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should not be sprung to return to a lifted position.

(c) A grab bar at least 24 inches (610 mm) long should be mounted behind the water closet, and a horizontal grab bar at least 40 inches (1015 mm) long should be mounted on at least one side wall, with one end not more than 12 inches (305 mm) from the back wall, at a height between 33 inches (840 mm) and 36 inches (915 mm) above the floor.

(d) Faucets and flush controls should be operable with one hand and should not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls should be no greater than 5 lbs (22.2 N). Controls for flush valves should be mounted no more than 44 inches (1120 mm) above the floor.

(e) Doorways on the end of the enclosure, opposite the water closet, should have a minimum clear opening width of 32 inches (815 mm). Door latches and hardware should be operable with one hand and should not require tight grasping, pinching, or twisting of the wrist.

(2) Accessible restrooms should be in close proximity to at least one seating location for persons using mobility aids and should be connected to such a space by an unobstructed path having a minimum width of 32 inches (815 mm).

C. Visibility Through a Window. Care should be taken so that the lift does not obscure the vision of the person occupying the securement position.

[56 FR 45756, Sept. 6, 1991, as amended at 63 FR 51702, 51703, Sept. 28, 1998]

PART 39—TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES: PASSENGER VESSELS

Subpart A—General

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AUTHORITY: 42 U.S.C. 12101 through 12213; 49 U.S.C. 322; 29 U.S.C. 794.

SOURCE: 75 FR 38893, July 6, 2010, unless otherwise noted.

Subpart A—General

§ 39.1 What is the purpose of this part?

The purpose of this Part is to carry out the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 with respect to passenger vessels. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires ves-

sels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

§ 39.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

“Accessible” means, with respect to vessels and facilities, complying with the applicable requirements of this Part.

“The Act” or “ADA” means the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611), as it may be amended from time to time.

“Assistive device” means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices.

“Auxiliary aids and services” includes:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers, taped texts, audio recordings, brailled materials and displays, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or

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other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

“Coast Guard” means the United States Coast Guard, an agency of the Department of Homeland Security.

“Commerce” means travel, trade, transportation, or communication among the several States, between any foreign country or any territory and possession and any State, or between points in the same State but through another State or foreign country.

“Department” or “DOT” means the United States Department of Transportation, including any of its agencies.

“Designated public transportation” means transportation provided by a public entity by passenger vessel that provides the general public with general or special service, including charter service, on a regular and continuing basis.

“Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase *physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) The term physical or mental impairment includes, but is not limited to, such contagious or noncontagious

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diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

(iv) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having such an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.

(5) The term disability does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

“Facility” means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

“Individual with a disability” means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or private entity acts on the basis of such use.

“Operates” includes, with respect to passenger vessel service, the provision of transportation by a public or private entity itself or by a person under a contractual or other arrangement or relationship with the entity.

“Passenger for hire” means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

“Passenger vessel” means any ship, boat, or other craft used as a conveyance on water, regardless of its means of propulsion, which accepts passengers, whether or not for hire. The term does not include boats or other craft rented or leased to and operated solely by consumers or fixed floating structures permanently moored or attached to a landside facility.

“Passenger vessel owner or operator (PVO)” means any public or private entity that owns or operates a passenger vessel. When the party that owns a passenger vessel is a different party from the party that operates the vessel, both are responsible for complying with the requirements of this Part. To be a PVO for purposes of this Part, a private entity must be a private entity primarily engaged in the business of transporting people, as determined by the Department of Transportation in consultation with the Department of Justice.

“Private entity” means any entity other than a public entity that is primarily engaged in the business of transporting people.

“Public entity” means:

- (1) Any State or local government; or
- (2) Any department, agency, special purpose district, or other instrumentality of one or more State or local governments (including an entity established to provide public ferry service).

“Qualified individual with a disability” means an individual with a disability—

(1) Who, as a passenger (referred to as a “passenger with a disability”), with respect to obtaining transportation on or use of a passenger vessel, or other services or accommodations required by this Part,

(i) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for transportation on a passenger vessel and presents himself or herself at the vessel for the purpose of traveling on the voyage to which the ticket pertains; or

(ii) With respect to use of a passenger vessel for which members of the public are not required to obtain tickets, presents himself or herself at the vessel for the purpose of using the vessel for the purpose for which it is made available to the public; and

(iii) Meets reasonable, nondiscriminatory requirements applicable to all passengers; or

(2) Who, with respect to accompanying or meeting a traveler, using ground transportation, using facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by the PVO to the general public, with reasonable modifications, as needed, provided by the PVO.

