



**Passenger Vessel
Association**

103 Oronoco Street, Suite 200
Alexandria, VA 22314

Phone (703) 518-5005
Fax (703) 518-5151
Toll Free 1-800-807-8360

pvainfo@passengervessel.com
www.passengervessel.com

To: Mr. Chad Lallemand
Office of Information and Regulatory Affairs
Office of Management and Budget

From: Ed Welch
Legislative Director
Passenger Vessel Association
103 Oronoco Street, Suite 200
Alexandria, VA 22134
Phone: 703-518-5005 ext. 27
Email: ewelch@passengervessel.com

Date: January 15, 2013

Re: OIRA review of Proposed Rule by U.S. Access Board
"Americans with Disabilities Act (ADA) Accessibility Guidelines for
Transportation Vehicles: Passenger Vessels"

● Some mischaracterize this as a "cruise ship" rulemaking, but that is erroneous. Far more passenger vessels of other types will be potentially affected than will large oceangoing cruise ships. These other types of passenger vessels are U.S.-flagged vessels operated by American companies. The U.S.-flagged passenger vessel fleet is a diverse mixture of ferries, sightseeing craft, dinner boats, gaming vessels, windjammers, eco-tour vessels, and "small-ship" overnight cruise vessels. In contrast, nearly all large oceangoing cruise ships serving the U.S. are registered in foreign nations.

● The Passenger Vessel Association (PVA) has been working with the Access Board on this rulemaking for more than 15 years. PVA members were part of the Access Board's "Passenger Vessel Access Advisory Committee," as were representatives of disability groups and other maritime sectors. PVA is the national trade association representing owners and operators of U.S.-flagged passenger vessels of all types. See www.passengervessel.com.

● PVA vessels must comply with Coast Guard safety regulations. Safety is the paramount consideration in the operation of passenger vessels. There must be no conflict between safety regulations and vessel accessibility regulations. The

Access Board must continue to consult closely with the Coast Guard, and the Coast Guard must review the proposed rule and provide input to the Access Board.

- Within the past two years, two other agencies (the Department of Transportation and the Department of Justice) have each issued ADA regulations applicable to passenger vessels. These are the “service” or “vessel operations” regulations. PVA members must comply with them.
- The Access Board’s proposed rule addresses how to design and construct vessels to enhance accessibility. PVA’s shorthand term is the “ADA vessel construction rule.”
- Access Board rulemakings are traditionally prospective in nature; that is, they apply to “new builds” undertaken after the effective date. They don’t apply to existing structures (except in the case of “alterations”). PVA supports the prospective application of the vessel construction rules.
- Because vessels are typically individually designed and then constructed, there must be adequate “lead time” (18 months to two years) between when the final rule is issued and when it becomes effective.
- PVA supports the Access Board’s “two-step” rulemaking approach: first, construction rules for larger passenger vessels (the one under current OIRA review), followed by rules for smaller passenger vessels. It will be more challenging to design accessibility features into smaller vessels, and the experience gained in implementing the larger passenger vessel rule will assist in making policy decisions for the second rule.
- PVA strongly urges that the rulemaking’s delineation between “large” and “small” passenger vessels with no overnight accommodations should be 150 passengers. This is consistent with the traditional regulatory “break point” under Coast Guard rules. It’s also consistent with the recommendation of the Access Board’s Passenger Vessel Access Advisory Committee. However, the June 26, 2008, draft guidelines of the Access Board depart from this delineation. While that draft uses the 150-passenger threshold as the regulatory “break point” between “large” and “small” passenger vessels for most types of passenger vessels, it deviates from it in the case of ferry vessels, classifying a ferry with a capacity for 100 or more passengers as a “large” passenger vessel for purposes of this rulemaking. Departing from the traditional governmental “break point” for passenger vessels and having two differing “break points” in the same rule for passenger vessels with no overnight accommodations will lead to confusion and complexity.

- For passenger vessels other than large oceangoing cruise ships, the toughest design accessibility design challenges are likely to be:
 - Vertical access between decks (lifts or elevators);
 - On-off issues, especially at locations where water levels (tidal, weather-related, or seasonal) fluctuate markedly; and
 - Emergency announcement to and communications with persons who are deaf or hard of hearing.
- Nearly all U.S. passenger vessel operators (both private and governmental) are “small entities” under SBA guidelines. PVA notes that the Access Board has apparently prepared a Regulatory Flexibility Analysis. PVA looks forward to the opportunity to review it.
- When evaluating costs imposed by the proposed rule, any extra construction and equipment costs must be factored in. In addition, there must be an analysis as to whether the accessibility features that are incorporated into the vessel design have the effect of decreasing the vessel’s revenue earning capacity. For instance, a dinner boat may have to reduce the number of tables that would otherwise be available; this would result in decreased revenues per sailing.
- The summary of the proposed rule posted at www.reginfo.gov highlights why PVA is concerned that the impact on passenger vessels other than cruise ships is not fully appreciated. In the discussion entitled “Anticipated Costs and Benefits,” there is explicit discussion of the possibility that cruise ships may lose revenue-generating staterooms. However, there is no recognition that the proposed rule may impose costs on other types of passenger vessels, even though it is these other types of vessels that are U.S.-flagged and are operated by U.S. companies fully subject to U.S. law and subject to U.S. income taxation.

For more information, contact:

Mr. Ed Welch
Legislative Director
Passenger Vessel Association
103 Oronoco Street, Suite 200
Alexandria, VA 22314
Phone: 703-518-5005 ext. 27
Email: ewelch@passengervessel.com