



**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(c); 49 CFR 27. 7(b)(2)**

**5/24/12**

**QUESTION:**

**WHAT ARE THE OBLIGATIONS OF A PUBLIC ENTITY RECEIVING FEDERAL FINANCIAL ASSISTANCE THAT OWNS AND CONTROLS TRACK THROUGH A STATION?**

**ANSWER:**

- Under 49 CFR section 37.42(c), when a new or altered platform is adjacent to a track shared with existing freight operations, the railroad providing passenger service, and other responsible parties, can either provide level boarding or ensure nondiscriminatory service to persons with disabilities by other means, such as car-borne lifts.
- When such a track is owned and controlled by a public entity receiving Federal financial assistance, such as Amtrak, a commuter authority, or a state or local agency, the recipient's obligation under Section 504 of the Rehabilitation Act of 1973 also must be a consideration.
- Under the Department's Section 504 rules (49 CFR section 27.7(b)(2)), 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."
- The Department has long held that level-entry boarding provides passenger rail service in the most integrated setting reasonably achievable to persons with disabilities who are unable to climb steps.
- Consequently, even though section 37.42(c) provides discretion to provide access to rail cars through level boarding or other means when a track adjacent to a new or altered platform is shared with freight rail operations, recipients that own and control the track have an obligation under Section 504 to use that discretion to provide level boarding.

**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 and 37.**