“Secretary” means the Secretary of Transportation or his/her designee.

“Section 504” means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394, 29 U.S.C. 794), as amended.

“Service animal” means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, alerting persons with seizure disorders to the onset of a seizure, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

“Specified public transportation” means transportation by passenger vessel provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis, where the

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private entity is primarily engaged in the business of transporting people.

“Terminal” means, with respect to passenger vessel transportation, the portion of a property located adjacent to a dock, entry ramp, or other means of boarding a passenger vessel, including areas through which passengers gain access to land transportation, passenger shelters, designated waiting areas, ticketing areas, and baggage drop-off and retrieval sites, to the extent that the PVO owns or leases the facility or exercises control over the selection, design, construction, or alteration of the property.

“United States” or “U.S.” means the United States of America, including its territories, commonwealths, and possessions.

“Wheelchair” means any mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered.

“You” means the owner or operator of a passenger vessel, unless the context requires a different meaning.

§ 39.5 To whom do the provisions of this part apply?

(a) Except as provided in paragraph (b) or (c) of this section, this Part applies to you if you are the owner or operator of any passenger vessel, and you are:

(1) A public entity that provides designated public transportation; or

(2) A private entity primarily engaged in the business of transporting people whose operations affect commerce and that provides specified public transportation;

(b) If you are the PVO of a foreign-flag passenger vessel, this Part applies to you only if your vessel picks up passengers at a port in the United States, its territories, possessions, or commonwealths.

§ 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?

(a) If you receive Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a

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condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

(b) You are also subject to ADA regulations of the Department of Justice (28 CFR part 35 or 36, as applicable).

§ 39.9 What may the owner or operator of a foreign-flag vessel do if it believes a provision of a foreign nation’s law prohibits compliance with a provision of this part?

(a) If you are the PVO of a foreign-flag vessel, and you believe that a binding legal requirement of a foreign nation precludes you from complying with a provision of this Part, you may request a waiver of the provision of this Part.

(b) You must send such a waiver request to the Department.

(c) Your waiver request must include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the binding legal requirement of a foreign nation applies and how it precludes compliance with a provision of this Part;

(3) A description of the alternative means you will use, if the waiver is granted, to effectively achieve the objective of the provision of this Part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) If you submit such a waiver request before November 3, 2010 you may continue to apply the foreign legal requirement pending the Department’s response to your waiver request.

(e) The Department shall grant the waiver request if it determines that the binding legal requirement of a foreign nation applies, that it does preclude compliance with a provision of this Part, and that the PVO has provided an effective alternative means of achieving the objective of the provision of this Part subject to the waiver or clear and convincing evidence that it would be impossible to achieve this objective in any way.

§ 39.11 [Reserved]**§ 39.13 When must PVOs comply with the provisions of this part?**

You are required to comply with the requirements of this part beginning November 3, 2010, except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services**§ 39.21 What is the general nondiscrimination requirement of this part?**

(a) As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of a vessel;

(2) You must not require a qualified individual with a disability to accept special services that the individual does not request;

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons, except when specifically permitted by another section of this Part; and

(4) You must not take any action against an individual (*e.g.*, refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the ADA.

(b)(1) As a PVO that is a private entity, you must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless you can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or proce-

dures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

§ 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this Part that would apply to you if you provided the service yourself.

(b) As a PVO, you must include an assurance of compliance with this Part in your contracts or agreements with any contractors who provide to the public services that are subject to the requirements of this Part. Noncompliance with this assurance is a material breach of the contract on the contractor's part. With respect to contracts or agreements existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the PVO.

(2) The assurance must also commit the contractor to implementing directives issued by your Complaints Resolution Officials (CROs) under § 39.103.

(c) As a PVO, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. With respect to contracts or agreements with U.S. travel agents existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' and U.S. travel agents' compliance with this part and with the

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assurances in your contracts with them.

(e) It is not a defense to an enforcement action under this Part that your noncompliance resulted from action or inaction by a contractor or U.S. travel agent.

§ 39.25 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?

(a) As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of § 39.27 or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel.

§ 39.27 Can a PVO take action to deny transportation or restrict services to a passenger with a disability based on safety concerns?

