



Intercity and High-Speed Passenger Rail: Legal Considerations and the September 2011 ADA Rule

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Applicable statutes and regulations

- Section 504 of Rehabilitation Act of 1973 and implementing regulation at 49 CFR Part 27.
- Title II of the Americans with Disabilities Act (ADA) and implementing regulations at 49 CFR Parts 37 and 38.
- Other DOT guidance on new rule available on FRA website: <http://www.fra.dot.gov/Pages/1904.shtml>.



Title II of the ADA: Responsibilities



The **U.S. Department of Justice** has ultimate responsibility for enforcing the ADA.



U.S. Access Board creates guidelines that can be adopted in whole or in part by U.S. DOT in its regulations.



U.S. DOT is responsible for implementing transportation-related (including rail) regulations and guidance.



FRA is responsible for applying rail-related provisions of Title II of ADA and DOT regulations and guidance to its grantees, including Amtrak, Alaska Railroad and State and local governments.



49 CFR Parts 27, 37, and 38

49 CFR PART 27

- Contains provisions related to Section 504 of the Rehabilitation Act, applicable to all Federal grantees. Requires services be provided in the most integrated setting reasonably achievable.

49 CFR PART 37

- Contains general provisions related to transportation facilities (including rail platforms and stations) and rail vehicles.

49 CFR Part 38

- Subpart F contains minimum design standards for intercity railcars and systems.
- Subpart H contains minimum design standards for high speed rail systems.



Station facilities



Level Entry Boarding at Saco Station

With a few exceptions, station components, new or altered after November 2006, such as restrooms, ticket counters, elevators, ramps, and doors, must meet 2004 design standards for building accessibility set by U.S. Access Board, which were adopted by US DOT in 2006.



High-speed rail systems

All high-speed rail systems, including but not limited to those using "maglev" or high speed steel-wheel-on-steel rail technology, and monorail systems operating primarily on dedicated rail or guideway shall be designed for high-platform, level boarding. 49 CFR 38.175(a).



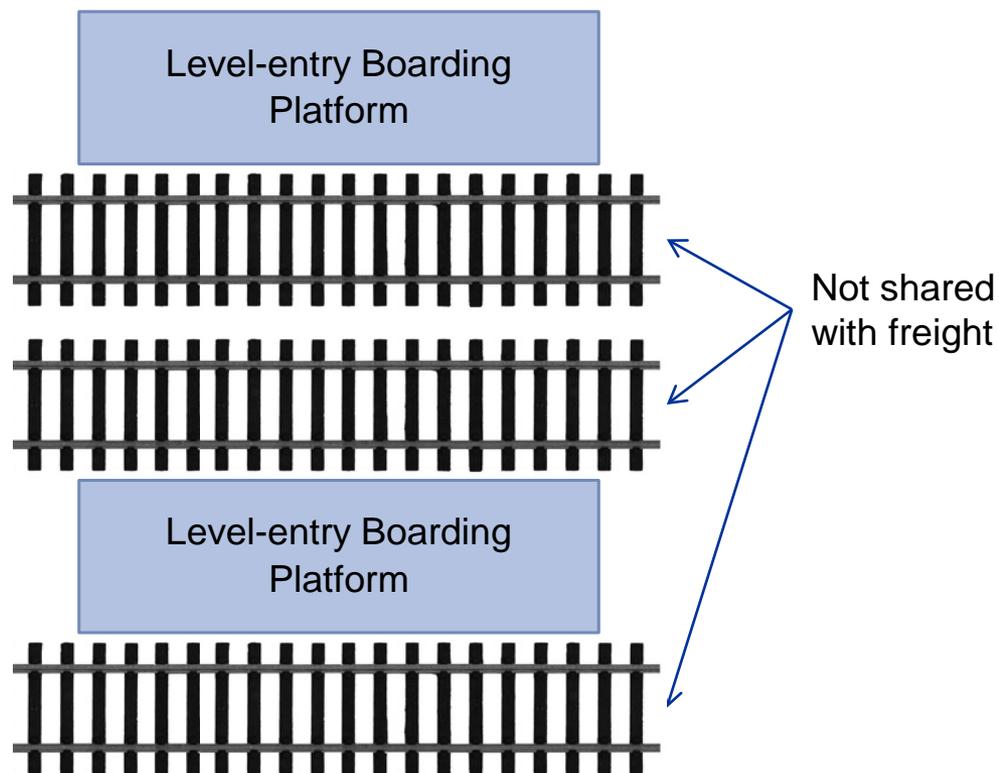
New rule applies a "Performance Standard" to boarding passengers with disabilities.

