

**ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD**

36 CFR Part 1195

[Docket No. 2004-2]

RIN 3014-AA11

**Americans With Disabilities Act (ADA)
Accessibility Guidelines for Passenger
Vessels; Small Vessels**

AGENCY: Architectural and
Transportation Barriers Compliance
Board.

ACTION: Advance notice of proposed
rulemaking; notice of hearing.

SUMMARY: The Architectural and
Transportation Barriers Compliance
Board (Access Board) is considering the
development of accessibility guidelines
under the Americans with Disabilities
Act of 1990 for newly constructed or
altered passenger vessels which carry
150 or fewer passengers or 49 or fewer
overnight passengers. This notice seeks
comment on various issues related to
the development of accessibility
guidelines for these types of passenger
vessels.

DATES: Comments should be received by
March 28, 2005. Comments received
after this date will be considered to the
extent practicable. The Access Board
will hold a hearing on January 10, 2005,
from 1:30 p.m. until 4:30 p.m.

ADDRESSES: Comments should be sent to
the Office of Technical and Information
Services, Architectural and
Transportation Barriers Compliance
Board, 1331 F Street, NW., suite 1000,
Washington, DC 20004-1111. E-mail
comments should be sent to
pvag@access-board.gov. Comments sent
by e-mail will be considered only if they
contain the full name and address of the
sender in the text. Comments will be
available for inspection at the above
address from 9 a.m. to 5 p.m. on regular
business days. The hearing on January
10, 2005 will be held at the Marriott at
Metro Center Hotel, 775 12th Street,
NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Paul
Beatty, Office of Technical and
Information Services, Architectural and
Transportation Barriers Compliance
Board, 1331 F Street, NW., suite 1000,
Washington, DC 20004-1111.
Telephone number (202) 272-0012
(Voice); (202) 272-0082 (TTY).
Electronic mail address: pvag@access-board.gov.

SUPPLEMENTARY INFORMATION: The
Architectural and Transportation
Barriers Compliance Board (Access

Board) is responsible for developing
accessibility guidelines under the
Americans with Disabilities Act (ADA)
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. The ADA is a
comprehensive civil rights law that
prohibits discrimination on the basis of
disability. Title II of the ADA
establishes requirements for the
purchase, lease, and remanufacture of
vehicles operated by State and local
government entities to provide
designated public transportation. 42
U.S.C. 12141, 12142, 12144. For
purposes of title II of the ADA, the term
“designated public transportation”
means “transportation * * * by bus,
rail, or any other conveyance * * * that
provides the general public with general
or special service (including charter
service) on a regular and continuing
basis.” 42 U.S.C. 12141(2). Passenger
vessels such as ferries operated by State
and local government entities provide
designated public transportation and are
thus subject to the transportation
vehicle requirements of title II of the
ADA.

Title III of the ADA establishes
requirements for the purchase and lease
of vehicles operated by private entities,
who are primarily engaged in the
business of transporting people and
whose operations affect commerce. 42
U.S.C. 12184. For purposes of title III of
the ADA, the term “specified public
transportation” means “transportation
by bus, rail, or any other conveyance
* * * that provides the general public
with general or special service
(including charter service) on a regular
basis”. Cruise ships and excursion boats
operated by private entities to provide
specified public transportation services
are thus subject to the transportation
vehicle requirements of title III of the
ADA. 42 U.S.C. 12181.

Title III of the ADA also establishes
requirements for the purchase and lease
of vehicles by private entities who are
not primarily engaged in the business of
transporting people but operate a
demand responsive or fixed route
system. 42 U.S.C. 12182(b)(2) (B) and
(C). For example, an amusement park or
hotel that operates shuttle boats to
transport patrons from a parking area to
the main attraction or hotel itself would
be subject to the transportation vehicle
requirements of title III of the ADA. In
addition to the transportation vehicle
requirements, title III of the ADA
establishes requirements for new
construction and alteration of places of
public accommodation operated by
private entities. 42 U.S.C. 12183. There

are twelve categories of places of public
accommodation covered by title III of
the ADA, including places of lodging,
establishments serving food or drink,
and places of exhibition or
entertainment. 42 U.S.C. 12181(7) (A)–
(L). Passenger vessels or portions of
vessels that are within any of the twelve
categories of places of public
accommodation such as cruise ships,
dinner boats, gaming boats, and
sightseeing vessels are thus subject to
the public accommodation requirements
of title III of the ADA.

In 1998, the Access Board established
a 21-member advisory committee to
provide recommendations to assist the
Board in developing passenger vessel
accessibility guidelines. The committee
included disability organizations,
industry trade groups, State and local
government agencies, and passenger
vessel operators. The Passenger Vessel
Access Advisory Committee (PVAAC)
met nine times between September 1998
and September 2000 and submitted a
final report “Recommendations for
Accessibility Guidelines for Passenger
Vessels” ([http://www.access-board.gov/
pvaac/commrept/index.htm](http://www.access-board.gov/pvaac/commrept/index.htm)) to the
Board in December 2000.

The PVAAC report addresses two
types of passenger vessels. Passenger
vessels which are subject to U.S. Coast
Guard regulations found at 46 CFR
Subchapters H or K, and smaller
passenger vessels subject to Subchapters
C or T. Most of the PVAAC report
focused on access in larger vessels, with
only one chapter of the report
specifically addressing smaller vessels
(see option 2 below for a summary of
the chapter). Determining which
Subchapter of the Coast Guard
regulations applies to a passenger vessel
is based on the number of passengers a
vessel is permitted to carry and the
volume tonnage of a vessel.