(a) As a PVO, you may take action to deny transportation or restrict services to a passenger with a disability if necessitated by legitimate safety requirements. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Example 1 to paragraph 39.27(a): You may take such action in order to comply with Coast Guard safety regulations.

Example 2 to paragraph 39.27(a): You may take such action if accommodating a large or heavy wheelchair would, together with its occupant, create weight and balance problem that could affect adversely the seaworthiness

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of the vessel or impede emergency egress from the vessel.

Example 3 to paragraph 39.27(a): You could restrict access to a lifeboat for a mobility device that would limit access to the lifeboat for other passengers.

(b) In taking action pursuant to legitimate safety requirements, you must take the action that imposes the minimum feasible burdens or limitations from the point of view of the passenger. For example, if you can meet legitimate safety requirements by a means short of refusing transportation to a passenger, you must do so.

(c) You may take action to deny transportation or restrict services to a passenger if the passenger poses a direct threat to others. In determining whether an individual poses a direct threat to the health or safety of others, the PVO must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the Captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent a avoid such a conflict.

§ 39.31 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease?

(a) You must not take any of the following actions on the basis that a passenger has a communicable disease or infection, unless one of the conditions of paragraph (b) of this section exists:

(1) Refuse to provide transportation or use of a vessel to the passenger;

(2) Delay the passenger's transportation or use of the vessel (*e.g.*, require the passenger to take a later trip);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) You may take actions listed in paragraph (a) of this section only if either or both of the conditions listed in paragraphs (b)(1) and (2) of this section are met. The action you take must be the least restrictive from the point of view of the passenger, consistent with protecting the health of other passengers.

(1) U.S. or international public health authorities (*e.g.*, the Centers for Disease Control, Public Health Service, World Health Organization) have determined that persons with a particular condition should not be permitted to travel or should travel only under conditions specified by the public health authorities;

(2) An individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences.

Example 1 to paragraph 39.31(b)(2). A passenger has a common cold. This condition is readily transmissible by casual contact but does not have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

Example 2 to paragraph 39.31(b)(2): A passenger has HIV/AIDS. This condition is not readily transmissible by casual contact but does have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

Example 3 to paragraph 39.31(b)(2): A passenger has SARS or a norovirus. These conditions are readily transmissible by casual contact and have serious health consequences. You may take an action listed in paragraph (a) of this section.

Example 4 to paragraph 39.31(b)(2). A passenger has a condition that is not readily transmissible by casual contact to or does not have serious health consequences for the general passenger population. However, it is possible that it could be readily transmitted by casual contact with and have serious health consequences for an individual with a severe allergy or severely compromised immune system. You may not take any of the

actions listed in paragraph (a) of this section.

(c) Any action of those listed in paragraph (a) of this section that you take under paragraph (b) of this section must be the least drastic action you can take to protect the health of other passengers. For example, if you can protect the health of other passenger by imposing a condition on the transportation of a passenger with a communicable disease (*e.g.*, limiting the passenger's access to certain facilities on the vessel for a period of time), you cannot totally deny transportation on the vessel.

(d) For purposes of paragraph (a)(4) of this section, a medical certificate is a written statement from the passenger's physician saying that the passenger's disease or infection would not, under the present conditions in the particular passenger's case, be readily communicable to other persons by casual contact during the normal course of the passenger's transportation or use of the vessel. Such a medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of the passenger's transportation on or use of the vessel. It must be sufficiently recent to pertain directly to the communicable disease presented by the passenger at the time the passenger seeks to board the vessel.

(e) If your action under this section results in the postponement of a passenger's transportation or use of the vessel, you must permit the passenger to travel or use the vessel at a later available time (up to one year from the date of the postponed trip or use of the vessel) at the cost that would have applied to the passenger's originally scheduled trip or use of the vessel without penalty or, at the passenger's discretion, provide a refund for any unused transportation or use of the vessel. If there is no available reservation within one year, you must provide a refund.

(f) If you take any action under this section that restricts a passenger's transportation or use of the vessel, you

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must, on the passenger's request, provide a written explanation within 10 days of the request.

§ 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

Except as provided in § 39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

§ 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel. The PVO always has an obligation to provide effective communication between the PVO and individuals who are deaf or hard of hearing or blind or visually impaired through the use of appropriate auxiliary aids and services.

§ 39.37 May PVOs require a passenger with a disability to provide advance notice in order to obtain particular auxiliary aids and services or to arrange group travel?

