

January 24, 2005

Proposed Americans with Disabilities Act Vessel Standards

Summary:

The Architectural and Transportation Barriers Compliance Board (Access Board) is developing Passenger Vessel Accessibility Guidelines (PVAG) to establish the standards for vessels under Title III of the Americans with Disabilities Act (ADA).¹ The Department of Transportation will adopt these guidelines as its minimum standards in regulations requiring nondiscrimination and accessibility in passenger vessel service. These proposed standards would apply to all kinds of passenger vessels including charter boats and potentially boat rentals or bareboat charters.

The guidelines are being developed in three tracks:

- I. **“Large Vessel” Guidelines** – These extensive guidelines released by the Access Board for comment would apply to vessels that carry more than 150 passengers or more than 49 overnight passengers;
- II. **“Small Vessel” Guidelines** - The Access Board is requesting information on how best to develop small vessel guidelines. These would apply to vessels that carry 150 or fewer passengers or 49 or fewer overnight passengers.
- III. **Potential Costs and Implementation Problems** - Most importantly, the Department of Transportation is seeking up to date information on the potential costs and how to best implement vessel accessibility regulations for both large and small vessels.

More about these proposals:

I. Access Board Large Vessel Guidelines

The Access Board has developed draft guidelines for accessibility to and in large passenger vessels and is seeking public comment prior to issuing a proposed rulemaking.² The large vessel [guidelines](#) are 105 pages long and were developed after a public consultation process. These guidelines will apply to vessels with a capacity for more than 150 passengers or more than 49 overnight passengers.

Although these guidelines are written for much larger vessels than NMMA members build, it is important that members review them because they will serve as the starting point for the small vessel guidelines in the early stages of development (see discussion below). The large vessel guidelines apply to the passenger areas of vessels and include many features such as accessible routes, entry decks, boarding systems, toilet and bathing facilities, telephones, assistive listening systems, passenger guest rooms, deck surfaces, protrusions, and level changes.

¹ The Access Board is responsible for developing accessibility guidelines under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) to ensure that facilities and vehicles covered by the law are readily accessible to and usable by individuals with disabilities.

² 69 Fed. Reg. 69,244 (Nov. 26, 2004).

II. Access Board Small Vessel Guidelines

The Access Board has issued an “advance notice of proposed rulemaking” for new small vessel guidelines.³ This notice means that the agency is seeking guidance on how best to draft their proposed rules. According to the Access Board, these rules will apply to:

- “**designated public transportation**” (*e.g.*, a ferry operated by a state or local government);
- “**specified public transportation**” (*e.g.*, a **charter service**, cruise ship or excursion boats);
- vehicles operated by **private entities** not primarily engaged in the business of transporting people but **who operate a demand, responsive or fixed route** (*e.g.*, a hotel shuttle boat); and
- a place of “**public accommodation operated by private entities**” (*e.g.*, cruise ships, dinner boats, gaming boats, and sightseeing vessels).

The Access Board is seeking comment on four options for regulating small vessels. In particular, the Board is interested in any data on costs and benefits of the options, recommendations on other ways to address accessibility, and the feasibility of each option.

- *Option 1* - requires small vessels to **comply with the same requirements as larger vessels “except where it is not operationally or structurally feasible.”** The Board is seeking comments on which provisions in the large vessel guidelines would be infeasible for small vessels.
- *Option 2* – requires small vessels to **comply with [Chapter 12 of the Passenger Vessel Access Advisory Committee \(PVAAC\) December 2000 report](#)**.⁴ This chapter applied to new passenger vessels subject to U.S. Coast Guard Subchapter C (uninspected vessels) or T (small passenger vessels) regulation. These recommendations are quite detailed and are different for small sailing and small power vessels. For example, the recommendations include such items as a minimum entry point to the vessel of at least 32 inches, accessible routes in certain situations, and clear deck spaces. Specific regulations for accessible toilets would apply only to vessels 65 feet or more and if the toilet is on a deck with a “program area.” Those boats that do not meet the cut off would have to comply with the requirements for large vessels.
- *Option 3* – requires manufacturers to **meet general performance requirements when designing, constructing or altering smaller vessels**. These would list objectives rather than detailed design requirements (such as ensuring that passengers with disabilities are able to get on and off the vessel, enter and maneuver in toilet facilities, *etc.*).
- *Option 4* – asks **at what passenger count or vessel size to apply the large vessel guidelines to smaller vessels**. Specifically, the Board is seeking comment to determine when applying the large vessel guidelines to the small vessels becomes infeasible.

