

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.