(a) Except as provided in this section, as a PVO you must not require a passenger with a disability to provide advance notice in order to obtain services or privileges required by this Part.

(b) If 10 or more passengers with a disability seek to travel as a group, you may require 72 hours advance notice for the group's travel.

(c) With respect to providing particular auxiliary aids and services, you may request reasonable advance notice to guarantee the availability of those aids or services.

(d) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and privileges, the notice is communicated,

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clearly and on time, to the people responsible for providing the requested service or accommodation.

§ 39.39 How do PVOs ensure that passengers with disabilities are able to use accessible cabins?

(a) As a PVO operating a vessel that has accessible cabins, you must follow the requirements of this Part to ensure that passengers with disabilities who need accessible cabins have non-discriminatory access to them.

(b) You must, with respect to reservations made by any means (*e.g.*, telephone, Internet, in person, or through a third party):

(1) Modify your policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible cabins during the same hours and in the same manner as individuals who do not need accessible cabins;

(2) Identify and describe accessible features in the cabins offered through your reservations service in enough detail to permit individuals with disabilities to assess independently whether a given cabin meets his or her accessibility needs.

(3) Ensure that accessible cabins are held for use by individuals with disabilities until all other cabins in that class of service have been rented;

(4) Reserve accessible cabins upon request by a passenger with disabilities and ensure that the specific accessible cabin reserved by that passenger is held for him or her, even you do not normally hold specific cabins for passengers who make reservations.

(c) You may release unsold accessible cabins to persons without disabilities for their own use when all other cabins in the same class of service and price for a voyage have been reserved.

(d) If a passenger with a disability seeks to reserve an accessible cabin in a given class of service, and there is not an available accessible cabin in that class of service, but there is an available accessible cabin in a different class of service, you must allow the passenger to reserve that accessible cabin at the price of the requested class of service of the class of service in which the accessible cabin exists, whichever is lower.

(e) As a PVO, you are never required to deny transportation to any passenger who has already reserved passage in order to accommodate a passenger with a disability in an accessible cabin.

(f) You must not require proof of disability, including, for example, a doctor's note, before reserving an accessible cabin.

(g) To prevent fraud in the assignment of accessible cabins (*e.g.*, attempts by individuals who do not have disabilities to reserve accessible cabins because they have greater space, you—

(1) Must inquire of persons seeking to reserve such cabins whether the individual (or an individual for whom the cabin is being reserved) has a mobility disability or a disability that requires the use of the accessible features that are provided in the cabin.

(2) May require a written attestation from the individual that accessible cabin is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the cabin.

(h) You must investigate the potential misuse of accessible cabins where there is good cause to believe that such cabins have been purchased fraudulently, and you may take appropriate action against someone who has reserved or purchased such a cabin fraudulently. For example, if an individual who does not have a disability reserves an accessible cabin, after having attested that he or she has a mobility disability, you may deny transportation to the individual.

§ 39.41 May a passenger with a disability be required to travel with another person?

(a) You must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.

(b) Your personnel are not required to perform personal tasks (*e.g.*, assisting with eating, dressing, toileting) for a passenger.

§ 39.43 May PVOs impose special charges on passengers with a disability for providing services required by this rule?

(a) As a PVO, you must not charge higher fares, surcharges, or other fees to passengers with a disability that are not imposed on other passengers for transportation or use of the vessel.

(b) If the accommodations on a vessel that are accessible to passengers with a disability are available only in a type or class of service or part of a vessel that are more expensive than the type or class of service or part of a vessel that the passenger requests, you must provide the accessible accommodation at the price of the type or class of service or facility that the passenger requests.

(c) You must not impose special or extra charges for providing facilities, equipment, or services that this rule requires to be provided to passengers with a disability.

§ 39.45 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this part.

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the vessel or a terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation or services;

(3) [Reserved]

(4) Requiring passengers to wear badges or other special identification; or

(5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair or other mobility device in order to receive assistance required by this Part or otherwise offered to the passenger.

(c) Special muster stations for disabled individuals are permissible for emergency evacuations in order to centrally locate available resources.

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§ 39.47 May PVOs require passengers with a disability to sign waivers or releases?

(a) As a PVO, you must not require passengers with a disability to sign any release or waiver of liability not required of all passengers in order to receive transportation or use of a vessel or to receive services relating to a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other mobility or assistive devices.

Subpart C—Information for Passengers

§ 39.51 What is the general requirement for PVOs' provision of auxiliary aids and services to passengers?

