

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

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David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 39

[Docket OST 2007 26829]

RIN 2105-AB87

Transportation for Individuals With Disabilities: Passenger Vessels

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to issue a new Americans with Disabilities Act (ADA) rule to ensure nondiscrimination on the basis of disability by passenger vessels. This notice of proposed rulemaking (NPRM) concerns service and policy issues. Issues concerning physical accessibility standards will be addressed at a later time, in conjunction with proposed passenger vessel accessibility guidelines drafted by the Access Board.

Comment Closing Date: Comments should be submitted by April 23, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST 2007-26829] by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: (202) 493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery:* To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number [OST-2007-26829] or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your

comment. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

Docket: You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590-0001. (202) 366-9306 (voice); (202) 755-7687 (TDD); bob.ashby@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The Department of Transportation has issued rules concerning nondiscrimination on the basis of disability for almost every mode of passenger transportation, including public transportation (bus, subway, commuter rail), over-the-road buses, intercity rail, and air transportation. The only mode on which the Department has yet to propose rules is transportation by passenger vessels. With this NPRM, the Department is beginning the process of filling this remaining gap in our coverage of transportation for individuals with disabilities.

Background

When the Department issued its first Americans with Disabilities Act (ADA) rules in 1991, we explicitly asserted coverage over passenger vessels. The Department reserved action on passenger vessels in the regulatory text of this final rule, and we made the following statements on the subject in the preamble (56 FR 45599-45560; September 6, 1991):

Ferries and passenger vessels operated by public entities are covered by the ADA, and subject at this time to DOJ Title II requirements as well as § 37.5 of this Part * * *. We anticipate further rulemaking to create appropriate requirements for passenger vessels * * *. The reason for this action is that, at the present time, the Department lacks sufficient information to determine what are reasonable accessibility requirements for various kinds of passenger vessels. We note that the DOJ has determined that passenger vessels encompassing places of public accommodation (e.g., cruise ships, floating restaurants) are subject to the general nondiscrimination and policies and practices portions of its Title III rule (Subparts B and C of 28 CFR Part 36). The Department of Transportation anticipates working with the Access Board and DOJ on further rulemaking to define requirements for passenger vessels * * *. The Department does want to make clear its view that the ADA does cover passenger vessels, including ferries,

excursion vessels, sightseeing vessels, floating restaurants, cruise ships, and others. Cruise ships are a particularly interesting example of vessels subject to ADA coverage.

Cruise ships are a unique mode of transportation. Cruise ships are self-contained floating communities. In addition to transporting passengers, cruise ships house, feed, and entertain passengers and thus take on aspects of public accommodations. Therefore cruise ships appear to be a hybrid of a transportation service and a public accommodation. As noted above, DOJ covers cruise ships as public accommodations under its Title III rules.

In addition to being public accommodations, cruise ships clearly are within the scope of a "specified public transportation service." The ADA prohibits discrimination in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce (§ 304(a)). "Specified public transportation" is defined by § 301(10) as "transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis."

Cruise ships easily meet the definition of "specified public transportation." Cruise ships are used almost exclusively for transporting passengers and no one doubts that their operations affect commerce. Cruise ships operate according to set schedules or for charter and their services are offered to the general public. Finally, despite some seasonal variations, their services are offered on a regular and continuing basis.

Virtually all cruise ships serving U.S. ports are foreign-flag vessels. International law clearly allows the U.S. to exercise jurisdiction over foreign-flag vessels while they are in U.S. ports, subject to treaty obligations. A state has complete sovereignty over its internal waters, including ports. Therefore, once a commercial ship voluntarily enters a port, it becomes subject to the jurisdiction of the coastal state. In addition, a state may condition the entry of a foreign ship into its internal waters or ports on compliance with its laws and regulations. The United States thus appears to have jurisdiction to apply ADA requirements to foreign-flag cruise ships that call in U.S. ports.

The U.S. Supreme Court recently affirmed the Department's long-held view that the ADA covers passenger vessels, specifically including foreign-flag cruise ships. In *Spector et al. v. Norwegian Cruise Lines*, 545 U.S. 119 (2005), the Court held that cruise ships are "public accommodations" that provide "specified public transportation" within the meaning of the ADA. The Court said that, while there may be some limitations on the coverage of the ADA to matters purely concerning the internal affairs of a foreign-flag vessel, matters concerning

the ship operators' policies and conditions relating to transportation of passengers with disabilities (e.g., higher fares or surcharges for disabled passengers, waivers of medical liability, requirements for attendants) had nothing to do with a ship's internal affairs. Such matters, then, are clearly subject to ADA jurisdiction. It is issues of this kind that are the focus of this NPRM.

The Access Board has been working for some time on drafting accessibility guidelines for passenger vessels. On November 26, 2004, the Access Board published for comment a notice of availability of draft guidelines for larger passenger vessels with a capacity of over 150 passengers or overnight accommodations for over 49 passengers. Since that time, the Access Board has been reviewing comments it received and planning work on a Regulatory Assessment for vessel guidelines. On July 7, 2006, the Access Board issued a second notice of availability asking for comments on a revised draft of vessel guidelines. Following the review of comments on that notice, the Access Board, in cooperation with the Department of Transportation, would issue an NPRM and Regulatory Assessment concerning physical accessibility requirements for larger passenger vessels. As we envision it, the final rule resulting from such a future NPRM would ultimately be joined with a final rule resulting from the current proposed rule in a single, comprehensive passenger vessel ADA rule.

On November 29, 2004, the Department published an advance notice of proposed rulemaking (ANPRM) asking questions about the shape of future ADA requirements for passenger vessels (69 FR 69247). The Department received 43 comments to the ANPRM. Most of these comments concerned the Access Board's draft guidelines and physical accessibility issues relating to existing and new vessels, and some of them concerned physical accessibility issues specific to very small vessels. The Department is retaining these comments and will consider them in context of the continuing work on the Access Board's draft vessel guidelines and the future NPRM that would propose to incorporate those guidelines in DOT rules.

The only comment that concerned the issues included in this NPRM was from the International Council of Cruise Lines (ICCL), a trade association for entities in the cruise industry. ICCL recommended that rules exempt transfers of persons from larger vessels

to tenders; recognize the flexibility of cabin configurations; exclude from coverage shore excursions provided by third-party-vendors, particularly in foreign countries; have eligibility criteria and direct threat provisions that allow operators to establish policies that will avoid safety risks; permit requirements for personal attendants; and permit limitations on the transportation of service animals. The Department will discuss these comments in context of the individual sections of the proposed rule.

Section-by-Section Analysis

§ 39.1 What is the purpose of this part?

This section briefly states the nondiscrimination-related purposes of the rule and specifies that nondiscrimination requirements apply to operators of foreign-flag as well as U.S. vessels.

§ 39.3 What do the terms in this rule mean?

This section proposes definitions of terms in this rule. Many of the definitions are based on parallel definitions in the Department's ADA and Air Carrier Access Act (ACAA) regulations or Department of Justice rules, adapted to the passenger vessel context. This preamble discussion focuses on terms that are specific to the passenger vessel context. Other terms would have the same meanings as they do in other DOT disability rules.

Because this NPRM does not propose physical accessibility requirements for vessels, the definition of "accessible" will be fleshed out with proposed standards based on Access Board guidelines in a future rulemaking. The definition of "direct threat," drawn from Department of Justice regulations, concerns only threats to the health and safety of others. Something that may threaten only the health or safety of a passenger with a disability by definition cannot be a direct threat.

In addition to vessels, "facilities" include landside facilities that a vessel operator owns, leases, or controls in the U.S. (including its territories, possessions, and commonwealths). A passenger vessel operator (PVO) would be viewed as controlling a facility, even if it did not own or lease it, if the facility owner, through a contract or other arrangement, delegated authority over use of the facility to the passenger vessel operator during those times in which the vessel was at the facility. Facilities in these three categories would be covered directly by Part 39. The Department seeks comment on how responsibilities should be allocated

when there are multiple PVOs who operate at a given landside facility or who only use the facility infrequently.

The Department realizes that entities other than PVOs, such as municipalities or other private businesses, may own, lease, or control landside facilities that passenger vessels use. The obligations of these entities would be controlled by Titles II and III of the ADA and, in some cases, by section 504 of the Rehabilitation Act of 1973. We envision the relationship between the facility owner/controller and the PVO to be analogous to other situations in which entities subject to different disability access rules share responsibility (e.g., public entity landlord subject to Title II leases property to a private entity subject to Title III). We seek comment on whether landside facility-specific language should be added to the Department's other ADA or section 504 rules.

