
Tom McDonald
Brad Schilperoort
Document Controls

Slimak, Thomas

From: Smith, Walter N <Walter.Smith1@bnsf.com>
Sent: Wednesday, July 29, 2015 3:03 PM
To: Slimak, Thomas
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control; Mitchell, DJ; Jacobsen, Roger C; Gonzalez, Fernando
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver
Attachments: M and L Pages from PlatformStudy.pdf

Mr. Slimak: We would still like to receive the typical cross-sections, however we have reviewed the letter and your request. While BNSF would still prefer to see the standard Sound Transit platform at 8" ATR with 'mini-hi' ADA platforms, we do not object to the 15" ATR platforms at 5'-4 inches from center line of track. We would however point out that BNSF has many locomotives that are covered by AAR Plate "L" (diagram attached) and that come very close to the edge of the proposed platform. Close inspections and tight tolerances will need to be kept to avoid these locomotives from striking the side of the platform.

Thank you Walt Smith

From: Smith, Walter N
Sent: Tuesday, July 28, 2015 3:38 PM
To: 'Slimak, Thomas'
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control; Mitchell, DJ; Jacobsen, Roger C
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Mr. Slimak: We will start reviewing based on your letter and the traffic in the area. Could you please provide a typical cross-section for the Point Defiance By Pass platform and the King Street station platform. Also at King Street Station please provide a list of the station tracks where this will apply.

Thank you; Walt Smith

From: Slimak, Thomas [mailto:SlimakT@wsdot.wa.gov]
Sent: Tuesday, July 28, 2015 9:27 AM
To: Smith, Walter N
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Mr. Smith,

Good morning and with Megan out on vacation, I wanted to send you the below requested Task 2 & 10 Side Clearance Concurrence memorandum for your review and concurrence. We would appreciate a BNSF response by COB tomorrow so we may get this request on the WUTC consent agenda for August. Thanks Walt for all your help on this and please don't hesitate to contact Casey, Chris or myself with any questions.

Thomas Slimak, P.E.
WSDOT Rail Division
O: (360)705-7339

C: (360)972-5366

From: Reagan, Megan T [mailto:Megan.Reagan@BNSF.Com]
Sent: Monday, July 20, 2015 7:32 AM
To: Slimak, Thomas
Cc: Naranjo, Antoinette
Subject: FW: XL3982: Point Defiance Bypass - Side Clearance Waiver

Tom,

Walt has requested that WSDOT write a letter to us explaining the situation that requests our concurrence, then we will respond.

Megan Reagan
Manager Engineering
BNSF Railway Co.

2454 Occidental Ave S #2D
Seattle, WA 98134

206-625-6413
206-423-4371 cell

Safety is what matters. People matter.

From: Slimak, Thomas [mailto:SlimakT@wsdot.wa.gov]
Sent: Friday, July 17, 2015 8:31 AM
To: Reagan, Megan T
Cc: Liles, Casey; Reck, Devin; Dunster, Chris
Subject: XL3982: Point Defiance Bypass - Side Clearance Waiver

Megan,

Thanks for discussing this with me this morning and below is what we are looking for in terms of a concurrence memorandum.

As you guys are already aware, we have been marching forward with the designs of the new platforms in the Freighthouse Square vicinity at the 15" A.T.R. We are also implementing these platforms with the face of platform at 5'-4" from centerline of track. By following the aforementioned design criteria set forth by FRA and meeting level boarding requirements, we must submit a side clearance waiver to the WUTC. Per WAC 480-60-050, a platform that is construction between 8" and 4'-0" A.T.R. must be a minimum of 7'-3" from centerline of track. The attachment titled *Passenger_ClearanceDiagram* is an illustration of the conflict between level boarding requirements and our WAC.

Yesterday morning we met with the WUTC on completing the necessary waiver so we can construction our platforms at the 5'-4" from centerline of track. The WUTC requested that we obtain concurrence memorandum's from our stakeholders on our proposed design…15" A.T.R and 5'-4" from centerline of track.

Therefore, would you guys be willing to draft a concurrence memorandum to the aforementioned design criterion and that your freight service would not be impacted by this design? If you guys concur with this approach, could we receive your memorandum by Tuesday, July 21?

Thank you for all your help on this. Please don't hesitate to call if you've got any questions or concerns.

Thomas Slimak, P.E.
WSDOT Rail Division
O: (360)705-7339
C: (360)972-5366

Slimak, Thomas

From: Kellem, Kyle <kkellem@ci.tacoma.wa.us>
Sent: Thursday, July 30, 2015 1:54 PM
To: Slimak, Thomas
Cc: Liles, Casey; Reck, Devin; Johnson, Mark; Matheson, Alan
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Tom,

Tacoma Rail concurs with BNSF's comments and concerns indicated below and does not object to the 15 inch ATR platforms at 5'-4 inches from center line of track.

Please let me know if you need additional information or if this email will suffice.

