



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

49 CFR §§ 27.7(a), 37.5(a), 49 CFR Part 38

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**QUESTION: WHAT ACCESSIBILITY STANDARDS APPLY TO PASSENGER RAIL CARS
WHEN SPECIFIC DESIGN STANDARDS ARE NOT PROVIDED IN 49 CFR PART 38?**

ANSWER:

- This guidance applies to all new and remanufactured passenger rail cars, including rail cars that are in the design phase on the date this guidance is issued. Rail cars that are in production but not yet in revenue service on the date this guidance is issued and that may have design elements affected by this guidance should be reviewed by the procuring passenger railroad for compliance with this guidance. The Federal Railroad Administration (FRA) and/or Federal Transit Administration (FTA), as applicable, should be consulted where uncertainty exists as to when or how to apply this guidance.
- It has been brought to the Department's attention that some confusion exists in the industry regarding what standards should be applied where no specific minimum standard exists in 49 CFR Part 38 for certain rail car accessibility features. The Department is issuing this guidance to remedy this confusion.
- Part 38 provides "minimum guidelines and requirements for accessibility standards in part 37 . . . for transportation vehicles required to be accessible by the Americans With Disabilities Act (ADA) of 1990 (42 U.S.C. 1201 et seq.)." There are a few instances where specific design standards are not provided in Part 38. For example, design standards specific to features of food service cars, including lounge or bistro cars, and several features found in sleeping compartment cars, are not described in Part 38. Nonetheless, it is the position of the Department that when specific design standards are not provided in Part 38, it remains the responsibility of the passenger railroad to design and build rail car features that are usable by people with disabilities, including those who use wheelchairs.
- The Department believes that the general nondiscrimination principles found in Section 37.5(a) and Section 27.7(a) apply in this instance. For example, 49 CFR 27.7(a) provides that "No qualified . . . person [with a disability] shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance administered by the Department of Transportation."

- It is inconsistent with these general nondiscrimination obligations to ignore the impact of the design and construction of rail car features on passengers with disabilities, simply because there is no specific minimum standard found in Part 38, especially when the result is that passengers with disabilities do not have access to and/or cannot use that feature.
- Providing universal access to elements of railcars, such as self-service water fountains, ice machines, and condiment dispensers; countertops and dining elements in lounge and bistro cars; and sleeper beds and eating surfaces provided in sleeper cars affords “a qualified . . . person [with a disability] an opportunity to participate in or benefit from the aid, benefit, or service that is . . . substantially equal to that afforded persons who are not [disabled].” 49 CFR 27.7(b)(ii). Rail cars should be designed and constructed to make these services usable by passengers with disabilities.
- In a situation in which no specific standard is found in Part 38, passenger railroads should meet their nondiscrimination obligation by designing and building rail cars compliant with the standards available for comparable elements in buildings and facilities. For example, the current U.S. Access Board Accessibility Guidelines (ADAAG) standard for countertop dimensions and other dining service elements, including basic guidance on reach ranges and knee and toe clearances, are contained in Chapters 3 and 9 of ADAAG, which are available at: <http://www.access-board.gov/ada-aba/ada-standards-dot.cfm#>. The Department adopted these standards in 2006 to apply to transportation facilities. See 49 CFR 37, Appendix A.
- In designing and building rail cars, passenger railroads should refer to the ADAAG standards for design features not contained in Part 38, except where doing so is infeasible because of particular geometric constraints of the rail car design, rail car safety, or operational considerations unique to rail transportation. In situations involving concerns about infeasibility, the passenger railroad should provide its rationale for noncompliance with these standards to the FRA and/or FTA, as applicable.
- Nothing in this guidance requires passenger railroads to make accessible those features of railcars that are intended only to be used by employees of the passenger railroad for serving passengers. For example, a bistro car food service station that will be open and usable only when an employee of the railroad is present serving passengers from that station is not required to have accessible elements, such as an ice dispenser and soft drink fountain, if that ice dispenser and soft drink fountain are intended only to be used by the railroad’s employee providing drinks to passengers. In this scenario, however, the passenger railroad would need to provide an accessible eating/drinking surface, and to the extent feasible, an accessible food service counter per ADAAG Section 904.4.

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, and 38.