The NPRM does not propose making this requirement applicable to facilities located outside the U.S. However, we seek comment on whether the final rule should apply to facilities outside the U.S. if a PVO (as distinct from another foreign entity) owns, leases, or controls the facility.

The definition of "historic vessel" is also one that is likely to become more significant when future rulemakings add physical accessibility standards to Part 39. Following practice in other portions of the ADA, it is likely that historic vessels (e.g., the USS *Constellation* in Baltimore harbor) would be exempted from some accessibility requirements. "New," "existing," and "used" passenger vessel are also terms that will be of greater importance once physical accessibility standards are in place. They are based on new and used vehicle definitions in the Department's ADA rules for surface transportation modes.

With respect to the definition of "new passenger vessel," which will be used in connection with vessel standards in Subpart E when they are added to the regulation, we seek comment on transition rules. That is, at what point in the procurement, design, construction, and delivery of a vessel should requirements for new vessels attach?

"Operates" means the provision of transportation or other service by any public or private entity on a passenger vessel. Importantly, it also includes the provision of transportation or other service by another party having a contractual or other arrangement or relationship with the entity involved. As in other parts of the Department's accessibility rules, a party can contract out its functions, but cannot contract

away its responsibilities. By "other services," we mean activities that take place on a vessel other than simply going from Point A to Point B (e.g., food service, recreation, entertainment, gambling). This section would also cover situations in which a vessel makes a round trip from Point A to Point A, like some dinner, excursion, and gambling vessels do.

"Passenger vessel" is meant to be a broadly encompassing term for any boat, ship, or other craft that takes on members of the public for hire or other activities conducted as a part of the vessel operators normal operations (which could include promotional activities involving use of a vessel by members of the public for which a fare is not charged, free shuttle or ferry service). The only exception is for boats or other craft that are rented or leased to consumers and which the consumers themselves (as distinct from the passenger vessel operator and its personnel) operate. The Department seeks comment on whether there are any additional situations that the rule should cover (e.g., the PVO or an organization to which the PVO makes the vessel available provides a charitable or promotional excursion for which no fee is charged). The Department also seeks comment on whether there should be exceptions or different provisions for vessels that are not primarily designed or used as passenger vessels, but may carry passengers for hire on certain occasions (e.g., supply vessels, crew boats, school training or sailing vessels, research vessels carrying students).

In some cases, such as certain on-the-water gambling casinos, museums, or restaurants, an activity takes place on a structure that floats but is permanently anchored or tethered to a dock or other shore facility. On one hand, because it floats on the water, such a structure could be regarded as a vessel covered by this rule. On the other hand, because it never actually goes anywhere, it could be regarded as a facility, like an on-shore building, that is more appropriately covered by Department of Justice rules. We seek comment on this matter.

The "passenger vessel operator" (PVO) is a term that includes both owners and operators of a passenger vessel. A PVO may be either a public or a private entity. Sometimes, ownership of vessels can be complex, with two or more different parties involved, and yet another party responsible for the day-to-day operation of the vessel. In such situations, all the parties involved would be jointly and severally

responsible for compliance with these rules.

For the most part, "passenger with a disability" and "qualified individual with a disability" have the same meaning for purposes of the proposed rule. There could be situations in which a qualified individual with a disability may not actually be a passenger, or in which someone is seeking to perform functions on behalf of a person with a disability. The "passenger with a disability" term includes both situations in which someone buys a ticket to travel on a vessel and situations (e.g., a gambling boat) in which members of the public go on board, without a ticket, to use the services provided on the vessel, regardless of whether the vessel leaves its dock or mooring.

"Terminal" would be defined broadly, meaning any property or facilities adjacent to the means of boarding a vessel that passengers use to get to the vessel. A terminal, in this sense, can be a large complex, a building, or a very simple facility. Importantly, terminals are covered under Part 39 only to the extent that the PVO owns or leases the terminal or exercises control over its selection, design, construction, or alteration (e.g., POV_[A1] selects site for construction of new facility; or PVO has choice of docking at existing accessible or inaccessible facility).

As noted in the discussion of "facility," the Department seeks comment on whether Part 39 should apply to a terminal located outside the U.S. if the PVO is involved in one of these ways. If the PVO does none of these things, the terminal would not in any circumstance be covered under Part 39, though other parts of the ADA and section 504 of the Rehabilitation Act of 1973, as amended, may well apply to terminals located in the U.S. We also note that activities that a PVO itself conducts, regardless of the facility in which they are conducted, would be expected to be available to persons with disabilities.

In other transportation contexts, there has been considerable discussion of whether the long-standing definition of "wheelchair" remains adequate, in light of the development and use of mobility devices that may not fit within the definition. We seek comment on this question in the context of passenger vessels. Should there be a definition that specifically acknowledges mobility devices that may not literally be "wheelchairs," or should a more inclusive term be developed?

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

The Department proposes that the provisions of this part apply to all passenger vessels, regardless of size. There are two major exceptions to this general coverage. First, while all U.S.-flagged vessels would be covered, coverage of foreign-flag vessels would be limited to those that pick up or discharge passengers in the U.S.

For example, suppose a foreign-flag cruise PVO operates two ships. One of them sails only among ports in Europe. Another picks up passengers in Miami and cruises to several Caribbean ports. The latter would be covered and the former would not. The Department seeks comment on a situation that may occur, in which tickets are sold to U.S. passengers for a combined trip that includes transportation to a non-U.S. port where they board a ship. For example, suppose Grand Fenwick Cruise Lines sells a package to U.S. passengers including air fare from New York to the Bahamas, where passengers board the S.S. *Grand Duchess Gloriana* for a Caribbean cruise; should the ship transportation be covered for purposes of Part 39 nondiscrimination rules?

The second exception concerns the future vessel accessibility standards. The NPRM reserves paragraph (c), which would state the scope of the applicability of these standards. The Department notes that the July 2006 draft Access Board vessel_[A2] would limit their application vessels permitted to carry over 150 passengers or over 49 overnight passenger capacity categories, as well as tenders with a capacity of 59 or more and all ferries. The Department currently anticipates following the Access Board's final guidelines, when they are issued, with respect to coverage. The Department also seeks comment on whether there should be any vessel size or capacity limits on any of the specific nondiscrimination provisions that are proposed in this NPRM with respect to subjects other than vessel accessibility standards.

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

This section simply points out that recipients of Federal financial assistance (e.g., some public ferry operators) are, in addition to Part 39, subject to section 504 of the Rehabilitation Act and DOT implementing rules. Department of Justice (DOJ) ADA regulations, as applicable, also cover PVOs.

§ 39.9 What may a PVO of a foreign-flag vessel do if it believes that a provision of a foreign nation's law prohibits compliance with a provision of this part?

§ 39.11 How may a PVO obtain approval to use an equivalent facilitation?

These sections provide means by which PVOs may obtain DOT authorization to do something different from what these regulations would require. Section 39.9, which parallels language in the Department's proposed Air Carrier Access Act (ACAA) rules for foreign carriers, provides a waiver mechanism for situations in which a PVO for a foreign-flag vessel believes that a binding legal requirement of a foreign nation (or of an international agreement) precludes compliance with a requirement of Part 39. This provision concerns binding legal requirements, not guidance or codes of suggested practices. It concerns situations in which such a binding legal requirement actually precludes compliance with a Part 39 provision (e.g., Part 39 says "You must do X," while a binding foreign legal requirement says "You must not do X"), as opposed to a situation where foreign law authorizes a practice that differs from a Part 39 requirement (e.g., Part 39 says "You must do Y," while a foreign law says "You may do Z"). In a situation where the Department grants a waiver, the Department would look to the PVO for a reasonable alternative means of achieving the purpose of the waived provision.

To avoid placing PVOs in a situation in which they potentially were required to comply with contradictory legal requirements, the NPRM proposes that PVOs seeking a waiver would have 90 days from the publication of the final rule to file a waiver request. If the PVO filed a complete waiver request within that period, it could continue to implement policies that it believes are consistent with the foreign law in question pending the Department's decision on the waiver request.

Section 39.11, on the other hand, concerns a potentially wider range of situations in which a PVO applies to the Department for authorization to provide a different means of compliance with a requirement of the DOT rules than the rules themselves specify. Equivalent facilitations can apply to the details of physical accessibility standards, when they become part of the rule, but could also apply to policy and administrative matters covered by the rule. It is important to note that to be considered an equivalent facilitation, the different

means of compliance must provide equal or greater accessibility than that required by the regulatory text.

§ 39.13 When must PVOs comply with the provisions of this part?