- Performance standard is met when individuals with disabilities, including individuals who use wheelchairs, have access to all accessible cars available to passengers without disabilities.
- Access must be provided in a timely, safe, reliable, and integrated manner.
- Performance standard is a change from the previous rule.
- There are a few situations where level boarding is not feasible (e.g., where the curvature of the track is too great).



Track not shared with freight:

For new or altered stations in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the standard is met by providing level-entry boarding.



Performance standard met through...

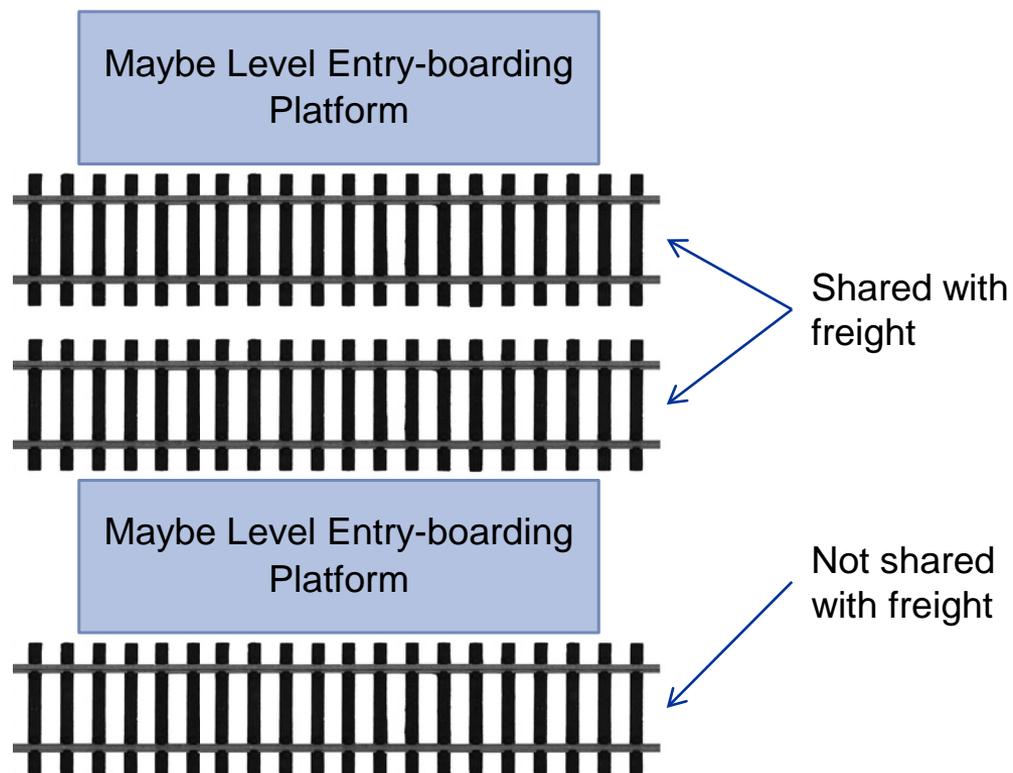


...level-entry boarding to all accessible cars in each train



Track shared with freight:

- For new or altered stations in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, the railroad may comply with standard by use of several means.
- While station-based lifts are allowable in certain circumstances, they are very disfavored by the disability community and provide the least integrated access to railcars.



Performance standard met through...

