

# INTERCITY AND HIGH SPEED RAIL: LEGAL CONSIDERATIONS AND THE SEPTEMBER 2011 RULE



# 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 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 37 AND 38

- 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.

49 CFR PART 37

49 CFR Part 38

# STATION FACILITIES

- ◉ With a few exceptions, new or altered station components, 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).

# HIGHER SPEED AND INTERCITY RAIL SYSTEMS - SEPTEMBER 2011 RULE APPLIES SO-CALLED "PERFORMANCE STANDARD":

- Performance standard is met when individuals with disabilities, including individuals who use wheelchairs have access to all accessible cars available to passengers without disabilities in each train using the station. 49 CFR 37.42(a).
- Performance standard is change from previous rule which allowed a hierarchy of options for boarding where level boarding infeasible, and for passenger rail, nearly always infeasible to maintain allowable maximum gaps (3in vertical, 5/8 in horizontal).

# TRACK NOT SHARED WITH FREIGHT:

- For new or altered stations serving commuter, intercity, and higher speed rail systems, in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the performance standard is met by providing level-entry boarding to all accessible cars in each train that serves the station. 49 CFR 37.42(b).

# TRACK SHARED WITH FREIGHT:

- 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 may comply with performance standard by use of one or more of several means.
- There are other situations where full-platform length level boarding is not physically feasible (e.g., where the curvature of the track is too great).

# IF SHARED WITH FREIGHT CAN DO:

- ⦿ (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.

# WHAT IS LEVEL-ENTRY BOARDING?

- ◉ Level-entry boarding means a boarding platform design in which the vertical gap 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. THESE ARE MAXIMUMS.
- ◉ Where the horizontal gap is more than 3 inches and/or the vertical gap is more than 5/8 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).

# 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, describing its proposed means to meet the performance standard at that station. (FRA Office of Civil Rights has agreed to coordinate these for FRA).
- ◉ Analyses are platform-by-platform and station-by-station. 49 CFR 37.42(d).

# PROPOSALS

- The plan must demonstrate that service to individuals with disabilities will be provided in an integrated, safe, timely, and reliable manner.
- FRA will give particular scrutiny to larger, more complex, stations and those with higher passenger volumes to ensure that the railroad's plan will fully meet the performance standard in practice.

# "EXISTING FREIGHT OPERATIONS?" MARCH 2012 GUIDANCE

- “Existing freight operations” means that the track is used at the present time by regular freight rail traffic (i.e., revenue freight trains carrying goods or returning from delivering goods on behalf of shippers).
- Use of one or more tracks passing through a station and adjacent to a platform for storage of freight car maintenance equipment, the 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”.

# **“EXISTING FREIGHT OPERATIONS?”**

## **MARCH 2012 GUIDANCE.**

- ◉ Where freight train can bypass the track adjacent to passenger platform via other available track such that the freight train does not need to use the track adjacent to the platform, level-entry boarding is required.
- ◉ Does not require creation of track switching where none exists but doesn't preclude it either.
- ◉ The possibility that a freight railroad could use a track for freight rail traffic at some time in the future does not mean are “existing” freight operations.