

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 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

## § 39.21

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 procedures 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.

## 49 CFR Subtitle A (10–1–20 Edition)

#### § 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 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.