Also today, the Access Board issued
in the **Federal Register** a notice
announcing that the Board’s draft
guidelines for large passenger vessels
are available for public review on the
Board’s Web site ([http://www.access-
board.gov](http://www.access-board.gov)). Because determining the
tonnage of a passenger vessel is a
complicated process and because many
large foreign-flagged passenger vessels
are not subject to Subchapters H or K,
the Board’s draft guidelines would
apply to passenger vessels which are
permitted to carry more than 150
passengers or more than 49 overnight
passengers. These numbers were
derived from Subchapter K and are used
to distinguish Subchapter K passenger
vessels from Subchapter T passenger
vessels, which are generally smaller. It
is possible for some Subchapter H

passenger vessels to have fewer than these passenger numbers.

To assist the Board in developing accessibility guidelines for the design, construction, and alteration of smaller passenger vessels, the Board seeks comment on four options. Comment is sought in the following areas for each option:

- The feasibility of each option and the rationale for selecting one option over others;
- How a selected option should be modified to correct any identified weaknesses;
- Data relating to the costs and benefits of each of the options; and
- Recommendations on other ways to address the accessible design, construction, and alteration of smaller passenger vessels.

Option 1. Require vessels which are permitted to carry fewer than 150 passengers or fewer than 49 overnight passengers to comply with the same design, construction, and alteration requirements applicable to larger vessels addressed in the Board's draft guidelines except where it is not operationally or structurally feasible. Where a provision is not operationally or structurally feasible, compliance would be to the maximum extent practicable. The Board seeks comment on which particular provisions might be considered operationally or structurally infeasible.

Option 2. Require these smaller vessels to comply with the PVAAC report. In Chapter 12 of its report (<http://www.access-board.gov/pvaac/commrept/chapter12.htm>), PVAAC provided access recommendations for smaller vessels but applied the recommendations differently to sailing vessels and power vessels. Any Subchapter C or T sailing vessel could use the small vessel access provisions (summarized below). However, only Subchapter C or T power vessels that are within at least two of the following three measurements could use the small vessel provisions. The three measurements are:

- The length on deck of the vessel is 65 feet or less;
- The maximum beam (width) of the vessel is 16 feet or less; and
- On the vessels main deck, each of the following three areas (weather deck, major program area, and boarding deck) is 750 square feet or less in size.

Therefore, for example, a new water taxi with a length on deck of 65 feet and a beam of 16 feet could use the small vessel provisions. Other Subchapter C or T power vessels that do not meet at least two of the above three measurements would need to comply

with the access provisions applicable to larger passenger vessels.

The small vessel provisions generally address access only in a few areas including vessel embarkation and debarkation points, clear decks spaces and transfer seats, toilet rooms, accessible routes and transfer systems, and means of escape. The accessible route technical provisions also addressed brow and gangway requirements but did not include recommendations regarding gangway slopes. These small vessel provisions were based on language similar to what is found in the Board's draft guidelines which address larger vessels, but were extensively modified to be compatible with smaller passenger vessels.

Option 3. Develop general performance requirements which must be met when designing, constructing or altering smaller vessels. General performance requirements list objectives, rather than detailed design requirements, which must be accomplished to determine if a vessel is accessible. For example, general performance requirements for newly constructed smaller passenger vessels could include the following:

- Passengers with disabilities must be able to get on and off a passenger vessel by a roll-on access method or by use of a transfer device;
- Within the vessel, except for spaces and areas only connected by ladders, passengers with disabilities must be able to approach, enter, maneuver within, and exit each program area;
- Within the vessel, except for spaces and areas only connected by ladders, passengers with disabilities must be able to approach, enter, maneuver within, and exit each passenger toilet facility;
- Within the vessel, provide a circulation path usable by passengers with disabilities which connects accessible spaces and areas to an accessible entry and departure point.

Option 4. The Board's draft guidelines apply to larger passenger vessels (including sailing vessels) which carry more than 150 passengers or more than 49 overnight passengers. It may be feasible to apply the draft guidelines to some sailing and power vessels which carry fewer than 150 passengers or 49 overnight passengers. The Board is interested in receiving comment to determine at what passenger count the application of the draft guidelines to smaller passenger vessels becomes infeasible or at what size vessel the application of the draft guidelines becomes infeasible.

In addition to welcoming written comments, the Board will hold a

hearing on January 10, 2005 to give the public an additional opportunity to provide input on the Board's draft guidelines. Interested members of the public are encouraged to contact the Access Board at (202) 272-0012 (voice) or (202) 272-0082 (TTY) to pre-register to attend the hearing. A second hearing may be held later in 2005. The location, date, and time of the second hearing will be announced in a subsequent **Federal Register** notice and on the Board's Web site. The hearings will be accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available. Persons attending the hearings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Availability of Copies and Electronic Access

Single copies of the passenger vessels rulemaking (ANPRM on Access to and in Smaller Passenger Vessels, Availability of Draft Guidelines, Draft Guidelines and Supplementary Information, and Draft Plan for Regulatory Assessment) may be obtained at no cost by calling the Access Board's automated publications order line (202) 272-0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S-45. Please record your name, address, telephone number and publication code S-45. Persons using a TTY should call (202) 272-0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). Documents are also available on the Board's Web site (<http://www.access-board.gov>).

Emil H. Frankel,

Chair, Architectural and Transportation Barriers Compliance Board.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST-2004-19700]

RIN 2105-AB87

Nondiscrimination on the Basis of Disability: Passenger Vessels

AGENCY: Office of the Secretary of Transportation (OST), DOT.