As a general matter, PVOs would have to begin to comply with the provisions of this rule as soon as the rule becomes effective. There is no evident reason why PVOs should need a lengthy phase-in period to comply with requirements pertaining to denials of transportation on the basis of disability, extra or special charges, personal or safety assistants, advance notice, waivers of liability, etc. The Department would hope and expect that most PVOs are already acting in ways that are in compliance with these nondiscrimination policy and administrative practice requirements. If not, then this NPRM should put PVOs on notice that changes in their policies may be necessary in the near future.

There are some provisions of the proposed rule concerning which it would be reasonable for PVOs to have a longer phase-in period, however. Specific sections on such matters as modifications to terminals and other landside facilities and training for personnel have proposed compliance dates intended to give PVOs a reasonable time to meet requirements. The Department seeks comment on these proposed compliance dates, as well as on whether there are other provisions on which PVOs would need additional time to comply.

§ 39.21 What is the general nondiscrimination requirement of this part?

The provisions of this section are parallel to the general nondiscrimination requirements in the Department's other disability-related rules. We would call attention particularly to paragraph (b), which would require modification of PVOs' otherwise acceptable general policies where doing so is necessary to accommodate the needs of a particular individual or category of individuals with a disability. Such modification is required unless it would be unduly burdensome or require a fundamental alteration in the nature of the PVO's services, programs, or activities.

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

As noted above, contractors and other persons whom the PVO uses to provide services to passengers "stand in the shoes" of the PVO with respect to the requirements of this rule. The PVO must

ensure, through provisions in the contracts or other agreements with such third parties, that the third parties comply with applicable requirements. We seek comment on whether, if at all, contractors outside the United States should be covered by this requirement. All new contracts and other agreements must have this assurance language. The Department seeks comment on whether the rule should require the addition of assurance language to existing contracts and agreements, and, if so, what the compliance period for such additions should be. Since PVOs cannot contract away their responsibilities, PVOs remain responsible for the third parties' actions. This would be true, in the Department's view, even with respect to actions of third parties where the PVO's agreements with the third parties did not yet include assurance language.

§ 39.25 May PVOs limit the numbers of passengers with a disability on a passenger vessel?

The Department views any policy limiting the number on passengers with a disability on a vessel as discriminatory on its face. With respect to the concern expressed by ICCL about large groups of passengers with a disability traveling together, we believe that the provision of § 39.35 permitting PVOs to ask for advance notice in this situation (e.g., so as to be able to make the needed reconfigurations of the flexible space in overnight accommodations that ICCL's comment mentions) should be helpful.

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

The Department views any policy or action prohibiting a person with a disability from being transported on or otherwise using a passenger vessel as discriminatory on its face. If a PVO says to a person, literally or in effect, "you are a person with a disability, therefore stay off my vessel," the PVO would violate this rule. The Department recognizes that some disabilities may make other passengers uncomfortable. That is not a justifiable reason to deny access to the vessel to persons with these disabilities (see paragraph (b)). Only if there is a genuine safety issue, meeting the stringent direct threat criteria outlined in paragraph (c), would the PVO be justified in excluding a person because the person has a disability. Even in that case, the PVO would have to provide a written explanation to the person within 10 days of the denial (paragraph (d)).

The Department recognizes that, particularly prior to the adoption of physical accessibility standards, some

vessels will not have accommodations that will permit persons with some disabilities to travel on or to obtain some services on the vessels.

For example, an older vessel might not have any overnight cabins of a size that could accommodate a person using a power wheelchair, or might have a dining area that is on a deck which can be accessed only by using steps. The Department would not, in such a situation, regard a PVO's statement to a passenger about the lack of adequate physical accommodations as equivalent to a policy denying access on the basis of disability.

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

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

These related provisions are intended to limit PVOs' discretion to impose requirements or restrictions on passengers on medical grounds. Most disabilities are not medical conditions: A person is not ill because he or she cannot see, hear, or walk, and applying a medical model to many disabilities is inappropriate. On the other hand, people with a variety of medical conditions (e.g., heart disease) may have at least temporary disabilities. If there is reasonable doubt that a passenger with a medical condition can complete a given trip or use a vessel without requiring extraordinary medical assistance, then this rule would permit the PVO to require a medical certificate from the individual. In applying this requirement, the Department believes it is reasonable for the PVO to take into account the length of the passenger's stay aboard the vessel.

With respect to communicable diseases, the PVO cannot deny or restrict transportation on or use of a passenger vessel on the basis that the passenger has a communicable disease, unless the PVO makes a direct threat determination. In the communicable disease area, the Department believes that PVOs should consider two factors. One is the severity of the consequences of a disease; the other is whether the disease can readily be communicated by casual contact. Only if a disease has severe consequences to the health of other persons and is readily communicable by casual contact could a PVO legitimately determine that there is a direct threat. For example, HIV/AIDS has severe consequences, but is not readily communicable by casual

contact. The common cold is readily communicable by casual contact but typically does not have severe health consequences. Consequently, having a cold or having AIDS would not be a basis on which a PVO could limit a person's transportation on or use of a vessel. Probably the best recent example of a disease that meets both criteria is Severe Acute Respiratory Syndrome (SARS), and, in the future, a readily human-to-human transmissible avian flu pandemic might well qualify. PVOs could legitimately take into account determinations by public health authorities about the travel of persons with a certain disease (e.g., if the Centers for Disease Control or World Health Organization issued a finding that persons with a certain disease or symptoms should not travel).

In any case in which a medical certificate may be required or a limitation on a passenger's travel be imposed, the limitation should be the minimum needed to deal with the medical issue or direct threat to the health of others. For example, the PVO would not be authorized to deny transportation to an individual if a less drastic alternative, such as the use of a personal assistant or the passenger's use of medical measures that would mitigate the transmission of an illness is available.

If a PVO refuses transportation to a passenger with a disability on grounds related to a medical condition, the NPRM proposes that the PVO would have to permit the passenger to travel or use the vessel at any time within a year at the same price as the original trip or, at the passenger's discretion, provide a refund. The Department seeks comment on whether and how to apply this concept to situations in which an equivalent trip is not available within a year (e.g., Grand Fenwick Cruise Lines makes only one trip to Tierra del Fuego every three years, or the S.S. Grand Duchess Gloriana's trips are all fully booked for the next year). The Department also seeks comment on how, if at all, the availability of trip insurance to the individual passenger should be related to this proposed provision.

§ 39.33 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel?

§ 39.35 May PVOs require a passenger with a disability to provide advance notice in order to obtain certain services in connection with transportation on or use of a passenger vessel?

In these related sections, the Department is saying, first, that it is never appropriate for a PVO to require a person to provide advance notice that he or she is coming, just because he or she has a disability. The PVO's nondiscriminatory policies and practices should be in place, ready to deal with whoever shows up. On the other hand, there may be specific accommodations for which provision of advance notice is needed. One that seems reasonable is when a large number of people with a disability plan to travel as a group. The NPRM uses the ACAA standard of a group of 10 or more disabled passengers traveling as a group. We seek comment on whether this concept should be refined to recognize the possibility that some groups of disabled passengers traveling together may not need any special accommodations. In such a case, is the advance notice provision advisable?

A second instance where advance notice could be helpful concerns a request for an accessible overnight cabin. The Department's proposal on this subject is intended to grapple with the reported problem of nondisabled travelers reserving an accessible cabin because it is roomier, thus denying its availability to a disabled passenger who may subsequently seek the accommodation. Under the proposal, everyone reserving an accessible cabin would be informed that, if a passenger with a disability made a reservation at least 72 hours before the vessel's scheduled departure and requested an accessible cabin, any nondisabled person who had previously reserved the cabin would be moved to another cabin, if one were available. The NPRM would not require any passenger to be bumped from a voyage as a result, only reassigned to a different cabin. Obviously, the operation of this provision would depend on self-identification by the passenger with a disability of his or her need for the accessible cabin.

The Department seeks comment on whether the rule should specify in more detail the kinds of disabilities that would trigger this provision (e.g., should the provision be limited to persons with mobility impairments?) or whether the PVO should be permitted,

or required, to seek documentation of a disability from a passenger seeking to reserve such an accommodation. We also seek suggestions for any alternative means of addressing this issue. We recognize that, especially on some cruise ships, it is commonplace for travelers to reserve cabins months in advance. It is also commonplace for whole voyages to be sold out months in advance. We seek comment, thus, on whether a passenger with a disability who requested an accessible cabin 72 hours before departure could appropriately bump a nondisabled passenger from a cabin reserved months ahead of time. Similarly, we seek comment on whether a deadline for requesting an accessible cabin should be 72 hours or another fixed time before departure or, alternatively, based on when passengers in general reserve their cabins. (If the latter, for example, an accessible cabin might have to be requested before half of all cabins are reserved.) Additionally, we seek comment on whether, as we do in the ADA rule for over-the-road buses, we should provide that any cut-off date for reservations in general should also be applied to requests for an accessible cabin.

