

§ 37.5

transporting people that is not a Class I motor carrier. To determine whether an operator has sufficient average annual gross transportation operating revenues to be a Class I motor carrier, its revenues are combined with those of any other OTRB operator with which it is affiliated.

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

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

Station means, with respect to intercity and commuter rail transportation, the portion of a property located appurtenant to a right of way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but this term does not include flag stops (*i.e.*, stations which are not regularly scheduled stops but at which trains will stop to board or detrain passengers only on signal or advance notice).

Transit facility means, for purposes of determining the number of text telephones needed consistent with section 10.3.1(12) of appendix A to this part, a physical structure the primary function of which is to facilitate access to and from a transportation system which has scheduled stops at the structure. The term does not include an open structure or a physical structure the primary purpose of which is other than providing transportation services.

Used vehicle means a vehicle with prior use.

Vanpool means a voluntary commuter ridesharing arrangement, using vans with a seating capacity greater than 7 persons (including the driver) or buses, which provides transportation to a group of individuals traveling di-

49 CFR Subtitle A (10–1–10 Edition)

rectly from their homes to their regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for his or her costs of providing the service.

Vehicle, as the term is applied to private entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 of title III of the Act.

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

[56 FR 45621, Sept. 6, 1991, as amended at 58 FR 63101, Nov. 30, 1993; 61 FR 25415, May 21, 1996; 63 FR 51690, Sept. 28, 1998]

§ 37.5 Nondiscrimination.

(a) No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

(b) Notwithstanding the provision of any special transportation service to individuals with disabilities, an entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service.

(c) An entity shall not require an individual with a disability to use designated priority seats, if the individual does not choose to use these seats.

(d) An entity shall not impose special charges, not authorized by this part, on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

(e) An entity shall not require that an individual with disabilities be accompanied by an attendant.

(f) Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the rules of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 36.301–36.306).

(g) An entity shall not refuse to serve an individual with a disability or require anything contrary to this part because its insurance company conditions coverage or rates on the absence of individuals with disabilities or requirements contrary to this part.

(h) It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

§ 37.7 Standards for accessible vehicles.

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in part 38 of this title.

(b)(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to

be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

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

(ii) Specific provision of part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation.

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38 of this subtitle; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall 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 members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a private entity that provides transportation services subject to the provisions of subpart E of this part or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate