



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

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**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.**



**U.S. Department of  
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1200 New Jersey Avenue, SE  
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**49 CFR §37.42(a)**

**DECEMBER 14, 2011**

**QUESTION:**

**WHEN DO THE REQUIREMENTS OF SECTION 37.42 BEGIN TO APPLY?**

**ANSWER:**

- The performance standard and other requirements of section 37.42(a) apply to stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012.
- “Approval for entry into final design” is a concept used in FTA-assisted “New Starts” projects. FTA anticipates that there will be no commuter rail New Starts projects being approved for entry into final design before February 1, 2012.
- On an intercity or commuter railroad project (whether or not Federally-funded), where actual construction activities have physically begun (“shovel in the ground”) on or after February 1, 2012, the performance standard and other requirements of section 37.42 apply, except as noted below.
- If a construction contract for a project, including a commitment to a specific design (e.g., a blueprint or its equivalent) for a specific platform, has been signed before February 1, 2012, but physical construction activities begin a reasonable time after that date (e.g., early in the 2012 construction season in a given location), then the Department interprets the requirements of section 37.42 as not applying.

**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.**



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**49 CFR §37.42(b)**

**DECEMBER 14, 2011**

**QUESTION:**

**WHERE THE TRACK ADJACENT TO A PLATFORM IS NOT SHARED WITH FREIGHT, ARE THERE ANY CIRCUMSTANCES IN WHICH AN APPROACH OTHER THAN LEVEL BOARDING IS ALLOWABLE?**

**ANSWER:**

- There may be some situations where level boarding is not physically feasible (e.g., where the curvature of the track is too great to make level boarding workable).
- A railroad operator facing a potential situation of this kind should consult with FRA or FTA, as appropriate.
- If FRA or FTA agrees that level boarding is not physically feasible, then the railroad would meet the performance standard of section 37.42(a) at the station through the means and process provided in section 37.42 (c) – (d).
- However, the fact that other stations on a line do not provide level boarding is not a justification for failing to meet the level boarding requirement of section 37.42(b) at any particular station at which the rule applies. The Department views compliance with the requirements of the rule on a station-by-station basis.

**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.**



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49 CFR §§37.42(b), 37.49(e), 37.57

DECEMBER 14, 2011

**QUESTION:**

**IF A PLATFORM IS OWNED BY A PRIVATE ENTITY OTHER THAN THE PASSENGER RAILROAD, WHAT HAPPENS IF THE PRIVATE ENTITY OBJECTS TO THE CREATION OF A LEVEL BOARDING PLATFORM?**

**ANSWER:**

- Under section 37.42(b), if there is a new or altered station serving a passenger rail system, in which no track passing through the station and adjacent to the platform is shared with existing freight rail operations, the passenger railroad must comply with the performance standard by providing level-entry boarding.
- Where a station platform is owned by a private entity (e.g., a freight railroad), other than the passenger railroad operator providing service at the station, section 37.49(e) provides that the passenger railroad operator is the “responsible person” for complying with the requirements of Subpart C of Part 37 (the subpart concerning transportation facilities).
- Under section 37.57, an owner or the person in control of an intercity or commuter rail station is required to provide reasonable cooperation to the responsible person for that station with respect to the efforts of the responsible person to comply with the requirements of Subpart C of Part 37.
- Consequently, the private entity that owns the station platform is required by section 37.57 to cooperate with the efforts of the passenger railroad to comply with the requirements of section 37.42(b). Because of this requirement, the private entity cannot refuse to permit the passenger railroad to construct or alter a platform that will 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 Part 37.**



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**49 CFR §§37.42(a); 37.3**

**DECEMBER 14, 2011**

**QUESTION:**

**WHAT CONSTITUTES AN ALTERATION TO A PLATFORM FOR PURPOSES OF TRIGGERING THE APPLICATION OF SECTION 37.42 REQUIREMENTS?**

**ANSWER:**

- Section 37.3 defines an alteration as “a change to an existing facility including, but not limited to, remodeling, renovation, rehabilitation, reconstruction . . . changes or rearrangement in structural parts or elements . . . Normal maintenance . . . painting . . . or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.”
- In the context of a railroad station platform, maintenance and repair activities, such as painting or fixing cracks, would generally not constitute an alteration. Adding accessibility features that do not affect the basic configuration of or access to the platform (e.g., adding a detectable warning strip along a platform edge, installing a public address system or visual paging system) would also not constitute an alteration.
- Changes that do affect the basic configuration of a platform or the ability of people with disabilities to have access to the platform would constitute an alteration.
- For example, if the platform height relative to the top of rail is raised, if the old surface is removed and/or a new surface put down, or if there is a reconstruction of or structural change to the platform that affects its usability (e.g., to remedy significant degrading of the facility), there would be an alteration.