The Department recognizes that, pending the development of passenger vessel physical accessibility standards, even new vessels are not required to have a particular number of accessible cabins. This provision would apply to the accessible cabins that now exist, as well as any others that may become available in the future. We also recognize that there could be situations in which an accessible room would not be available to a passenger with a disability because another passenger with a disability had already reserved the room. Other than treating such situations as a "first-come first-served" manner, do commenters have any suggestions for resolving such a situation?

The Department also seeks comment on whether 72 hours would be a reasonable amount of advance notice in these situations and on whether there are other services for which an advance notice requirement would be reasonable.

There could be situations in which a similar principle could arguably apply to other shipboard activities. For example, some cruise ships may assign seats for dinner. If a passenger with a disability was unable, because of barriers in the dining area, to get readily to his or her assigned seat, could it be viewed as a reasonable modification of the PVO's seating policy to shift dining

table assignments of other passengers to provide accessibility to a dining table? If so, taking into account any disruption of the operator's seating plans or of the other passengers' seating arrangements, would a request for an accessible table have to be made a specified number of hours before departure? The Department seeks comment on this or similar issues involving on-board activities.

§ 39.37 May PVOs require a passenger with a disability to travel with a personal or safety assistant?

The Department regards requiring a passenger with a disability to travel with another person, just because that person has a disability, as discriminatory on its face. Such a requirement is not only an affront to the independence and dignity of the passenger, but may sometimes make travel cost-prohibitive. On the other hand, there can be situations in which traveling with another person as a safety assistant is essential for safety purposes. Paragraph (b) spells out three situations in which it would be justifiable to impose a requirement for a safety assistant. These situations are drawn from the similar provision of the Department's ACAA rule, and the Department seeks comment on any other situations in vessel contexts where such a requirement could be justified.

As ICCL's comment noted, because some passenger voyages are much longer than airplane flights, there may be situations in which a personal assistant is necessary (the ACAA rule never permits a requirement for personal assistants, as distinct from persons needed to assist with an emergency evacuation, in air travel). Consequently, the Department proposes that if a passenger with a disability needs a personal assistant to help perform key personal tasks, such as eating, toileting, and dressing, and the passenger's use of the vessel will be lengthy enough so that the passenger will need to perform these tasks, the PVO may require the passenger with a disability to have a personal assistant. For shorter voyages akin in length to airplane flights, the PVO could not impose such a requirement. However, for a longer voyage (e.g., a multi-day cruise), the PVO could do so.

The Department recognizes that there can be situations in which a passenger and a PVO disagree about whether a safety or personal assistant is necessary. In these situations, the proposed rule contemplates that the PVO would have the last word, and could require the attendant over the passenger's objections. However, in such a situation,

the rule would require the PVO to put its money where its mouth is, and not charge for the transportation or use of the vessel by the assistant who the passenger was involuntarily required to bring along. As under the ACAA rule (where a similar provision has been in effect since 1990 without causing significant disruptions), the PVO could designate a member of its own staff or a passenger volunteer as the assistant, in order to deter any potential abuse by a passenger who would, for example, unreasonably object to the use of an assistant in order to secure free transportation for a friend or family member.

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

Price discrimination is forbidden. PVOs may not charge higher fares to passengers with disabilities than to other passengers. PVOs cannot impose surcharges on passengers with disabilities, or any sort of extra or special charges for facilities, equipment, accommodations, or services that must be provided to passengers because they have a disability. This prohibition would apply not only to formal charges made by the PVO itself, but to informal charges that PVO personnel might seek to impose or pressure passengers with a disability to pay. For example, if a vessel cannot be boarded by a wheelchair user without assistance (e.g., because the boarding ramp slope is too steep), it would not be appropriate for vessel personnel who provide boarding assistance to ask, pressure, or imply that the wheelchair users should provide a tip for the assistance.

One of the important implications of the prohibition on price discrimination concerns situations in which an accommodation for a person with a disability is available only in a more expensive type or class of service than the passenger requests. For example, suppose a passenger with a disability tries to make a reservation for an inside cabin. However, the only accessible cabins on the vessel are in the more expensive outside cabins with windows. The PVO would have to provide the accessible cabin to the passenger with a disability at the price of the less expensive accommodation he or she had requested. This is consistent with ADA practice in other contexts, such as booking of hotel rooms or sleeping compartments on Amtrak trains.

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

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

The NPRM would forbid restrictions on passengers with a disability that are not imposed on other passengers, including requirements to sign waivers or releases either for themselves or their assistive devices. The kinds of restrictions these sections address are restrictions created by PVO policy. The Department is aware that, particularly pending the adoption of passenger vessel physical accessibility standards, portions of existing vessels may well be inaccessible to some passengers with a disability. Inaccessibility of this kind would not violate these sections, but an administrative rule declaring certain portions of a vessel off limits to a passenger with a disability would, if that rule did not apply equally to all passengers.

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

The Department recognizes that vessels and facilities will not be equally accessible; that some vessels, ports, services, and facilities may not be usable by persons with some disabilities. This section would require PVOs to inform people with disabilities, accurately and in detail, about what they can expect. What features of a vessel are accessible and what are not? What limitations, if any, are there concerning the ability of a vessel to accommodate persons with a particular disability? At what ports could passengers with a disability expect to be able to get on and off the ship, and by what means? If third parties are making tours and excursions available to passengers, to what extent are these tours accessible to persons with a particular disability? With this information, potential passengers with a disability can make an informed choice about whether seeking transportation on a particular vessel is worth their while.

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

This section would apply to information and reservation services made available to consumers in the United States, regardless of the nationality of a PVO or where the personnel or equipment providing the services are themselves based. The first proposed requirement is for TTY service for persons with hearing impairments.

The Department is aware that some deaf and hard-of-hearing persons now may use other technologies in preference to TTYs (e.g., videophones, instant messaging), and we seek comment on how, if at all, this development should be reflected in a final rule.

On-line booking services, as well as web sites providing information about passenger vessel availability, schedules, and services, are very important in today's marketplace. Consequently, the Department views it as very important for on-line resources to be available to persons with disabilities. We would view a web site meeting section 508 or World Wide Web Consortium standards as being accessible for this purpose. The regulatory text does not make a specific proposal on this subject, but we seek comment on whether the final rule based on this NPRM, or a future rule incorporating vessel accessibility standards, should include such a requirement. We also seek comment on the costs of requiring Web site accessibility in the passenger vessel industry, the appropriate standards for accessible sites, and the timing and phase-in period appropriate for such a requirement.

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

The NPRM would propose that PVOs maintain a copy of the rule on each vessel and at each U.S. terminal. The purpose of doing so would be to make the rule readily available for reference in case a question occurred about whether a PVO was acting consistently with its requirements.

§ 39.57 What is the general requirement for PVOs' communications with passengers?

This section states the general effective communication requirement for PVOs.

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

This section applies to landside facilities that the PVO owns, leases, or controls in the U.S. If the PVO does not own, lease, or control a facility, then the requirements of this section do not apply to it (there may well be situations in which case a public entity or another private entity would own or control the facility, in which the other entity would have its own ADA and/or 504 obligations). In the case of a foreign facility, where ADA or section 504 rules would not apply in their own right, facility accessibility would then become a matter of the law of the country in which the facility is located. As noted

in the discussion of the definition of "facility," the Department seeks comment on whether a PVO covered by this rule should have accessibility obligations for a foreign facility that the PVO itself, as distinct from a separate foreign entity, owns, controls or leases.

The rule would make a familiar three-part breakdown of accessibility responsibilities for covered facilities. New facilities must meet accessibility standards from the beginning. In the case of an alteration, the altered portion of the existing facility would have to be brought up to the same accessibility standards applicable to new facilities. For existing facilities not otherwise being altered, the PVO would have to ensure that the facility is able to be used by a passenger with a disability to access the PVO's vessel. This could be achieved through a variety of means.

We note that there may be many situations in which a PVO shares accessibility responsibilities with another party. For example, a PVO may lease a portion of a port facility that is owned by a private or public entity. The PVO has responsibilities under this part; the other entity has responsibilities in its own right under Title II or III or the ADA or under section 504. In these cases, it would be up to the parties involved to allocate the responsibilities among themselves, so that they jointly ensure that accessibility requirements are met for the facility.