Kyle Kellem
Roadmaster
Tacoma Rail | Tacoma Public Utilities
253-377-3554
www.tacomarail.com

From: Slimak, Thomas [mailto:SlimakT@wsdot.wa.gov]
Sent: Thursday, July 30, 2015 7:40 AM
To: Matheson, Alan <alan.matheson@ci.tacoma.wa.us>; Kellem, Kyle <kkellem@ci.tacoma.wa.us>
Cc: Liles, Casey <LilesC@wsdot.wa.gov>; Reck, Devin <ReckD@wsdot.wa.gov>
Subject: FW: XL3982: Point Defiance Bypass - Side Clearance Waiver

Alan and Kyle,

Good morning guys and below is the response we heard back yesterday afternoon from BNSF regarding our side clearances at Tacoma and Seattle. Please let me know if you need any additional information in your evaluation of our side clearance proposal. Thanks guys and don't hesitate to call if you need anything.

Thomas Slimak, P.E.
WSDOT Rail Division
O: (360)705-7339
C: (360)972-5366

From: Smith, Walter N [mailto:Walter.Smith1@bnsf.com]
Sent: Wednesday, July 29, 2015 3:03 PM
To: Slimak, Thomas
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control; Mitchell, DJ; Jacobsen, Roger C; Gonzalez, Fernando
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Mr. Slimak: We would still like to receive the typical cross-sections, however we have reviewed the letter and your request. While BNSF would still prefer to see the standard Sound Transit platform at 8" ATR with 'mini-hi' ADA platforms, we do not object to the 15" ATR platforms at 5'-4 inches from center line of track. We would however point out that BNSF has many locomotives that are covered by AAR Plate "L" (diagram attached) and that come very close to

the edge of the proposed platform. Close inspections and tight tolerances will need to be kept to avoid these locomotives from striking the side of the platform.

Thank you Walt Smith

From: Smith, Walter N
Sent: Tuesday, July 28, 2015 3:38 PM
To: 'Slimak, Thomas'
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control; Mitchell, DJ; Jacobsen, Roger C
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Mr. Slimak: We will start reviewing based on your letter and the traffic in the area. Could you please provide a typical cross-section for the Point Defiance By Pass platform and the King Street station platform. Also at King Street Station please provide a list of the station tracks where this will apply.

Thank you; Walt Smith

From: Slimak, Thomas [mailto:SlimakT@wsdot.wa.gov]
Sent: Tuesday, July 28, 2015 9:27 AM
To: Smith, Walter N
Cc: Smelser, David; Coward, Mike (Consultant); Liles, Casey; Reck, Devin; Dunster, Chris; MacDonald, Danniel; Reagan, Megan T; Naranjo, Antoinette; A-SRMD Document Control
Subject: RE: XL3982: Point Defiance Bypass - Side Clearance Waiver

Mr. Smith,

Good morning and with Megan out on vacation, I wanted to send you the below requested Task 2 & 10 Side Clearance Concurrence memorandum for your review and concurrence. We would appreciate a BNSF response by COB tomorrow so we may get this request on the WUTC consent agenda for August. Thanks Walt for all your help on this and please don't hesitate to contact Casey, Chris or myself with any questions.

Thomas Slimak, P.E.
WSDOT Rail Division
O: (360)705-7339
C: (360)972-5366

From: Reagan, Megan T [mailto:Megan.Reagan@BNSF.Com]
Sent: Monday, July 20, 2015 7:32 AM
To: Slimak, Thomas
Cc: Naranjo, Antoinette
Subject: FW: XL3982: Point Defiance Bypass - Side Clearance Waiver

Tom,

Walt has requested that WSDOT write a letter to us explaining the situation that requests our concurrence, then we will respond.

Megan Reagan
Manager Engineering
BNSF Railway Co.

2454 Occidental Ave S #2D
Seattle, WA 98134

206-625-6413
206-423-4371 cell

Safety is what matters. People matter.

From: Slimak, Thomas [mailto:SlimakT@wsdot.wa.gov]
Sent: Friday, July 17, 2015 8:31 AM
To: Reagan, Megan T
Cc: Liles, Casey; Reck, Devin; Dunster, Chris
Subject: XL3982: Point Defiance Bypass - Side Clearance Waiver

Megan,

Thanks for discussing this with me this morning and below is what we are looking for in terms of a concurrence memorandum.

As you guys are already aware, we have been marching forward with the designs of the new platforms in the Freighthouse Square vicinity at the 15" A.T.R. We are also implementing these platforms with the face of platform at 5'-4" from centerline of track. By following the aforementioned design criteria set forth by FRA and meeting level boarding requirements, we must submit a side clearance waiver to the WUTC. Per WAC 480-60-050, a platform that is construction between 8" and 4'-0" A.T.R. must be a minimum of 7'-3" from centerline of track. The attachment titled *Passenger_ClearanceDiagram* is an illustration of the conflict between level boarding requirements and our WAC.

Yesterday morning we met with the WUTC on completing the necessary waiver so we can construction our platforms at the 5'-4" from centerline of track. The WUTC requested that we obtain concurrence memorandum's from our stakeholders on our proposed design…15" A.T.R and 5'-4" from centerline of track.

