



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

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

49 CFR §37.42(b)

MARCH 9, 2012

QUESTION:

WHAT DOES THE RULE MEAN BY “EXISTING FREIGHT OPERATIONS?”

ANSWER:

- “Existing freight operations” on a track 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 other purposes (including but not limited to use of maintenance equipment by a freight railroad, 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) does not constitute “existing freight operations” because these activities do not meet any plausible definition of “freight rail traffic.”
- In addition, where stations serve lines shared by passenger and freight traffic, and a freight train can bypass the track adjacent to the new or altered passenger platform via a gauntlet or other available track such that the freight train does not need to use the track adjacent to the platform, level-entry boarding is required. This means that even if freight trains could access a track adjacent to a passenger platform via a diverging track or other access point but does not have to do so because other tracks exist for freight passage through the station, level entry boarding is required. This also means that track adjacent to a passenger platform track that would be accessed via a diverging move off the main freight line would never be construed to carry freight rail traffic, and therefore, level-entry boarding is always required at such a platform.
- If more than one platform exists in the station and the station has multiple tracks available to freight trains, only a platform adjacent to a track actually used for freight rail traffic would not need to provide level-entry boarding. Other platforms at the station must provide level-entry boarding.

- The possibility that a freight railroad could use a track for freight rail traffic at some time in the future does not mean that there are “existing” freight operations.
- Where freight trains have not used a track passing through a station for a significant length of time (e.g., as noted in the Preamble to the rule, 10 years), the Department treats the situation as not constituting “existing” freight operations. However, entities should be aware that the example provided of “10 years” is as an illustration only. There may be occasions when a railroad not using tracks for freight train service over a period of less than 10 years would still constitute a significant length of time, depending on all the circumstances—e.g., when a freight customer no longer exists for a particular line. In such a case, the Department would regard the track as not being used for “existing” freight traffic on that track.

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 Part 37.