- ✓ ... Level-entry boarding
- ✓ ... Car-borne lifts
- ✓ ... Bridge plates, ramps or other appropriate devices;
- ✓ ... 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
- ✓ ... Station-based lifts



Platform heights

- 8" at top of rail (ATR) is MINIMUM height for a platform. This is NOT level with any equipment used today.
- There are a few instances where a platform is acceptable below the 8" minimum, such as when a highway grade crossing goes through the platform.
- 15" and 48" ATR platforms provide level boarding for various car floor heights, allowing for wheel wear and other factors.
- HIGHLIGHTS NEED FOR STANDARDIZATION OF EQUIPMENT.



Proposals

- When a railroad proposes to use a means other than level-entry boarding, the railroad must:
- Submit a plan to FRA and/or FTA as provided in 49 CFR 37.42(c).
- Analyses are platform-by-platform and station-by-station.
- The plan must demonstrate that service to individuals with disabilities will be provided in an integrated, safe, timely, and reliable manner.
- Amtrak has developed guidance for itself, stating that it will minimize use of station-based lifts and maximize level-entry boarding at stations that have more than 7,500 boarding and alights per year.



Q & A: Platform Alterations *from* December 2011 Guidance

- What constitutes an alteration to a platform?
- Maintenance and repair activities, such as painting or fixing cracks, generally would not constitute alterations.
- Changes that affect the basic configuration of a platform or the ability of people with disabilities to have access to the platform would constitute an alteration.
- Would be an alteration if:
 - Platform height relative to the top of rail is raised.
 - Old surface is removed and/or a new surface put down.
 - Reconstruction of or structural change to the platform.



Q & A: Existing freight operations *from March 2012 Guidance*

- “Existing freight operations” means that the track is used at the present time by regular freight rail traffic.
- “Freight rail traffic” means revenue freight trains carrying goods.
- Possibility freight railroad could use track at some time in the future does not mean there are “existing” freight operations.
- Rare or token passage of freight trains, storage of ballast cars, movement of private passenger cars, or use of tracks to park freight trains overnight do not constitute “existing freight operations.”
- Where freight train can bypass the track adjacent to passenger platform via other track, level-entry boarding is required.
- Does not mandate creating gauntlet or passing tracks where are none.
- Grantees are encouraged to maximize opportunities to do so wherever feasible.



Q & A: Publically-owned railroads *from May 2012 Guidance*

- When track passing by a passenger platform is owned and controlled by a public entity receiving Federal financial assistance, the recipient's obligations under Section 504 of the Rehabilitation Act are also considered.
- Under Section 504, public entities must provide persons with disabilities “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.”
- DOT has long held that level-entry boarding provides rail service in the most integrated setting reasonably achievable.
- Therefore, even when shared track discretion exists to provide access to rail cars through level boarding or other means, recipients owning and controlling track have an obligation under Section 504 to use that discretion to provide level boarding.



Take-Away: **EVERYONE** BENEFITS!

- Studies show that all people are attracted to larger, easier, more accessible user-friendly space.
- Accessibility benefits everyone, not just people using wheelchairs, including families with baby strollers, the elderly, and passengers carrying luggage.
- Level entry boarding is the safest, most operationally efficient and maintenance free option for providing access to all passengers.
- The Administration is committing to improving the lives of people with disabilities and giving them access to accessible transportation.
- People with disabilities just want, to work, live, and recreate like the rest of us.



Richard Devylder, Senior Advisor on Accessible Transportation to the Secretary of Transportation



QUESTIONS?

- Contact FRA Office of Civil Rights, Rosanne Goodwill, at 202-493-6012, rosanne.goodwill@dot.gov.
- Contact FRA Office of Chief Counsel, Linda Martin, 202-493-6062, Linda.Martin@dot.gov.
- Go to FRA webpage for various resources including all guidance documents, rules and regulations:
<http://www.fra.dot.gov/Pages/1904.shtml>.
- Go to Access Board website for building standards applicable to rail facilities: <http://www.access-board.gov/ada-aba/ada-standards-dot.cfm>.