(a) If you are a PVO that is a public entity, you must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. In determining what type of auxiliary aid or service is necessary, you must give primary consideration to the requests of individuals with disabilities.

(b) If you are a PVO that is a private entity, you must furnish appropriate auxiliary aids or services where necessary to ensure effective communication with individuals with disabilities.

(c) If a provision of a particular auxiliary aid or service would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, you shall provide an alternative auxiliary aid or service, if one exists, that would not result in a fundamental alteration or undue burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations you offer.

(d) As a PVO, it is your responsibility, not that of a passenger with a disability, to provide needed auxiliary aids and services.

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§ 39.53 What information must PVOs provide to passengers with a disability?

As a PVO, you must provide the following information to individuals who self-identify as having a disability (including those who are deaf or hard of hearing or who are blind or visually impaired) or who request disability-related information, or persons making inquiries on the behalf of such persons. The information you provide must, to the maximum extent feasible, be specific to the vessel a person is seeking to travel on or use.

(a) The availability of accessible facilities on the vessel including, but not limited to, means of boarding the vessel, toilet rooms, staterooms, decks, dining, and recreational facilities.

(b) Any limitations of the usability of the vessel or portions of the vessel by people with mobility impairments;

(c) Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call (*e.g.*, because of the use of inaccessible lighters or tenders as the means of coming to or from the vessel);

(d) Any limitations on the accessibility of services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers;

(e) Any limitations on the ability of a passenger to take a service animal off the vessel at foreign ports at which the vessel will call (*e.g.*, because of quarantine regulations) and provisions for the care of an animal acceptable to the PVO that the passenger must meet when the passenger disembarks at a port at which the animal must remain aboard the vessel.

(f) The services, including auxiliary aids and services, available to individuals who are deaf or hard of hearing or blind or visually impaired.

(g) Any limitations on the ability of the vessel to accommodate passengers with a disability.

(h) Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call and services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers.

§ 39.55 Must information and reservation services of PVOs be accessible to individuals with hearing or vision impairments?

This section applies to information and reservation services made available to persons in the United States.

(a) If, as a PVO, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing and who use a text telephone (TTY) or a TTY relay service (TRS).

(1) You must make service to TTY/TRS users available during the same hours as telephone service for the general public.

(2) Your response time to TTY/TRS calls must be equivalent to your response time for your telephone service to the general public.

(3) You must meet this requirement by [date one year from the effective date of this Part].

(b) If, as a PVO, you provide written (*i.e.*, hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same language(s) in which you make it available to the general public.

§ 39.57 Must PVOs make copies of this rule available to passengers?

As a PVO, you must keep a current copy of this Part on each vessel and each U.S. port or terminal you serve and make it available to passengers on request. If you are an entity that does not receive Federal financial assistance, you are not required to make this copy available in languages other than English. You must make it available in accessible formats on request, subject to the provisions of § 39.51(c).

Subpart D—Accessibility of Landside Facilities

§ 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?

As a PVO, you must comply with the following requirements with respect to all terminal and other landside facilities

you own, lease, or control in the United States (including its territories, possessions, and commonwealths):

(a) With respect to new facilities, you must do the following:

(1) You must ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheeled mobility assistive devices. You are deemed to comply with this obligation if the facilities meet the requirements of 49 CFR 37.9, and the standards referenced in that section.

(2) You must ensure that there is an accessible route between the terminal or other passenger waiting area and the boarding ramp or device used for the vessel. An accessible route is one meeting the requirements of the standards referenced in 49 CFR 37.9.

(b) When a facility is altered, the altered portion must meet the same standards that would apply to a new facility.

(c) With respect to an existing facility, your obligations are the following:

(1) If you are a public entity, you must ensure that your terminals and other landside facilities meet program accessibility requirements, consistent with Department of Justice requirements at 28 CFR 35.150.

(2) If you are a private entity, you are required to remove architectural barriers where doing so is readily achievable, *i.e.*, easily accomplishable and able to be carried out without much difficulty or expense, consistent with Department of Justice requirements at 28 CFR 36.304 or, if not readily achievable, ensure that your goods, services, facilities, privileges, advantages, or accommodations are available through alternative methods if those methods are readily achievable, consistent with Department of Justice regulations at 28 CFR 36.305.

(d) Where you share responsibility for ensuring accessibility of a facility with another entity, you and the other entity are jointly and severally responsible for meeting applicable accessibility requirements.

