

available only to users of the commuter rail system, is subject to the requirements of this part for fixed route commuter bus service operated by a public entity.

**§ 37.37 Other applications.**

(a) A private entity does not become subject to the requirements of this part for public entities, because it receives an operating subsidy from, is regulated by, or is granted a franchise or permit to operate by a public entity.

(b) Shuttle systems and other transportation services operated by privately-owned hotels, car rental agencies, historical or theme parks, and other public accommodations are subject to the requirements of this part for private entities not primarily engaged in the business of transporting people. Either the requirements for demand responsive or fixed route service may apply, depending upon the characteristics of each individual system of transportation.

(c) Conveyances used by members of the public primarily for recreational purposes rather than for transportation (e.g., amusement park rides, ski lifts, or historic rail cars or trolleys operated in museum settings) are not subject to the requirements of this part. Such conveyances are subject to Department of Justice regulations implementing title II or title III of the ADA (28 CFR part 35 or 36), as applicable.

(d) Transportation services provided by an employer solely for its own employees are not subject to the requirements of this part. Such services are subject to the regulations of the Equal Employment Opportunity Commission under title I of the ADA (29 CFR part 1630) and, with respect to public entities, the regulations of the Department of Justice under title II of the ADA (28 CFR part 35).

(e) Transportation systems operated by private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or religious organizations or entities controlled by religious organizations are not subject to the requirements of this part.

(f) If a parent private company is not primarily engaged in the business of

transporting people, or is not a place of public accommodation, but a subsidiary company or an operationally distinct segment of the company is primarily engaged in the business of transporting people, the transportation service provided by the subsidiary or segment is subject to the requirements of this part for private entities primarily engaged in the business of transporting people.

(g) High-speed rail systems operated by public entities are subject to the requirements of this part governing intercity rail systems.

(h) Private rail systems providing fixed route or specified public transportation service are subject to the requirements of § 37.107 with respect to the acquisition of rail passenger cars. Such systems are subject to the requirements of the regulations of the Department of Justice implementing title III of the ADA (28 CFR part 36) with respect to stations and other facilities.

**§ 37.39 [Reserved]**

**Subpart C—Transportation Facilities**

**§ 37.41 Construction of transportation facilities by public entities.**

(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility or station is “new” if its construction begins (*i.e.*, issuance of notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.

(b) (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique

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characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

[56 FR 45621, Sept. 6, 1991, as amended by 71 FR 63266, Oct. 30, 2006]

### **§ 37.42 Service in an Integrated Setting to Passengers at Intercity, Commuter, and High-Speed Rail Station Platforms Constructed or Altered After February 1, 2012.**

(a) In addition to meeting the requirements of sections 37.9 and 37.41, an operator of a commuter, intercity, or high-speed rail system must ensure, at stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012, that the following performance standard is met: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station.

(b) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the performance standard of paragraph (a) of this section must be met by providing level-entry boarding to all accessible cars in each train that serves the station.

(c) 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 exist-

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ing freight rail operations, the railroad operator may comply with the performance standard of paragraph (a) by use of one or more of the following means:

- (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;

(d) Before constructing or altering a platform at a station covered by paragraph (c) of this section, at which a railroad proposes to use a means other than level-entry boarding, the railroad must meet the following requirements:

(1) If the railroad operator not using level-entry boarding chooses a means of meeting the performance standard other than using car-borne lifts, it must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts and the means chosen by the railroad operator, as well as a comparison of the relative ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. The railroad operator must submit a copy of this analysis to FTA or FRA at the time it submits the plan required by paragraph (d)(2) of this section.

(2) The railroad operator must submit a plan to FRA and/or FTA, describing its proposed means to meet the performance standard of paragraph (a) of this section at that station. The plan must demonstrate how boarding equipment or platforms would be deployed, maintained, and operated; and how personnel would be trained and deployed to ensure that service to individuals with disabilities is provided in an integrated, safe, timely, and reliable manner.

(3) Before proceeding with constructing or modifying a station platform covered by paragraphs (c) and (d) of this section, the railroad must obtain approval from the FTA (for commuter rail systems) or the FRA (for intercity rail systems). The agencies will evaluate the proposed plan and