We also recognize that there can be instances in which a vessel berths at a floating dock, rather than literally at a landside facility. We would propose to treat such a floating dock in the same way as a landside facility for accessibility purposes, but we seek comment on whether any different treatment would be appropriate.

The Department seeks comment on whether it would be advisable to add specific provisions similar to §§ 37.41, 37.43, and 37.45 in the Department's existing ADA rule for the new construction and alteration of passenger vessel facilities, including provisions for alterations affecting areas containing a primary function that are subject to additional requirements for path of travel.

§ 39.63 What accommodations are required at terminals and other landside facilities for individuals with hearing or vision impairments?

This section specifies the effective communications that would have to be provided at terminals and other landside facilities to ensure that persons with sensory impairments would be able to receive the information otherwise available to the public,

concerning such subjects as ticketing, fares, and schedules. There would be a one-year phase-in period for this requirement, which would apply to existing as well as new facilities.

Subpart E—Accessibility of Vessels

This subpart would be reserved. It is a place-holder for the subsequent inclusion of passenger physical accessibility standards based on future Access Board guidelines. We note that, in connection with any rule incorporating the guidelines as DOT standards, DOT would designate an agency as the “administrative authority” to make certain determinations. We anticipate that the Department would designate the U.S. Coast Guard, with that agency’s consent, as the administrative authority for many of these provisions, for foreign-flag as well as U.S. vessels. It is not necessary for this NPRM to propose this designation, since it logically would be part of a future NPRM proposing to adopt Access Board guidelines as DOT regulatory standards.

There are, however, some facility accessibility issues that may not be covered by future Access Board guidelines. For example, we seek comment on whether a provision should be added for accessibility of televisions and telephones on vessels, similar to what DOT has proposed for air carriers pursuant to the Air Carrier Access Act (see 71 FR 9285 (February 23, 2006)). The Access Board’s guidelines will not address televisions and telephones in passenger rooms since they are not fixed elements.

It is our understanding that cruise ships typically provide televisions in passenger rooms and lounges. The Television Decoder Circuitry Act requires televisions with screens 13 inches or greater to contain built-in circuitry that receives and decodes closed captions. Cruise ships also typically provide telephones in passenger rooms. The Hearing Aid Compatibility Act and FCC rules require certain telephones to have volume controls and to be compatible with hearing aid technology. We seek information on whether cruise ships are currently providing televisions that are capable of receiving and decoding closed captions, and hearing aid compatible telephones with volume controls.

The Department does not intend to impose requirements in this area in the final rule resulting from this NPRM. Rather, we are seeking comment on this subject in order to determine whether, in a future NPRM that would propose

adoption of the Access Board’s final passenger vessel guidelines, to propose adding requirements concerning telephones and televisions as a DOT modification to the guidelines.

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

This section does not deal with boarding a vessel, as such. Rather, it deals with how people get to the point of boarding a vessel, in terms of land transfers (e.g., a bus between the airport and the terminal) and in actually moving through the terminal and boarding process up to the point of getting onto the vessel. PVOs would be responsible for making sure that these services were accessible to people with disabilities. The Department seeks comment on the extent, if any, to which such a requirement should apply to services provided outside the U.S. (e.g., Grand Fenwick Cruise Lines itself provides, or contracts with a local bus company to provide, land transportation between the dock and points of interest in Barbados).

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

The optimal solution for boarding a vessel involves a passenger with a disability being able to board independently (e.g., via a level-entry ramp). The Department realizes that there will be many situations where this optimal solution does not exist. In these situations, the PVO is responsible for providing assistance that enables a passenger with a disability to get on or off the vessel. We note that a number of comments to the ANPRM represented that these services are already being provided in many instances, so we believe it is fair to suggest that this requirement would not create significant added burdens for PVOs. We also note that this provision pertains to normal boarding and disembarkation from a vessel: obviously, in the case of an “abandon ship” or other emergency situation, crew will use any means necessary to ensure that all passengers can safely evacuate.

On some occasions, it may be the custom on cruise ships or other vessels with overnight accommodations to temporarily store luggage in passageways in preparation for disembarkation at the end of a voyage. This may have the effect of preventing passengers with disabilities from using otherwise accessible routes. The Department seeks comment on the extent of this problem and what

requirements in a final rule, if any, should be devised to address it.

The Department also seeks comment on whether a provision should be added that would require the use of accessible boarding systems, as described in § V412 of the Access Board’s draft guidelines, for vessels with a certain passenger capacity at terminals that have a certain threshold level of annual embarkations, similar to the provision in DOT’s Air Carrier Access rule. See 14 CFR 382.40(a). If so, what vessel passenger capacity and threshold level of annual embarkations should be used for requiring accessible boarding systems? Also, if a provision is added requiring accessible boarding systems at certain terminals, would it be advisable to require the PVO negotiate an agreement with the terminal operator to ensure the provision of accessible boarding systems, similar to the provision in DOT’s Air Carrier Access Act and section 504 rules concerning boarding devices for commuter aircraft? See 14 CFR 382.40(b) and (c). Such an approach might also require amendment of the DOT 504 rule, 49 CFR Part 27.

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

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

These sections concern services that PVOs would, or need not, provide to passengers with a disability. The services in question include movement about the vessel, but only with respect to portions of the vessel that are not accessible to passengers with a disability acting independently. To the extent that a PVO makes accessibility improvements to a vessel, the PVO can probably reduce its obligation to provide this service. When food is provided to passengers, PVO personnel would help passengers with a disability to a limited degree, including opening packages and identifying food, or explaining choices. Assistance in actual eating or other personal functions (e.g., toileting or provision of medical equipment or supplies or assistive devices, beyond what is provided to all passengers) would not be required. Effective communication of on-board information would be required.

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

This section specifies that safety-related information must be communicated effectively to passengers with disabilities. This can include the

use of alternative formats and other auxiliary aids, where needed. Safety videos would have to be captioned or have an interpreter inset, in order to make the information available to persons with impaired hearing. Passengers with disabilities must be enabled to participate in evacuation and other safety drills, and information about evacuation and safety procedures would have to be kept in locations that passengers with disabilities can access and use. The Department seeks comment on whether any special accommodations would be needed to assist persons with cognitive disabilities.

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

Many persons with disabilities rely on service animals to travel and conduct daily functions. This section specifies that PVOs would be required to permit service animals to accompany a passenger with a disability on board a vessel.

ICCL raised a number of service animal-related comments in its ANPRM response. We agree that foreign countries may limit entry of service animals; this should not affect the carriage of service animals on the vessel, however, since there is no requirement that the animal leave a cruise ship. Limitations on the ability of a service animal to leave the ship at a foreign port would be among the information that a cruise ship would provide to potential customers inquiring about an upcoming cruise. We also agree that PVOs would not be required to supply food for the animal. We seek comment on whether it is necessary to require PVOs to permit passengers with a disability to bring their own supplies of food for the service animal on board, without charge by the PVO. We also seek comment on whether PVOs should make refrigeration services available for service animal food.

ICCL commented that service animals typically share the cabin of the passengers who use them. The Department does not see an objection to this practice, though we seek comment on whether service animal users have had any problems in this regard.

We would view a limitation on the number of service animals that can be brought on a given voyage as tantamount to a number limit on passengers with a disability (i.e., as a number limit, which the proposed rule would prohibit). It is not self-evident that having a number of service animals on board a ship at a given time would be disruptive to ship operations, and

vague concerns about adverse effects on the quality of the cruise experience for other passengers do not trump the nondiscrimination imperative of the ADA.

The Department is not proposing, at this time, to adopt ACAA service animal guidance for other transportation contexts, though the general principles behind this guidance apply across the board to all transportation and public accommodations applications of the ADA. The Department anticipates that, following the publication of a final rule on passenger vessels, it would work with stakeholders to develop more detailed guidance on this subject for passenger vessels. One issue the Department would likely address in such guidance is the extent to which PVOs could inquire as to the status of an animal as a service animal (e.g., to prevent potential abuse from persons wanting to bring pets on board the vessel in ways inconsistent with the PVO's policy on pets).

One issue that arises, especially in the context of longer voyages, concerns service animal relief areas. The Department seeks comment what requirements, if any, should be included in a final rule concerning the provision of such areas. Should a final rule specify the number and location of such areas? We are glad to see from the ICCL comment that cruise operators typically provide relief areas.

ICCL, of course, represents the cruise industry, which frequently operates larger ships than other PVOs. The Department seeks comment on whether, with respect to any of the issues discussed in this section, there should be differing requirements for smaller vessels.

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

§ 39.95 May PVOs limit their liability for the loss of or damage to mobility aids and other assistive devices?