Therefore, would you guys be willing to draft a concurrence memorandum to the aforementioned design criterion and that your freight service would not be impacted by this design? If you guys concur with this approach, could we receive your memorandum by Tuesday, July 21?

Thank you for all your help on this. Please don't hesitate to call if you've got any questions or concerns.

Thomas Slimak, P.E.
WSDOT Rail Division
O: (360)705-7339
C: (360)972-5366

Exhibit J – Sound Transit & Amtrak Concurrence Memorandums

SOUNDTRANSIT

July 22, 2015

Mr. Casey Liles
WSDOT Rail Office
310 Maple Park Ave SE
PO Box 47407
Olympia, WA 98504-7407

RE: Letter of Concurrence: Side Clearance Waiver Request

Dear Mr. Liles:

Sound Transit has examined the materials prepared by WSDOT Rail staff illustrating the configuration of passenger platform edges located 15" above top of rail (ATR) and 5'-4" from centerline of tracks in relation to the clearance plates of Sounder passenger rail equipment that will serve or pass by the new and existing Freighthouse Square platforms and the new King Street Station platform to be constructed to this configuration. Sound Transit finds no interference with its equipment.

Furthermore, Sound Transit understands that WSDOT has determined that the proposed configuration has no interference with Department of Defense rail equipment or loads illustrated by Plate MIL-STD-1366E that could be hauled by BNSF trains operating on the tracks passing the Freighthouse Square platforms.

The Freighthouse Square platforms front tracks on which Tacoma Rail has an exclusive freight easement. Sound Transit understands that WSDOT has determined that the proposed configuration has no interference with Tacoma Rail's freight clearance requirements.

Based on the above, Sound Transit fully supports the request for waiver from WUTC side clearance requirements for the platforms at Freighthouse Square.

Sincerely,

Mark Johnson
Project Director
Sounder and REX Capital Programs

Weylin Doyle
Commuter Rail Transportation Superintendent, Operations

Cc: Melissa Saxe
Jodi Mitchell

CHAIR
Dow Constantine
King County Executive

VICE CHAIRS
Paul Roberts
Everett Councilmember

Marilyn Strickland
Tacoma Mayor

BOARD MEMBERS
Claudia Balducci
Bellevue Mayor

Fred Butler
Issaquah Mayor

Dave Earling
Edmonds Mayor

Dave Enslow
Sumner Mayor

John Lovick
Snohomish County Executive

John Marchione
Redmond Mayor

Pat McCarthy
Pierce County Executive

Joe McDermott
King County Council Vice Chair

Mary Moss
Lakewood Councilmember

Ed Murray
Seattle Mayor

Mike O'Brien
Seattle Councilmember

Lynn Peterson
Washington State Secretary of Transportation

Larry Phillips
King County Council Chair

Dave Upthegrove
King County Councilmember

Peter von Reichbauer
King County Councilmember

CHIEF EXECUTIVE OFFICER
Joni Earl

Central Puget Sound Regional Transit Authority • Union Station
401 S. Jackson St., Seattle, WA 98104-2826 • Reception: (206) 398-5000 • FAX: (206) 398-5499
www.soundtransit.org

Letter of Concurrence: Side Clearance Waiver Request

29 July 2015

Mr. Casey Liles
WSDOT Rail Office
310 Maple Park Ave SE
PO Box 47407
Olympia, WA 98504-7407

Dear Mr. Liles:

Amtrak has examined the materials prepared by WSDOT Rail staff illustrating the configuration of passenger platform edges located 15" above top of rail (ATR) and 5'-4" from centerline of tracks in relation to the clearance plates of Sounder passenger rail equipment that will serve or pass by the Freighthouse Square platforms to be constructed to this configuration. Amtrak finds no interference with its equipment.

Furthermore, Amtrak understands that WSDOT has determined that the proposed configuration has no interference with Department of Defense rail equipment or loads illustrated by Plate MIL-STD-1366E that could be hauled by BNSF trains operating on the tracks passing these platforms.

These platforms front tracks on which Tacoma Rail has an exclusive freight easement. Amtrak understands that WSDOT has determined that the proposed configuration has no interference with Tacoma Rail's freight clearance requirements.

Amtrak has also examined the materials prepared by WSDOT Rail staff illustrating the configuration of passenger platform edges located 15" above top of rail (ATR) and 5'-4" from centerline of tracks in relation to the clearance plates of Amtrak passenger rail equipment that will serve or pull into the King Street Station platform to be constructed to this configuration. Amtrak finds no interference with its equipment.

This platform is on a track that is leased from the BNSF. Amtrak understands that WSDOT has determined that the proposed configuration has no interference with Talgo passenger cars and that there will be no freight pulling into the station stub tracks.

Based on the above, Amtrak fully supports the request for waiver from WUTC side clearance requirements for the platform at King Street Station.

Michael Albanese
Project Manager
Amtrak Engineering Construction

Kevin Casey
Senior Clearance Bureau Specialist
Amtrak Engineering