



INTERNATIONAL COUNCIL
OF CRUISE LINES

July 28, 2005
Access Board Docket 2004-1 and 2004-2
Draft Passenger Vessel Accessibility Guidelines
DOT Docket OST - 2004-19700
ANPRM re: Non-Discrimination on the Basis of Disability: Passenger Vessels

Comments by
International Council of Cruise Lines

The International Council of Cruise Lines (ICCL) is a non-profit trade association that represents the interests of 16 of the largest cruise lines operating in the North American cruise market and over 90 Associate Member companies that are cruise industry business partners and suppliers. ICCL member cruise lines serve major ports in the United States and call at over 70 ports in the United States and at more than 600 ports around the world. Last year, ICCL's member lines carried more than 10.5 million passengers on approximately 120 vessels.

These proposed guidelines are of critical significance to ICCL members, as will be the operational and other issues that are to be addressed by DOT. The following submission reflects the comments of our members and is structured as follows:

1. General Comments
2. Detailed Comments on PVAG proposals
3. Response to Questions raised by DOT
4. Economic Analysis
5. Regulatory Impact
6. Appendix with Picture

The effort to develop guidelines for ensuring access onboard passenger vessels has been in progress now for approximately eight years. Despite this, there are numerous unresolved issues and unanswered questions. In the spirit of moving forward with guidelines that will reasonably address these issues, we recommend the following:

1. The various segments of the passenger vessel industry, together with the Access Board and staff, should identify those elements over which there is little or no disagreement either in scope or requirement and go forward with these elements in a process that would

set these rules in place as soon as administrative processes allow. We believe that this covers the majority of the elements.

2. For the on/off issue at the port/ship interface, the Access Board, the passenger vessel industry, and port representatives should work together to develop an acceptable performance standard that recognizes safety, feasibility and operational responsibilities.
3. For those elements where there is serious disagreement and unresolved matters due to technical or practical constraints, the Access Board and the passenger vessel industry should establish working groups of experts or other processes to resolve these issues.

ICCL notes once again that notices published in the Federal Register, together with the Draft Guidelines, posed to the industry over 150 questions of a significant nature. We remain extremely concerned that many of these questions are unresolved. Because this rulemaking will have a major impact on the passenger vessel industry as a whole, it is imperative that the Board and DOT resolve these matters correctly before proceeding with the rulemakings.

ICCL appreciates the opportunity to comment on this most important matter and the efforts of the Board members and staff to learn about the cruise ship industry. We look forward to working with the US Access Board and DOT in developing the final guidelines for access onboard passenger vessels.

A handwritten signature in black ink, appearing to read 'T.E. Thompson', with a stylized flourish at the end.

T.E. Thompson
Executive Vice President

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Section 1:

**ADA Commentary
ICCL General Comments**

ADA Commentary ICCL General Comments

Ships as a Safety System:

In developing accessibility guidelines and regulations for passenger ships, it is essential that there is a basic understanding that ships are not buildings. Indeed, ships are more than buildings, in that they are subject to a stringent set of safety requirements and conventions specifically designed for a maritime environment. Wholesale application of accessibility rules developed for and applied to land-based facilities to passenger ships and smaller vessels, in many instances, is not appropriate and in some cases, may be unsafe e.g., directional emergency signage and removal of sills on external doors in some locations – as discussed in detail in our submission. Therefore, accessibility rules for passenger vessels must take into account all of the features, operations, and safety standards unique to those vessels while continuing to provide a high level of service to persons with disabilities.

Ships are not fixed structures built to local building codes and do not use similar construction techniques that mostly rely on concrete, rebar, wooden joists and sheetrock. Ships are complex structures that must survive in a sometimes hostile environment and are subject to forces and accelerations in six degrees of freedom or motion – roll, pitch, heave, surge, sway and yaw. Movement of the ship in a seaway, even in only minor storms, is significantly greater than those movements that even an earthquake proof building would withstand. Recently, the news carried a number of reports of a “rogue” wave that damaged a large cruise ship. This was only one of three such instances to occur to passenger ships in the past few months. On one of these occasions, the water shorted out propulsion and control systems for the ship.