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§ 39.63 What modifications and auxiliary aids and services are required at terminals and other landside facilities for individuals with hearing or vision impairments?

(a) As a PVO, you must ensure that the information you provide to the general public at terminals and other landside facilities is effectively communicated to individuals who are blind or who have impaired vision and deaf or hard-of-hearing individuals, through the use of auxiliary aids and services. To the extent that this information is not available to these individuals through accessible signage and/or verbal public address announcements or other means, your personnel must promptly provide the information to such individuals on their request, in languages (*e.g.*, English, Norwegian, Japanese) in which the information is provided to the general public.

(b) The types of information you must make available include, but are not limited to, information concerning ticketing, fares, schedules and delays, and the checking and claiming of luggage.

Subpart E—Accessibility of Vessels [Reserved]

Subpart F—Assistance and Services to Passengers With Disabilities

§ 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

(a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel in the U.S. (*e.g.*, a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this Part.

(b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) of a terminal in the U.S. and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key

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functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible toilet room.

§ 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

(a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept assistance from you in getting on or off the vessel unless it is provided to all passengers as a matter of course.

(b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.

(c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (*e.g.*, lifts, ramps, boarding chairs, assistance by vessel personnel).

§ 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?

As a PVO, you must provide services on board the vessel as requested by or on behalf of passengers with a disability, or when offered by PVO personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving about the vessel, with respect to any physical barriers rendering an area not readily accessible and usable to the passenger.

(b) If food is provided to passengers on the vessel, assistance in preparation for eating, such as opening packages and identifying food;

(c) Effective communication with passengers who have vision impairments or who are deaf or hard-of-hearing, so that these passengers have timely access to information the PVO provides to other passengers (*e.g.*, weather, on-board services, delays).

§ 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?

As a PVO, you are not required to provide extensive special assistance to passengers with a disability. For purposes of this section, extensive special assistance includes the following activities:

- (a) Assistance in actual eating;
- (b) Assistance within a toilet room or assistance elsewhere on the vessel with elimination functions; and
- (c) Provision of medical equipment or services, or personal devices, except to the extent provided to all passengers.

§ 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

- (a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary for effective communication. This includes providing written materials in alternative formats that persons with vision impairments can use.
- (b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.
- (c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (*e.g.*, through use of captioning or placement of a sign language interpreter in the video).
- (d) You must provide whatever assistance is necessary to enable passengers with disabilities to participate fully in safety or emergency evacuation drills provided to all passengers.

(e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

§ 39.91 Must PVOs permit passengers with a disability to travel with service animals?

- (a) As a PVO, you must permit service animals to accompany passengers with a disability.
- (b) You must permit the service animal to accompany the passenger in all locations that passengers can use on a vessel, including in lifeboats.
- (c) You must permit the passenger accompanied by the service animal to bring aboard a reasonable quantity of food for the animal aboard the vessel at no additional charge. If your vessel provides overnight accommodations, you must also provide reasonable refrigeration space for the service animal food.
- (d) You must accept the following as evidence that an animal is a service animal: Identification cards, other written documentation, presence of harnesses, tags, and/or the credible verbal assurances of a passenger with a disability using the animal.
- (e) If the legal requirements of a foreign government (*e.g.*, quarantine regulations) do not permit a service animal to disembark at a foreign port, as a PVO you may require the animal to remain on board while its user leaves the vessel. You must work with the animal's user to ensure that the animal is properly cared for during the user's absence.

§ 39.93 What wheelchairs and other assistive devices may passengers with a disability bring onto a passenger vessel?

- (a) As a PVO subject to Title III of the ADA, you must permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
- (b)(1) As A PVO subject to Title III of the ADA, you must make reasonable modifications in your policies, practices, or procedures to permit the use of other power-driven mobility devices

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by individuals with mobility disabilities, unless you can demonstrate that a device cannot be operated on board the vessel consistent with legitimate safety requirements you have established for the vessel.

(2) In determining whether a particular other power-driven mobility device can be allowed on a specific vessel as a reasonable modification under paragraph (b)(1) of this section, the PVO must consider:

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The vessel's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The vessel's design and operational characteristics (*e.g.*, the size and balance requirements of the vessel, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of a device in the specific vessel; and

(c)(1) As a PVO subject to Title III of the ADA, you must not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) You may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. In response to this inquiry, you must accept the presentation of a valid, State-issued disability parking placard or card, or State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a PVO shall accept as a credible assurance a verbal representation not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.