These sections say simply that passengers should be permitted to bring and use their own mobility aids and other assistive devices on board a vessel. Once the devices are there, if the PVO is responsible for loss or damage, the PVO must compensate the owner, at the level of the original purchase price of the device. This measure of the level of compensation is derived from the Department's ACAA rule. We also seek comment on alternative methods of measuring the appropriate level of compensation, such as the depreciated present value of the device or the current replacement cost for the device.

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

§ 39.103 What actions do CROs take on complaints?

The role of the Complaints Resolution Official (CRO) was first developed in the Department's 1990 ACAA regulations, and it has proved very helpful in the airline service context. As applied in the passenger vessel context, the CRO would be the PVO's expert in disability matters, knowledgeable about both the Department's regulations and the PVO's procedures, and able to assist passengers with disabilities and other PVO personnel in resolving issues. We believe that the CRO model can potentially be adapted very well to passenger vessels, with the intent of solving problems at the PVO level before they become matters for complaints to the Department or for litigation. These proposed provisions are modeled closely on the ACAA CRO provisions, and the Department seeks comment on what changes, if any, should be made in adapting this model to passenger vessels.

As in the airline context, the Department does not intend to mandate that CRO duties necessarily be full-time for a given employee. PVOs could, for example, train a number of different vessel and landside personnel to act as CROs, who might perform these functions as a collateral duty.

PVOs are likely to find it necessary to ensure that not only CROs, but also other personnel who interact with passengers, are trained sufficiently to be knowledgeable about the requirements of these rules and proficient in performing tasks related to passengers with disabilities. If they are not, it is likely that mistakes will be made that would potentially lead to noncompliance. The Department seeks comment on what, if any, training requirements should be included in a final rule.

One model that the Department could consider would resemble the training requirements in the ACAA rule. This model would involve training to proficiency concerning the requirements of this rule; the PVO's procedures with respect to the provision of transportation or use of a passenger vessel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; the use of the equipment used by the PVO and appropriate assistance procedures that safeguard the safety and dignity of passengers. Training on the ACAA model would also address such matters

as awareness and appropriate responses to passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability. Training on this model would cover contractor personnel as well as direct employees of PVOs. The Department seeks comment on whether such a requirement is advisable. We also seek comment on alternative training models that might be appropriate.

The Department also seeks comment on what the costs of training are likely to be. With respect to training, the Department does not currently have data concerning the number of PVO personnel who would have to be trained or the costs per person of such training. We seek data from the industry or other sources on this matter. We point out that, in the regulatory evaluation for the Department's 2004 NPRM to expand ACAA coverage to foreign air carriers, the Department projected annual training costs of around \$9.5 million, for an industry that probably has an affected work force of that may be of roughly comparable size.

If there is such a training requirement, the Department seeks comment on what time frames or deadlines we should establish for completing the training. We also seek comment on what, if any, reporting or record retention requirements there should be concerning training. The Department does not, at this time, contemplate drafting a training curriculum or certifying the training of PVO personnel.

§ 39.105 How must PVOs respond to written complaints?

§ 39.107 Where may passengers file complaints?

These provisions are also based on current ACAA procedures, and we again seek comment on how they may best be adapted to the passenger vessel context. We also seek comment on whether this rule should include a reporting requirement, analogous to that of the ACAA rule (see 14 CFR 382.70). The purpose of such a requirement would be to help the Department identify types of issues that may need additional attention or particular PVOs that may be having problems in a particular area in which the Department could focus compliance efforts. Should such a requirement be limited to PVOs operating vessels over a certain size (e.g., 50 passenger capacity)? Is a requirement similar to that of the ACAA a good idea in the vessel context, or is

there a different or simpler approach we could take toward complaint reporting?

The final rule would include detailed information on addresses, phone numbers, etc. where complaints could be filed at DOT or DOJ. Obviously, a passenger dissatisfied with the PVO's resolution of a complaint could file a complaint with DOT or DOJ.

§ 39.109 What enforcement action may be taken under this part?

One important difference between the ACAA and the ADA is that, under the former, the Department has its own civil penalty enforcement authority and procedures. The Department does not have its own civil penalty authority under Titles II and III of the ADA, though the Department can conduct investigations and compliance reviews, collect data, find facts, come to conclusions, and refer matters to the Department of Justice for further action. DOJ can, of course, conduct enforcement proceedings on its own initiative.

Some PVOs receive Federal financial assistance, such as ferry operators who receive Federal Transit Administration (FTA) funding. Complaints concerning violations of this part by FTA-assisted ferry operators could be made to the FTA under the Department's ADA and 504 rules, and FTA could take enforcement action as provided in those rules.

Regulatory Analyses and Notices

The Department believes that this NPRM proposes a significant rule for Executive Order 12866 and DOT Regulatory Policies and Procedures purposes. While the NPRM does not impose significant costs, it addresses issues that are of considerable policy interest and would create requirements for entities that have not previously been subject to regulation. In a future rulemaking, the Department anticipates proposing, in conjunction with the Access Board, physical accessibility standards for vessels. This future rulemaking is expected to involve a more detailed regulatory evaluation with respect to the costs and benefits of its proposals, and it is also likely to be a significant rulemaking.

This NPRM focuses on prohibiting unnecessary practices that have discriminatory effects, such as extra charges and denials of transportation. Observing such prohibitions will not have significant cost impacts on PVOs. According to ANPRM comments, many PVOs already provide boarding assistance and other services to passengers with disabilities, so it is reasonable to assume that the passenger

assistance provisions of the NPRM would not have large incremental costs. We seek comment and data on these matters, however. As a general matter, we seek comment on whether any fuller regulatory evaluation or analysis concerning the cost of the proposed provisions or other matters should be developed in connection with the final rule.

In the passenger vessel context as in other areas, the purpose of the ADA is to ensure nondiscrimination on the basis of disability and accessibility of travel on vessels for people with disabilities. Consequently, the most important benefits of this proposed rule are the largely non-quantifiable benefits of increased access and mobility for passengers with disabilities. These proposals would eliminate most policies of PVOs that would prevent or inhibit travel by persons with disabilities. The benefits that would accrue from removal of these barriers cannot be quantified, but could well include increased employment, business, recreational, and educational opportunities for travelers with disabilities, and quality of life enhancements associated with travel opportunities both within the U.S. and to foreign points.

Many persons with mobility impairments would be able to use passenger vessel services for the first time, and take advantage of an expanded range of travel opportunities. Even persons with disabilities who did not immediately choose to use a passenger vessel would know that barriers to such travel had been removed, and there is a psychological benefit to knowing one can travel if one wishes (what economists sometimes refer to as the "option value" of a regulatory provision).

Other beneficiaries of the proposed rule would include the travel companions, family, and friends of passengers with disabilities, since persons with disabilities would have greater and more varied travel opportunities. In addition, to the extent that changes in PVO practice make use of vessels easier for everyone, there would be indirect benefits for the general traveling public.

Because making passenger vessel transportation and services more readily available to passengers with disabilities and others traveling with them is likely to increase overall usage of vessels to some degree, it is likely that there will be some economic benefits to PVOs from compliance with the proposed rule. The Department seeks data that would assist in quantifying these potential benefits.

For the reasons stated above, the Department believes that compliance with the provisions proposed in this NPRM would have very low costs. That is, avoiding discriminatory policies and providing improved information to passengers with disabilities would not impose substantial costs on regulated parties generally. Therefore, the Department certifies that this NPRM, if adopted, would not have substantial economic effects on a significant number of small entities.

Nevertheless, the Department seeks comment on small entity-related issues, including whether there should be provisions that mitigate any burdens on small entities resulting from the proposed requirements. This information would include data on numbers of companies and vessels (domestic and foreign-flag) that would be affected. In addition, the Department seeks comment on what standard should be used for analyzing small entity impacts with respect to passenger vessel transportation. Small Business Administration (SBA) size standards in 13 CFR Part 121 establish a 500-employee standard (i.e., any entity with fewer employees would be regarded as a small business for SBA purposes). Is there any reason for using a different standard for purposes of this rulemaking (e.g., a PVO which does not operate any boats above a certain size)?

While there are some state and local entities (i.e. operators of state or municipal ferry systems) that would be covered by this proposed rule, most regulated parties would be private sector entities. As noted above, we do not expect significant economic impacts on any regulated parties from the proposed rule. Consequently, we have concluded that there are not sufficient Federalism impacts to warrant the preparation of a Federalism assessment. As a civil rights rule, this proposal is not subject to review with respect to unfunded mandates.

Issued this 5th day of January 2007, at Washington, DC.

Mary E. Peters,
Secretary of Transportation.

List of Subjects for 49 CFR Part 39

Individuals with disabilities, Mass transportation, Passenger vessels.

For the reasons set forth in the preamble, the Department of Transportation proposes to add a new 49 CFR Part 39, to read as follows:

PART 39—TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES: PASSENGER VESSELS

Subpart A—General

Sec.

- 39.1 What is the purpose of this part?
- 39.3 What do the terms in this rule mean?
- 39.5 To whom do the provisions of this part apply?
- 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?
- 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?
- 39.11 How may a PVO obtain approval to use an equivalent facilitation?
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Subpart B—Nondiscrimination and Access to Services

- 39.21 What is the general nondiscrimination requirement of this part?
- 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?
- 39.25 May PVOs limit the number of passengers with a disability on a passenger vessel?
- 39.27 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?
- 39.29 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease or other medical condition?
- 39.31 May PVOs require a passenger with a disability to provide a medical certificate?
- 39.33 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel?
- 39.35 May PVOs require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with transportation or use of a passenger vessel?
- 39.37 May PVOs require a passenger with a disability to travel with a personal or safety assistant?
- 39.39 May PVOs impose special charges on passengers with a disability for providing services and accommodations required by this rule?
- 39.41 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?
- 39.43 May PVOs require passengers with a disability to sign waivers or releases?

Subpart C—Information for Passengers

- 39.51 What information must PVOs provide to passengers with a disability?
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- 39.57 What is the general requirement for PVOs' communications with passengers?

Subpart D—Accessibility of Landside Facilities

- 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?
- 39.63 What accommodations are required at terminals and other landside facilities for individuals with hearing or vision impairments?

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?
- 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?
- 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?
- 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?
- 39.89 What requirements apply to on-board safety briefings, information, and drills?
- 39.91 Must PVOs permit passengers with a disability to travel with service animals?
- 39.93 What mobility aids and other assistive devices may passengers with a disability bring onto a passenger vessel?
- 39.95 May PVOs limit their liability for the loss of or damage to mobility aids and other assistive devices?

Subpart G—Complaints and Enforcement Procedures

- 39.101 What are the requirements for providing Complaints Resolution Officials?
- 39.103 What actions do CROs take on complaints?
- 39.105 How must PVOs respond to written complaints?
- 39.107 Where may passengers file complaints?
- 39.109 What enforcement action may be taken under this part?

Authority: 42 U.S.C. 12101 through 12213; 49 U.S.C. 322.

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

§ 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 accessibility requirements of this part.

“Alteration” means a change to a passenger vessel or facility that affects or could affect the usability of the vessel, facility, or a portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls, bulkheads, and partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to propulsion, mechanical or electrical systems are not alterations unless they affect the usability of the passenger vessel or facility.

“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 and medications.

“Auxiliary aids and services” includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open captioning, text telephones (also known as telephone devices for the deaf, or TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(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.

“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.

“Department” or “DOT” means the United States Department of Transportation, including the Office of the Secretary of Transportation, the Federal Transit Administration, the Federal Highway Administration, and the Maritime Administration.

“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 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 working;

(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;

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

“Existing vessel” means a passenger vessel in existence at the time of the effective date of Subpart E of this part.

“Facility” means terminals and any of landside facilities related to the use of passenger vessels in the United States (including its territories, possessions, and commonwealths) that a vessel owner or operator owns, leases, or controls (e.g., terminals, boarding ramps, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites) normally used by passengers or other members of the public.

“Historic vessel” means a craft, ship, or boat of historic significance that is made available to the public to tour. Such vessels are usually permanently moored to a facility, but may take the public on excursions in some cases.

“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 or other service 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 for hire in connection with other revenue-generating activities. The term includes, but is not limited to, cruise ships, (whether U.S.- or foreign-flag); ferries; dinner, excursion, or sightseeing boats; boats chartered for fishing or other private recreational activities; and floating facilities used for gambling (whether tethered to a dock or mobile). The term does not include boats or other craft rented or leased to and operated solely by consumers.

“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. The term includes entities that are primarily engaged in the business of transporting people (e.g., a cruise ship or excursion vessel) and entities that are not primarily engaged in transporting people (e.g., an amusement park operator which operates a passenger vessel to transport visitors from a parking area to the main part of the park or a hotel located on an island that operates a passenger vessel to shuttle guests from the mainland to the island).

“Private entity” means any entity other than a public entity.

“Public entity” means:

- (1) Any state or local government;
- (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).

“Purchase or lease,” with respect to passenger vessels, means the time at which an entity is legally obligated to obtain a vessel, such as the time of contract execution.

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

- (1) Who, as a passenger (referred to as a “passenger with a disability”),
 - (i) With respect to obtaining a ticket for transportation on passenger vessel offers, or makes a good faith attempt to

offer, to purchase or otherwise validly to obtain such a ticket;

(ii) With respect to obtaining transportation on or use of a passenger vessel, or other services or accommodations required by this part,

(A) 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

(B) 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

(C) 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 accommodations, 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.

“Solicitation” means the closing date for the submission of bids or offers in a procurement.

“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.

“Terminal” means, with respect to passenger vessel transportation, the portion of a property located appurtenant to a dock, entry ramp, or other means of boarding a passenger vessel, including areas of interface with land transportation, passenger shelters, designated waiting areas, restrooms,

concession 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 a mobility aid belonging to any class of wheeled devices, usable indoors, designed or adapted for and used by individuals with disabilities, whether operated manually or powered. A “common wheelchair” is such a device which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied.

“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;
- (2) A private entity primarily engaged in the business of transporting people whose operations affect commerce that provides specified public transportation; or
- (3) A private entity that owns, operates, or leases a place of public accommodation, and you are not primarily engaged in the business of transporting people.

(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.

(c) [Reserved]

§ 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 Parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable

Department of Justice regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§ 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 in the 90-day period between the publication of this rule in the **Federal Register** and the effective date of this part, you may continue to apply the foreign legal requirement pending the Department's response to your waiver request.

(e) The Department may 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 How may a PVO obtain approval to use an equivalent facilitation?

(a) Nothing in this part prevents the use of designs, products, or technologies as alternatives to those prescribed in this part, or alternative ways of providing accommodations and services to passengers with disabilities, provided they result in substantially equivalent or greater accessibility and usability.

(b) If, as a PVO or the manufacturer of a product or accessibility feature to be used in a passenger vessel, you wish to provide an equivalent facilitation in lieu of complying with a provision of this

part, you may request approval to do so from the Department.

(c) You must use the following process to request approval of an equivalent facilitation:

(1) You must provide the following information with your request:

(i) Entity name, address, contact person, and telephone;

(ii) Specific provision(s) of this part or 49 CFR Part 38 concerning which the entity is seeking a determination of equivalent facilitation.

(iii) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vessel provided this part.

(2) Before you submit your request for equivalent facilitation, you must provide opportunities for public participation:

(i) You must consult in person, in writing, or by other appropriate means, with individuals with disabilities and groups representing them, as well as conduct outreach to passengers, particularly those with disabilities. This consultation must take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to the Department and members of the public.

(ii) You must make your proposed request available for public review and comment before the request is made final or transmitted to DOT. In making the request available for public review, you must ensure that it is available, upon request, in accessible formats.

(3) A determination whether to approve or disapprove your request, in whole or in part, will be made by the Department on a case-by-case basis. Determinations are made by the General Counsel, with the concurrence of the Assistant Secretary for Transportation Policy.

(i) An approval may be conditioned on specified actions that you agree to take.

(ii) The Department normally considers approving an equivalent facilitation only with respect to the specific situation concerning which the request is made. However, the Department may approve a request for equivalent facilitation with respect to a product or accessibility feature that the Department determines can provide an equivalent facilitation in a class of situations.

(4)(i) You must not cite an approval of a request for equivalent facilitation as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other

than those to which the determination specifically pertains.

(ii) You must not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government or the Department of Transportation.

§ 39.13 When must PVOs comply with the provisions of this part?

You are required to comply with the requirements of this part beginning [insert effective date of the final rule], 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 the 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. This is true even if there are separate or different services available for individuals with a disability, 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) You must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to your services, unless you can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

§ 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 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.

(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. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' 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.

§ 39.25 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 on your vessel.

§ 39.27 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) You may refuse to provide transportation or use of a vessel to any passenger on the basis of safety only as provided in this paragraph:

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation or use of a vessel to a passenger with a disability if you are able to demonstrate

that the passenger poses a direct threat (see definition in § 39.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) the nature, duration, and severity of the risk;

(ii) the probability that the potential harm to the health and safety of others will actually occur; and

(iii) whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation or use of the vessel to the passenger if you can protect the health and safety of others by means short of a refusal (e.g., by implementing measures recommended by a physician in connection with a medical certificate under § 39.31 to prevent the transmission of a disease).

