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

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

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Subpart A—General

§ 39.1 What is the purpose of this part?

The purpose of this Part is to carry out the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 with respect to passenger vessels. This rule prohibits owners and operators of passenger vessels,

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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 disabilities.

§ 39.3 What do the terms in this rule mean?

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

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

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

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

“Auxiliary aids and services” includes:

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

(2) Qualified readers, taped texts, audio recordings, brailled materials and displays, screen reader software, magnification software, optical readers,

secondary auditory programs (SAP), large print materials, accessible electronic and information technology, or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

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

(4) Other similar services or actions. “Coast Guard” means the United States Coast Guard, an agency of the Department of Homeland Security.

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

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

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

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

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

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

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

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

(iii) The term physical or mental impairment includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;

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

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

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

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

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

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

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

(5) The term disability does not include—

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

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

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

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

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where the building, property, structure, or equipment is located.

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

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

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

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

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

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

“Public entity” means:

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

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

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

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

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

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

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

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

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

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

“Specified public transportation” means transportation by passenger vessel provided by a private entity to the general public, with general or special

service (including charter service) on a regular and continuing basis, where the private entity is primarily engaged in the business of transporting people.

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

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

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

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

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

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

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

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

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

(a) If you receive Federal financial assistance from the Department of

Transportation, compliance with applicable requirements of this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

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

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

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

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

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

- (1) A copy, in the English language, of the foreign law involved;
- (2) A description of how the binding legal requirement of a foreign nation applies and how it precludes compliance with a provision of this Part;
- (3) A description of the alternative means you will use, if the waiver is granted, to effectively achieve the objective of the provision of this Part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

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

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

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