When a window breaks in a building and water intrudes, the water will flow down the stairs and into the basement or out a lower door with little damage other than soaked rugs and sheetrock. A ship must be able withstand this type of damage and not only stay afloat, but also remain a viable shelter for both passengers and crew. As noted above, a ship must also be able to keep the water from entering in the first place; thus, the need for weathertight and watertight doors, and associated sills. These closing devices and other safety features, such as fire doors, are designed to close and stay closed in an emergency. They are constructed to maintain the integrity of the hull in a dynamic environment and are paramount for the safety of passengers and crew. Unlike emergency situations occurring in buildings, a ship cannot simply call 911 to summon external help. It is imperative that a ship (both in its structure and operation) be a self-contained safety system, able to handle all emergencies.

Whereas it may be beneficial for a hotel to have a lip or sill on exterior doorways to prevent water damage to carpet, ships have more serious concerns. Existing requirements for weathertight and watertight integrity of the ship are based on safety concerns and not whether or not cosmetic damage may occur. Water entry into a ship not only causes stability concerns but also can adversely impact the safety of the ship in other ways such as loss of power and control.

Unlike buildings which remain in one location throughout their life and whose occupants must rely on external support from fire, police and local medical services in an emergency, ships must be able to survive an incident and provide services from within until reaching port or until outside assistance arrives to the ship's location at sea. In emergency situations on land, building owners and managers have little responsibility in regards to responding to an actual emergency. In hotels, staff have little responsibility for evacuation. The hotel guests have to make their way out of the building on their own or await rescue by the local fire department. Guests have minimal instruction in the form of an information card posted on the back of a door. Onboard passenger ships however, the passengers are actually instructed and drilled by trained crew in emergency procedures as required by SOLAS Chapter III Regulations 19.2.3; 19.3.3.1; and 30.2. Drills are required to be conducted within 24 hours from departing port when on an international voyage. On ICCL member cruise ships, the instructions are normally provided continuously on the TV set in passenger cabins and required drills are conducted prior to getting underway. Participation in these drills is mandatory for all passengers and designated crew.

The ship itself must be designed, constructed and operated as an integrated safety system. As stated before, there is no external 911. Where the primary response to a fire or other emergency situation in a building is to have everyone depart the building, this is not possible with a ship at sea. Exiting the ship in an emergency is the very last and most desperate option. In these instances, a ship must be self supporting and every member of the crew must be trained and competent to fulfill his or her duties.

Training requirements for crew members are contained in the International Convention for Standards on Training, Certification and Watchkeeping for Seafarers (STCW). This Convention spells out required training, knowledge requirements and proficiency skills necessary for certification in their assigned emergency duty. In an emergency at sea, all passengers receive assistance and direction, not just those with disabilities. Additionally, every passenger cruise ship has extensive emergency response plans for every major contingency and these plans are exercised regularly.

Because safety at sea is critical and the ship is a safety system in itself, the operational aspects of the ship are an integral part of the design and operation. Accordingly, the rules, regulations, codes of practice, building techniques and building materials for ships and rules for ship operations are themselves complex and voluminous. They are contained in multiple sets of rules that interlink to provide a series of safety nets for the ship, crew and passengers that allow these ships to operate independently around the globe. The rules for design, construction and operation include, but are not limited to:

- The International Convention on Safety Of Life at Sea (SOLAS) and associated safety codes; Resolutions, Circulars, Guidelines, and Unified Interpretations;*
- The International Loadlines Convention;
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW);
- Shipping Classification Society Rules;
- International Engineering Standards (IEEE, ISO);
- National Engineering Standards: (ASTM, ASME, DIN, JIS);

- Flag State regulations; and
- Shipyard standard construction practices.

* Safety Codes, Resolutions, Circulars, Unified Interpretations and other guidance may be adopted as mandatory or not. Often times, flag state administrations and port states will incorporate the non-mandatory documents into their own regulatory framework. All these form a body of expert opinion that is ignored at great risk.

Since ships travel around the world, these rules are internationally accepted. This acceptance has evolved from more than a hundred years of experience in safety of life at sea. Often these rules have been written in blood and lost lives. Accessibility rules, while important, are one more set of rules that must be woven into the fabric of ship safety and operability. Rules for accessibility can not be permitted to conflict with or emasculate rules whose very existence is to save lives and the environment. This concept is supported by the recent Supreme Court decision regarding access onboard cruise ships (*Spector v. Norwegian Cruise Lines*, 2005).