(d) As a PVO subject to Title II of the ADA, you must follow the requirements of paragraphs (a) through (c) of this section. In addition, any restric-

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tion you impose on the use of an other powered mobility device on your vessel must be limited to the minimum necessary to meet a legitimate safety requirement. For example, if a device can be accommodated in some spaces of the vessel but not others because of a legitimate safety requirement, you could not completely exclude the device from the vessel.

(e) As a PVO, you are not required to permit passengers with a disability to bring wheelchairs or other powered mobility devices into lifeboats or other survival craft, in the context of an emergency evacuation of the vessel.

§ 39.95 May PVOs limit their liability for loss of or damage to wheelchairs or other assistive devices?

Consistent with any applicable requirements of international law, you must not apply any liability limits with respect to loss of or damage to wheeled mobility assistive devices or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device is the original purchase price of the device.

Subpart G—Complaints and Enforcement Procedures

§ 39.101 What are the requirements for providing Complaints Resolution Officials?

(a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).

(b) You must make a CRO available for contact on each vessel and at each terminal that you serve. The CRO may be made available in person or via telephone, if at no cost to the passenger. If a telephone link to the CRO is used, TTY or TRS service must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your other services available to the general public.

(c) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with

your personnel about discrimination, policies, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the CRO available on the vessel or at the terminal. Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and Web sites must provide information equivalent to that required by paragraph (c)(1) of this section to passengers with a disability using those services.

(d) Each CRO must be thoroughly familiar with the requirements of this Part and the PVO's procedures with respect to passengers with a disability. The CRO is intended to be the PVO's "expert" in compliance with the requirements of this Part.

(e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

§ 39.103 What actions do CROs take on complaints?

When a complaint is made directly to a CRO (*e.g.*, orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of PVO personnel has resulted in a violation of a provision of this Part, the CRO must take, or direct other PVO personnel to take, whatever action is necessary to ensure compliance with this Part.

(b) If an alleged violation of a provision of this Part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the PVO pro-

poses to take in response to the violation.

(c) If the CRO determines that the PVO's action does not violate a provision of this Part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this Part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right to complain to the Department of Transportation and/or Department of Justice. The CRO must provide the statement in person to the complainant in person if possible; otherwise, it must be transmitted to the complainant within 10 calendar days of the complaint.

§ 39.105 How must PVOs respond to written complaints?

(a) As a PVO, you must respond to written complaints received by any means (*e.g.*, letter, fax, e-mail, electronic instant message) concerning matters covered by this Part.

(b) A passenger making a written complaint, must state whether he or she had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response received from the CRO.

(c) As a PVO, you are not required to respond to a complaint from a passenger postmarked or transmitted more than 45 days after the date of the incident.

(d) As a PVO, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred. The response must be effectively communicated to the recipient.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this Part, for the determination.

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(3) Your response must also inform the complainant of his or her right to pursue DOT or DOJ enforcement action under this part, as applicable. DOT has enforcement authority under Title II of the ADA for public entities and under section 504 of the Rehabilitation Act for entities that receive Federal financial assistance; DOJ has enforcement authority under Title III of the ADA for private entities.

§ 39.107 Where may persons obtain assistance with matters covered by this regulation?

A passenger, PVO, or any other person may obtain information, guidance, or other assistance concerning 49 CFR part 39 from then DOT Departmental Office of Civil Rights and/or DOT Office of General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

§ 39.109 What enforcement actions may be taken under this Part?

(a) The Department of Transportation investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title II entities.

(b) As a PVO subject to Title II of the ADA, you must be prepared to provide to the Department of Transportation a written explanation of your action in any situation in which you exclude or restrict an individual with a disability or any mobility or other assistive device used by such an individual with respect to the use of your vessel.

(c) The Department of Transportation investigates complaints conducts compliance reviews or other inquiries into the compliance of this Part of PVOs, whether private or public entities, that receive Federal financial assistance from the Department, under section 504 of the Rehabilitation Act of 1973, as amended.

(d) The Department may refer any matter concerning the compliance of PVOs with this Part to the Department of Justice for enforcement action.

(e) The Department of Justice investigates complaints and conducts reviews or other inquiries into the compliance with this Part of PVOs that are Title III entities.

(f) The Department of Justice may file suit in Federal court against both

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Title II and Title III PVOs for violations of this part.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

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