III. Potential Costs and Implementation Problems -- Department of Transportation

The Department of Transportation (DOT) asked number of questions in their request for comments about the potential costs and implementation problems associated with the Access Board guidelines. DOT is particularly interested in learning about how small vessels differ from large vessels and therefore where the guidelines should differ as well.

1. Vessel Sizes

DOT wants to know how vessels should be distinguished - by passenger capacity or perhaps by U.S. Coast Guard regulations (large vessels are subject to 46 C.F.R. subchapters H or K and small vessels are subject to 46 C.F.R. subchapter C or T)? DOT is asking if there are other approaches to consider (*i.e.* length, displacement, *etc.*).

³ 69 Fed. Reg. 69,245 (Nov. 26, 2004).

⁴ The PVAAC included representatives from disabled groups, cruise lines, the Passenger Vessel Association, the Society of Naval Architects and Marine Engineers but did not from the charter or recreational boating industry.

2. Access Board Draft Guidelines

DOT asks a number of questions regarding the large vessel guidelines. For example:

- If there are any other ideas for achieving accessibility or any new cost data available?
- What should be considered a new vessel and thus triggering the requirement that the vessel be built to fully comply with the guidelines? What date should be used for determining if a vessel is old or new and thus subject to differing guidelines? How long will it take for industry to begin to build new vessels that comply with the guidelines?
- How do the guidelines interact with U.S. Coast Guard requirements?

3. Barrier Removal and Program Accessibility

Under ADA standards for other industries, Title III (private) regulated businesses must make readily achievable changes to existing facilities to accommodate persons with disabilities and Title II (public) entities must ensure program accessibility by making modifications to existing facilities that are not unduly burdensome. DOT asks if these concepts should apply unaltered to passenger vessels. In particular, should a greater degree of retrofitting be appropriate for vessels?

4. Shore to Vessel Transition

Since getting on and off of vessels can be difficult for passengers with disabilities and challenging for vessel and dock/gangway operators, DOT seeks comment on how to allocate the responsibility between vessel owners and dock or gangway operators. DOT asks if there should be different requirements for public or private entities. In addition, DOT seeks specific comment on whether small vessel operators should have greater discretion to use crew assistance as a means of access? What vessel size categories should different special provisions apply?

5. Access to On-Board Facilities

DOT asks how can accessibility to on-board facilities be accomplished on smaller vessels where space is at a premium? For example:

- Is it necessary to provide deck fittings to secure wheelchairs in passenger rooms, dining areas, and other common areas?
- Can cabins for passengers with wheelchairs be made available in all classes of service?
- What accommodations should be made for passengers with vision and hearing impairments to ensure they are alerted to emergencies, informed of passenger announcements and events, and capable of enjoying passenger entertainment and functions?
- Should DOT prohibit limits by vessel operators on the size or number of mobility aids a passenger may bring on board (i.e., powered wheelchairs or scooters)?
- When should a vessel operator be permitted to require an attendant?

6. Economic Considerations

DOT seeks information on the potential costs of the vessel accessibility requirements on small vessels. A copy of a previous economic study by the Volpe Center is included in the DOT docket for review.

Where do I get more information?

To view the notices, visit these links:

[Large Vessel Notice](#);

[Small Vessel Notice](#);

[Public Hearing Notice](#);

[DOT Request for Information](#).

Please contact Cindy Squires, NMMA's Regulatory Counsel at 202-737-9766 or csquires@nmma.org with your questions. NMMA encourages members send their comments to DOT and the Access Board by the July 28, 2005 deadline.

Most importantly, the Small Business Administration Office of the Advocacy has requested that NMMA members provided them with copies of all comments. Contact Michael See at 202-619-0312 or michael.see@sba.gov with your views.