This safety system has worked very effectively to protect the lives and safety of persons onboard passenger ships. In the past 35 years, since 1970, there has not been a single passenger death on an ICCL member ship resulting from a marine related casualty (fire, explosion, collision, grounding). ICCL does not have information pre-dating 1970.

Concern has been expressed that an injured passenger or passengers with disabilities may be unable to respond to an emergency and may thus be forgotten and left in their room. While this is a legitimate concern for a hotel guest, SOLAS and STCW specifically address this matter for passenger vessels. Passengers are instructed and drilled by trained crewmembers in what action to take when they hear the emergency alarm, where to go (their assembly/muster station), how to get there, and what route to take. When gathered at the assembly/muster station, procedures are undertaken to assure that all passengers are accounted for.

Additionally, SOLAS Chapter III Regulation 37.2 states that “Each passenger ship shall have procedures in place for locating and rescuing passengers trapped in their staterooms.” Regulations in STCW (Regulation V/2 and V/3) require training and demonstration of competency assisting passengers, and have specific training in crowd management, passenger safety, and crisis management and human behavior. Requirements for the training are also specified and mandatory requirements regarding persons designated to assist passengers in emergency situations are found in STCW Regulations and Mandatory Code sections A-V/2 and A-V/3. Thus, no one is left in his or her cabin.

Specifically, the regulations address the following:

- Knowledge of muster lists, emergency instructions, emergency exits and restrictions on the use of elevators
- The ability to assist passengers to muster stations by:
 - Giving clear reassuring orders
 - Controlling passenger flow in corridors, staircases and passageways
 - Maintaining escape routes clear of obstructions

- Assisting the evacuation of “disabled persons and persons needing special assistance”
- Searching accommodation spaces

These safety requirements are further expanded in SOLAS Chapter IX which mandates an onboard and shoreside safety management system to identify who is responsible for assuring compliance with every aspect of these regulations and how the regulations are carried out for every type of shipboard emergency. Further, it specifies that these elements are subject to both internal and external audit. To assure compliance with the numerous safety rules, ships must undergo pre-construction plan review and approval, continuous inspection during build, and regular examination by various safety agencies including the US Coast Guard every 90 days throughout the life of the ship (when the ship is in U.S. service). These numerous inspections and audits assure that the ship structure and operating systems as well as crew qualifications are maintained ensuring that all operations are conducted in accordance with the equally detailed operational rules and regulations. On a large passenger cruise ship, these inspections average more than one a week by numerous agencies.

Accordingly, we believe that any Regulations or Guidelines relating to passenger vessels should recognize and incorporate the operational aspects of carrying passengers onboard a ship. Crew training and crew assistance/response should be recognized and taken into account.

Existing Vessels:

The draft Guidelines are replete with provisions and exceptions addressing elements on existing vessels. While ICCL agrees that requirements for alterations to existing vessels should be differentiated from new construction, the wording in these provisions implies that they will be applicable to unaltered existing vessels and elements. The draft Guidelines do not have existing vessels and elements within its scope. Therefore, the term “existing” should be amended to address alterations to existing vessels or elements.

Engineering Standards:

Marine construction standards must be referenced and utilized in the proposed guidelines. It makes no sense to reference shoreside building standards when those standards are not recognized or accepted by the countries in which the ships are built or when those standards do not account for the dynamic loads that the systems must withstand. Referencing such standards, meant for shoreside building construction in the United States, has no relevance to a ship being designed and built in a non US ship yard.

Technical Terminology:

Each industry has its own set of “jargon” or the specialized technical language of the trade. The maritime industry is no different. Accordingly, referencing a collegiate or standard dictionary for terms specific to the marine industry is inappropriate and will lead to miscommunications, misunderstandings, and missed opportunity in trying to develop and apply accessibility rules for

passenger vessels. This confusion frustrates providing access. Terms specific to the marine industry must be utilized and those terms are found in maritime dictionaries and other maritime professional publications. It is these reference materials that must be utilized if ship designers, construction yards and operators are to understand what is being proposed or required.

Alterations, Modifications and New Construction:

Application of accessibility guidelines to construction of new vessels is appropriate provided the building sequence is recognized and the final rules are not applied to existing vessels or vessels that are already designed and contracted. Because of the lead time necessary for vessel design, plan review and approval by multiple agencies, as well as contract penalties for design changes, it will not be practicable or economically feasible to require compliance by vessels that have already been designed and contracted for construction at the time the Guidelines become legally effective. This is particularly true for a company that intends to build a series of identical vessels from the same approved drawings without major modification. These “sister vessels” are often part of a company’s overall economic long term plan and major changes, which cause extensive contract price increases due to change orders, may severely impact the economic viability of a company.

With regards to major modifications such as lengthening of a ship by inserting a whole new section, adding a whole new deck or deck section, these new sections generally can be made accessible; however, it may not always be feasible for some or all pathways of travel to the new sections to be rebuilt so as to be fully accessible. This is because ship construction, unlike building construction, relies on an integrated system and it is rarely possible to modify one part of a ship, widening a passageway for example, to be undertaken without impacting the whole of the surrounding integrated structure. Thus, extending the major modification to the entire ship may not be feasible or practicable.

The term “alterations” must be very specifically defined. Bringing certain portions of an altered element into compliance may be reasonably accomplished while full compliance of an altered element may not be possible due to shipboard construction limitations and adverse impact on the ship as a system. For example: If an elevator car is changed out or modernized, it will certainly be possible to properly locate the call buttons, update the floor announcements, adjust rail heights and floor surface. However, it will not be possible to change the physical dimensions of the elevator car to bring it into compliance with accessibility guidelines for width and depth requirements. Attempting such a feat would necessitate making significant structural modifications around the new elevator car which may adversely impact compliance with main vertical fire zone requirements, and escape path width requirements. Additional steel requirements, the additional weight of the larger car and the larger lift machinery would impact the stability of the ship, which must also meet very stringent requirements, and would impact the electrical load capacity of the ship. This may, in turn, require re-engineering of the generators and the electrical distribution switchboards.

As can be seen from this example, ships are not as easily altered as buildings due to the integrated structure of a ship and associated safety systems, weight restrictions and the impact on

stability. Thus, the overall safety of the ship with regard to its response to given sea states and ability to survive a flooding casualty may be adversely impacted.

Potential Conflict with Standards of Other Countries:

ICCL notes that administrations of several countries, where ICCL member ships either make port calls or embark passengers, are either in the process of or have indicated the intent to adopt accessibility requirements for passenger ships. These include, but are not limited to: United Kingdom, Australia, Japan, Italy and the European Union. It is not clear how ships calling at all these countries can comply with differing standards if each administration elects to press its own accessibility scheme on passenger ships not otherwise subject to its jurisdiction. To avoid conflict, ICCL recommends a harmonized approach to the development of these guidelines.

On/Off Access and Gangways:

Access for all persons on and off a passenger vessel must be a responsibility that is shared between the ship and the port. Primary concern for embarking and debarking passengers under all weather and tidal conditions must be the safety of all passengers and crew.

ICCL members call upon over 70 ports in the United States and over 600 ports world wide. Access on and off any passenger vessel will vary depending on many factors including the port infrastructure, the type of operation--whether it be a turn around port or a port of call--and tidal influences. Some ports are well developed with good infrastructure for accommodating the boarding of vessels while others are remote and have little infrastructure.

In many instances, an ICCL cruise ship must anchor away from the port and use either the ship's tendering vessels or local passenger boats to ferry the passengers between the ship and the port landing. In these situations, the dynamic motions between the tendering vessel and the ship and/or ship's boarding platform must be considered, in addition to the actual interface between the platforms. Due to these motions and the overall safety of transferring between two vessels, we recommend that the guidelines expressly exempt the actual transfer interface or operation.

In other ports, embarkation may be by means of a sophisticated boarding bridge, similar to a jetway that one encounters in boarding an airplane at a major airport. In still other ports, access to the ship will be via a gangway type arrangement. These gangways vary in construction, length, width, and walking surface and may or may not have some sort of transition between the end of the gangway and the shore or ship. In many instances, these gangways are provided by the port of call; in others, the ship's limited gangway is used to augment port facilities.

In large ports utilizing a boarding bridge, the slope of the boarding ramp can be controlled and is usually very slight. In other situations, the slope of a boarding gangway varies significantly depending upon the shore structure relative to the boarding location on that ship. The slope will also vary greatly within a given port facility if there are large tidal fluctuations that must be contended with. In many instances this may be minimized by operational practices and utilizing different boarding ports located on different decks. Even with these efforts, it is not always possible to ensure a gentle slope for unassisted access. Add to this the use of articulated stair

steps or cross bars on a gangway to ensure safe footing in adverse weather and for steeper slopes, and it becomes impossible to ensure unassisted safe on/off access for wheelchair users and other persons with mobility disabilities. In many instances, during tendering operations, especially where there is a poor port infrastructure, high tidal fluctuations or bad weather, all persons are offered or receive assistance in getting on or off the ship safely. This is seen as an operational and safety necessity.

A detailed, prescriptive requirement addressing an issue that is readily recognized as not having a commonly accepted solution is inappropriate. Therefore, on/off accessibility guidelines should be in the form of a performance standard.

To take account of the wide variation in ship designs, port facilities and tidal ranges, a pragmatic approach is essential. We recommend a performance standard that considers the following:

- a) A means of transfer is to be provided between a passenger vessel and regular ports of call on an itinerary.
- b) In all transfers, the safety of both passengers and crew must be the primary concern.
- c) The interface between the ship and the means of access both inside the vessel and on the quayside is to be suitable for passengers with reduced mobility.
- d) Due to safety concerns, independent access may not be possible in adverse tidal or weather conditions.
- e) Gangway surfaces are to have a non-slip finish and be suitable for the marine environment.

Given the constraints we have discussed, it is evident that the currently drafted exception for gangways with a length equal to the beam of the vessel is unrealistic and unworkable. Please see photos located in the Appendix.

Extraterritorial Application with regards to On/Off matters:

Access on and off a vessel is extremely dependent upon many factors including the port infrastructure, the remoteness of a port, and tidal variations. The interface between a ship and port facilities therefore varies widely from port to port. While this is an extremely difficult issue to properly and reasonably address within United States ports where US jurisdiction is clear, the matter of on/off access can not be addressed by US law or regulation when it involves a port not subject to US jurisdiction and a non-US flag passenger vessel. ICCL members strive to provide reasonable access both on and off their vessels in all ports as this is in the best interests of our guests. However, the application of US law and regulation to non-US flag ships operating in non-US ports is unacceptable.

Application to Shore Excursions:

Guidelines for accessibility onboard passenger vessels by its definition cannot include requirements for shore excursions or extraterritorial ports of call.

With regards to shore excursions, the majority of excursions are provided by independent, third party vendors. When these excursions and vendors are located within US jurisdiction, they themselves are subject to the Americans with Disabilities Act (ADA) and must comply with applicable accessibility requirements for their operations. Thus, cruise ships and cruise operating companies cannot be responsible for compliance by third parties.

General Footnote:

ICCL suggests that a general provision be included in the Guidelines which clarifies that certain items such as door closing speeds and opening forces, slopes of ramps, maximum cross slopes of decks, etc., are to be measured when the ship is in the static design condition. Thus, any changes due to ship motions, wind, change in operating condition (trim or heel) would not be cause for these parameters to be considered out of compliance.

These elements must also be harmonized with SOLAS mandatory safety requirements.

Advisory Notes:

ICCL recommends that “Advisory Notes” be included throughout the final text to include commentary that has been useful or necessary in clarifying or explaining the various requirements so that this vital information will not be lost in final publication.

Passenger Vessel Access Advisory Committee (PVAAC):

The Board specifically asked for expert opinion assistance in developing guidelines for accessibility on passenger ships. To this end, the Passenger Vessel Access Advisory Committee was established. The committee included experts and representatives from the maritime industry, vessel operations, disabled professionals, and various associations representing the groups listed above. Over the course of several years and many meetings, the professional advice of this group was sought and obtained. It is disappointing to note that where PVAAC noted specific safety issues and potential conflict with international standards, this advice was rejected, apparently on the simple basis that it was necessary to maintain consistency with ADAAG. This is extremely disappointing when one realizes that the Committee was formed in recognition of the fact that shoreside accessibility standards written for construction of land-based facilities were inappropriate for passenger vessels. The goal is to create accessibility without compromising safety, and PVAG raises certain critical safety issues and conflicts with international standards.

The Way Forward

The effort to develop guidelines for ensuring access onboard passenger vessels has been in progress now for approximately eight years. Despite this, there are numerous unresolved issues and unanswered questions. In the spirit of moving forward with guidelines that will reasonably address these issues, we recommend the following:

1. The various segments of the passenger vessel industry, together with the Access Board and staff, should identify those elements over which there is little or no disagreement either in scope or requirement and go forward with these elements in a process that would set these rules in place as soon as administrative processes allow. We believe that this covers the majority of the elements.
2. For those elements where there is serious disagreement and unresolved matters due to technical or practical constraints, the Access Board and the passenger vessel industry should establish working groups of experts or other processes to resolve these issues.
3. For the on/off issue at the port/ship interface, the Access Board, the passenger vessel industry, and port representatives should work together to develop an acceptable performance standard that recognizes safety, feasibility and operational responsibilities.

Section 2:

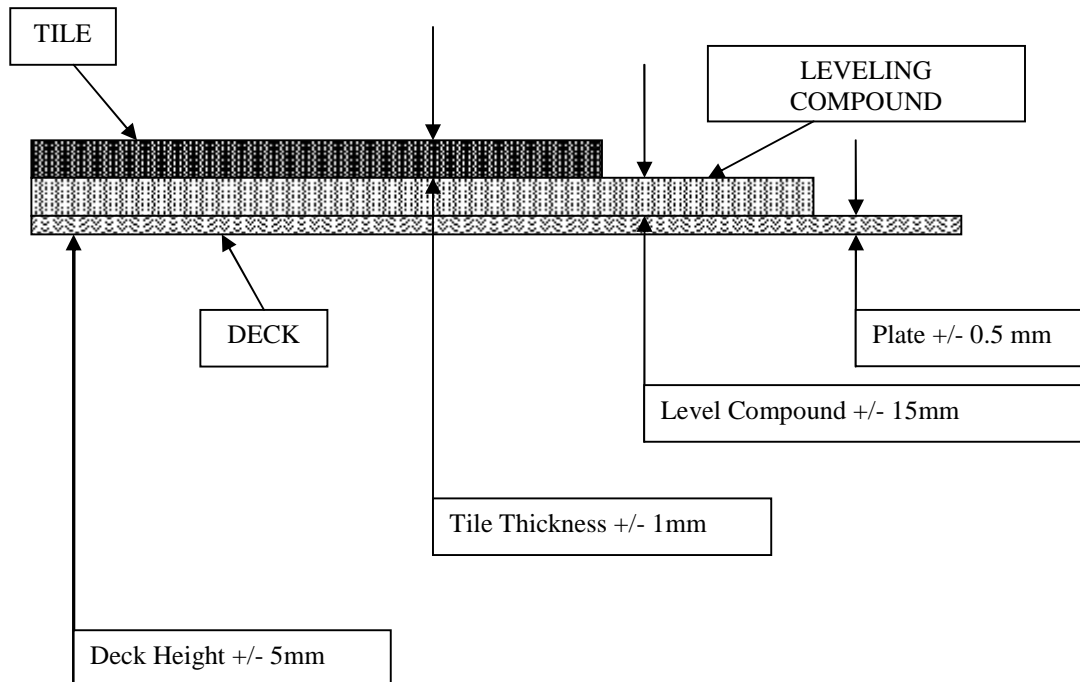
**ICCL COMMENTS ON
U.S. ACCESS BOARD
DRAFT
PASSENGER VESSEL ACCESSIBILITY GUIDELINES**

**U.S. ACCESS BOARD
DRAFT
PASSENGER VESSEL ACCESSIBILITY GUIDELINES**

Discussion of Provisions

1. V101 – Purpose: ICCL recommends that the term “additions” be removed as in the maritime industry these are referred to as alterations.
2. V104 – Conventions: A convention in the maritime industry refers to such regulations as the International Convention on Safety of Life at Sea (1974), the International Loadlines Convention (1966) and other international regulatory documents. A different term should be selected for this heading.
3. V104 – Dimensions: The notation referencing minimum, maximum and absolute dimensions does not, in many cases, permit sufficient leeway for design, construction tolerance and operations for floating versus land-based facilities. Given the multiple layers and elements involved in welded steel construction, dimensions of the finished structures and elements within may differ slightly from design dimensions by an inch or more. This point is illustrated by the diagram below.