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**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.**



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**49 CFR §37.42(d)(2)**

**DECEMBER 14, 2011**

**QUESTION: MUST RAILROADS SUBMIT PLANS FOR MEETING THE  
PERFORMANCE STANDARD OF SECTION 37.42 ON A STATION-BY-STATION  
BASIS?**

**ANSWER:**

- Yes. Plans for meeting the performance standard at new or altered stations where track adjacent to the platform is shared with freight traffic must be submitted on a station-by-station basis.
- That is, there must be a separate plan for each such station. It is not sufficient to have a generic plan for a line or a system.
- While there may well be common features of a railroad's plans for various stations in its system, there are also likely to be differences among stations. The design and layout of stations, the number of trains that stop at the station, the passenger volume at the station, whether there are other railroads that use the station, and other factors are likely to vary from station to station. Station plans need to take these variables into account at each station.
- In reviewing station plans, FRA and FTA intend to 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.

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49 CFR §§37.41-43; 37.9(a), (d);  
49 CFR Part 37, App. A (810.5.3)

DECEMBER 14, 2011

**QUESTION:**

**WHEN A RAIL OPERATOR CONSTRUCTS A NEW STATION PLATFORM OR ALTERS AN EXISTING STATION PLATFORM, DOES 49 CFR PART 37 REQUIRE THE RAIL OPERATOR ENSURE THAT THE PLATFORM IS AT LEAST 8 INCHES ABOVE TOP OF RAIL, EVEN IF THE RAILROAD OPERATOR WILL PROVIDE ACCESSIBILITY CONSISTENT WITH THE REQUIREMENTS OF SECTION 37.42?**

**ANSWER:**

- Public entities, such as Amtrak and commuter operators, must construct a new facility for use in designated public transportation so that it is readily accessible to and usable by persons with disabilities (see sec. 37.41(a)). Likewise, when a public entity alters an existing facility or a part of such a facility, the entity must make the alterations in such a way that the altered part of the facility is readily accessible to and usable by persons with disabilities (see sec. 37.43(a)(1)). This latter requirement also specifically applies to alterations of an intercity or commuter rail station by its owner, the “responsible person” for the station, or a person in control of the station (see sec. 37.43(a)(3)).
- A transportation facility is considered to be accessible if it meets the Americans with Disabilities Act Accessibility Guidelines (ADAAG; see 36 CFR Part 1191, including Appendices B and D), as modified by Appendix A to Part 37.
- Appendix A to Part 37 (see section 801.5.3) provides that low-level platforms in rail stations must be at least 8 inches above top of rail (ATR). We note that there may be rare situations in which meeting this requirement is impracticable (e.g., there is a highway grade crossing intersecting the platform). FRA and/or FTA will address such unusual situations on a case-by-case basis, as needed.
- Because of these requirements, when an intercity or commuter railroad constructs or alters a platform, it must ensure the platform is at least 8 inches ATR. Note that alterations to parts of a station other than the platform do not trigger this requirement.

- In addition to this basic facility accessibility requirement, section 37.42 requires a railroad that alters a station platform and does not provide level boarding to ensure that passengers with disabilities can board any accessible car of a train available to other passengers at that station, using means including car-borne lifts, station-based lifts, or mini-high platforms. Meeting this requirement does not exempt the railroad from the separate requirement to ensure that an altered or newly constructed platform is at least 8 inches ATR.
- While a platform 8 inches above ATR generally does not provide level boarding, a platform at this height does facilitate boarding by ambulatory passengers, including passengers (e.g., elderly persons) who might have difficulty ascending a vertical distance greater than the normal vertical gap between an 8-inch ATR platform and the first step of a railroad car.

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**49 CFR 37.42(a)**

**5/24/12**

**QUESTION:**

**WHERE THE REQUIREMENTS OF SECTION 37.42 APPLY, WHICH CARS OF A TRAIN DOES A RAILROAD OPERATOR HAVE TO MAKE AVAILABLE TO PASSENGERS WITH DISABILITIES?**

**ANSWER:**

- The performance standard of section 37.42(a) requires that passengers with disabilities “must have access to all accessible cars available to passengers without disabilities in each train using the station.
- The standard applies only to “accessible” cars meeting the requirements of 49 CFR Part 38. Some railroads continue to operate a number of inaccessible cars (e.g., 1950s-era double-decker commuter cars) that people with mobility impairments cannot enter and use. The requirement does not apply to cars of this kind.
- Moreover, the standard applies only to “cars available to passengers without disabilities” at a given station. There can be a number of situations in which not all cars in a train are made available to anyone at a station.
- For example, at a station with a relatively short platform, only cars 1-4 of an 8-car train may be available to any passenger. In some commuter rail systems, only two cars are open to be boarded by any passenger at a station.
- In situations like these, only those cars that are made available to other passengers at the station have to be made available to passengers with disabilities. The railroad operator generally would not be required to make cars available to passengers with disabilities that are not made available to other passengers.
- However, if all wheelchair locations are occupied by other wheelchair users in cars where the doors normally open at a station, the Department expects the railroad operator to double-stop or move a lift, where necessary, in order to provide transportation to a wheelchair user in an unoccupied wheelchair location. (Of course, railroad operators are always responsible for moving passengers’ luggage and other items out of wheelchair locations to permit their use by a wheelchair user.) Likewise, if the only way a passenger with a disability can access a food service car is through an adjacent car, then the railroad should provide access to the adjacent car.

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