(d) 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 paragraph (c) of this section 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.

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

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

(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) In assessing whether the passenger's condition poses a direct

threat, you must consider the following factors:

(1) Whether 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;

(2) Whether 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;

(3) Whether applying the provisions of § 39.27 (c)(1) through (2) would otherwise lead to the conclusion that the person poses a direct threat to the health or safety of others.

(c) 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 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.

(d) If you take any action under this section that restricts a passenger's transportation or use of the vessel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

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

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability—

(i) Who needs medical oxygen during his or her transportation or use of the vessel; or

(ii) Whose medical condition is such that there is reasonable doubt that the individual can complete the transportation or use of the vessel safely, without requiring extraordinary medical assistance.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the transportation or use of the vessel safely, without requiring extraordinary medical assistance.

(c)(1) You may also require a medical certificate for a passenger if he or she

has a communicable disease or condition that poses a direct threat to the health or safety of others.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of the passenger's transportation or use of the vessel. The 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 dated within 10 days of the date of the trip or use of the vessel for which it is presented.

§ 39.33 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel?

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.

§ 39.35 May PVOs require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with transportation on or use of a passenger vessel?

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

(b) (1) 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.

(2) If a passenger needs an accessible overnight cabin, you may require 72 hours advance notice for the accommodation. In order to ensure that such accommodations remain available for passengers with a disability, you must inform other passengers who reserve accessible cabins that, if a person with a disability requests the accommodation by 72 hours before the vessel's scheduled departure, you will move the other person to a different cabin.

(c) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service, then you must provide the requested service or accommodation.

(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

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

(e) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the trip.

§ 39.37 May PVOs require a passenger with a disability to travel with a personal or safety assistant?

(a) Except as provided in paragraph (b) of this section, 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) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided transportation or use of a passenger vessel, if you determine that a safety assistant is essential for safety:

(1) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from vessel personnel.

(2) A passenger with a mobility impairment so severe that the person is unable to assist in his or her own evacuation from the vessel in an emergency;

(3) A passenger who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with vessel personnel for purposes of safety information and instructions.

(c) You may require a passenger with a disability to have a personal assistant if the passenger is unable to perform personal tasks (e.g., eating, dressing, toileting) without such an assistant, and the duration of the transportation or use of the vessel is long enough that the passenger must perform one or more of these tasks while on the vessel.

(d) If you determine that a person meeting the criteria of paragraph (b) or (c) of this section must travel with a safety or personal assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. You may also designate a member of your staff or a passenger volunteer to perform the personal or safety assistant role in such a case, rather than carrying at no charge a person designated by the passenger. In a case in which a passenger voluntarily chooses to travel with a personal assistant or a safety

assistant that you do not require, you may charge for the transportation of that person.

§ 39.39 May PVOs impose special charges on passengers with a disability for providing services and accommodations 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 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, accommodations, or services that this rule requires to be provided to passengers with a disability.

§ 39.41 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, services, or accommodations;

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

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

§ 39.43 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 in order to receive transportation or use of a vessel or to receive services or accommodations for 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 assistive devices.

Subpart C—Information for Passengers

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

As a PVO, you must provide the following information to passengers who self-identify as having a disability 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, lavatories, staterooms, decks, dining, and recreational facilities;

(b) Any limitations on the ability of the vessel to accommodate passengers with a disability;

(c) 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.

§ 39.53 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 through use of a text telephone (TTY).

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

(2) Your response time to TTY 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 the final rule].

(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 it is available to the general public.

§ 39.55 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.

§ 39.57 What is the general requirement for PVOs' communications with passengers?

PVOs must ensure the effective communication to passengers with disabilities of all information provided to passengers, through the use of auxiliary aids where needed.

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 wheelchairs. You are deemed to comply with this obligation if the facilities meet requirements of 49 CFR Part 37, § 37.9, and the standards referenced in that section.

(2) You must ensure that there is an accessible path 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 Part 37, § 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, you must ensure that passengers with a disability can use the facility to gain access to your vessel. You may meet this obligation through any combination of facility accessibility, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability. With respect to making structural modifications in existing facilities, you have the same obligations as any other public or private entity under the applicable provisions of DOT ADA regulations.

(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.

§ 39.63 What accommodations are required at terminals and other landside facilities for individuals with hearing or vision impairments?

(a) As a PVO, the information you provide to the general public at terminals and other landside facilities must be effectively communicated to individuals with impaired vision and deaf and hard-of-hearing individuals. To the extent that this information is not available to these individuals through signage and/or verbal public address announcements, your personnel must promptly provide the information to such individuals on their request, in languages 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.

(c) You must meet the requirements of this section by [date one year from effective date of the final rule].

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 (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) and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible restroom or nearby takeout food vendor.

§ 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.

(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 tour personnel). However, you must never use hand-carrying (i.e., directly picking up the passenger's body in the arms of one or more personnel) to effect a level change the passenger needs to get on or off the vessel, even if the passenger consents.

§ 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 spaces that are 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 restroom or assistance elsewhere on the vessel with elimination functions; and

(c) Provision of medical equipment or services, or assistive 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. 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 open captioning or placement of a sign language interpreter in the video).

(1) You may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset can be placed in the video presentation without so interfering with it as to render it ineffective or it would not be large enough to be readable.

(2) You may implement the requirements of this section by substituting captioned or interpreted video materials for uncaptioned/uninterpreted video materials as the uncaptioned/uninterpreted materials are replaced in the normal course of the carrier's operations.

(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.

(c) 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.

(d) If you decide not to accept an animal as a service animal, you must explain the reason for your decision to the passenger and document it in writing. A copy of the explanation must be provided to the passenger within 10 calendar days of the incident.

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

(a) As a PVO, you must permit passengers with a disability to bring the following kinds of items onto a passenger vessel, consistent with Coast Guard requirements concerning security, safety, and hazardous materials:

(1) Wheelchairs and other mobility devices, including, but not limited to, manual wheelchairs and battery-powered wheelchairs;

(2) Other mobility aids, such as canes (including those used by persons with impaired vision), crutches, and walkers;

(3) Other assistive devices (e.g., vision-enhancing devices, personal ventilators, portable oxygen concentrators, and respirators that use non-spillable batteries);

(4) Personal oxygen supplies.

(b) You must permit passengers with a disability to use their mobility aids and assistive devices on board the vessel in all locations passengers access.

(c) You are not required to permit passengers with a disability to bring these items 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 mobility aids 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 wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be 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 on each vessel and each terminal you serve. You must make CRO service available in the language(s) in which you make your

other services available to the general public.

(c) You may make the CRO available in person or via telephone, at no cost to the passenger. If a telephone link to the CRO is used, TTY service must be available so that persons with hearing impairments may readily communicate with the CRO.

(d) 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, accommodations, 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 (d)(1) of this section to passengers with a disability using those services.

(e) Each CRO must be thoroughly familiar with the requirements of this part and the carrier'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.

(f) 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 is not required to 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 proposes 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 postmarked or transmitted more than 45 days after the date of the incident, except for complaints referred to you by the Department of Transportation.

(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.

(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.

(3) Your response must also inform the complainant of his or her right to pursue DOT and/or DOJ enforcement action under this part.

§ 39.107 Where may passengers file complaints?

(a) Any person believing that a PVO has violated any provision of this part may contact the following office for assistance: U.S. Department of Transportation, Departmental Office of Civil Rights, 400 Seventh Street, SW, Washington, DC 20590.

(b) Any person believing that a PVO has violated any provision of this part may also file a complaint with the Disability Rights Section, Civil Rights Division, Department of Justice.

(c) Any person believing that a PVO that receives Federal financial assistance has violated any provision of this part may also file a complaint with the civil rights office of the concerned DOT operating administration.

(d) Requests for assistance and complaints must be filed no later than 180 days after the incident, or after the end of a continuing violation, to ensure that they can be investigated.

§ 39.109 What enforcement action may be taken under this part?

(a) The Department of Transportation may investigate complaints and conduct reviews or other inquiries into the compliance of PVOs with this part.

(b) The Department may issue and make public findings and recommendations concerning any matter relating to the compliance of PVOs with this part.

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

(d) The Department of Justice may conduct investigations and take enforcement action concerning compliance with the provisions of this part on its own initiative at any time.

(e) With respect to a PVO that receives DOT financial assistance, the Department may take enforcement action as provided in 49 CFR Parts 27 and 37.

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