TYPICAL SHIP BUILDING TOLERANCES



Total Tolerance: $5 + 1 + 15 + 0.5 = +/- 21.5\text{mm}$ (+/- approximately one inch)

4. V104.1.2 – Slopes: Should read “static *design* condition.” While the Board recognizes that vessels move in six degrees of freedom, slopes are measured from the static design condition. Such consideration also should be made clear for other items that may be impacted by the ship movement or weather conditions such as door opening and closing forces and times.
5. V105 – Referenced Standards: The guidelines call for compliance with U.S. engineering standards such as ANSI, BHMA, ASTM, ANSI and NFPA. As previously noted, non-US flag cruise ships are built in non-US shipyards using mostly non-U.S. equipment. Foreign countries, shipyards, certifying governments, manufacturers etc. may not recognize or even accept U.S. engineering standards over their own. German shipyards use DIN or other EU recognized standards and Japan yards use JIS. The same is true for equipment procured from non-U.S. manufacturers. If it is only a matter of certification inspection, it is one issue; if it is a matter of changing materials standards for the equipment or changing tolerances or other physical properties of the equipment, it may be impossible for the non-U.S. manufacturers to meet the referenced U.S. engineering standards. This can also negatively impact issuance of a warranty by the manufacturer.

ICCL recommends that construction of the ship and manufacture of its components be permitted to utilize recognized non-U.S. engineering standards common to the maritime industry.

6. V105.2.4 – IMO: This incorrectly refers to SOLAS as a standard. It is not. These are international regulations and have a different legal standing. SOLAS and other international regulatory conventions also reference mandatory and non-mandatory interpretations, codes, and implementation guidelines, such as Resolutions, Circulars, Unified Interpretations and Guidelines.
7. V105.2.5 – NFPA: IMO Regulations take precedence over NFPA standards unless the NFPA Standard is referenced by an IMO document.
8. V106 – Definitions: ICCL recommends that the guidelines utilize the correct nautical terms that are applicable to ship construction and used throughout the maritime industry. These nautical terms may not be found in collegiate dictionaries or the existing definitions therein may differ from maritime usage. See comments at General Comments, “Technical Terminology”.
9. V106.5 – Addition: This definition should be deleted, as it is included within the concept of alteration.
10. V106.5 – Administrative Authority: In as much as these guidelines apply to non-U.S. Flag ships, this definition is not accurate for these “foreign” vessels and must be modified accordingly.
11. V106.5 – Assembly Area: In the marine context, the term “assembly areas” refers to muster stations. In the proposed rule, the term is used to describe places of gathering, such

as lounges and theaters. Therefore, the use of this term can result in confusion. Clear differentiation must be made in the definitions section regarding this terminology and clearly stating the Board's intent versus SOLAS' intent. ICCL recommends that the term in the guidelines be changed to "program area", "passenger gathering area", or some other term that is not likely to be confused with the SOLAS safety term.

12. V106.5 – Camber: The definition should state that this is the "transverse" slope of the deck for the purpose of shedding water. Increase in strength, headroom etc. is not the purpose or definition of camber.
13. V106.5 – Ground Level: In as much as ships are not buildings or shoreside facilities, the term "ground level" is misleading, inappropriate, and could be confusing. We recommend the term be changed to "deck level" in keeping with commonly accepted nautical/maritime vocabulary.
14. V106.5 – Mezzanine: This should be referred to as "tween-deck" space which is the accepted nautical term.
15. V106.5 – Occupant Load: Occupant loading for various areas on a ship or passenger vessel are not defined in this manner. This will cause problems in design of vessel escape routes in accordance with SOLAS. USCG regulations determine occupancy load may be based on a number of different criteria, including:
 - Rail length
 - Seating capacity
 - Deck space (sq. ft. per person)
 - Stability limitations
 - Size of exit doors from the interior space
16. V201.1 – Scope: "Newly designed" and "newly constructed" are not defined terms. There needs to be a determination as to when these requirements would apply. The only flexibility provided in application of new regulations for the ship owner is before the contract is signed. Therefore, the application date for any regulations should be for classes of ships "contracted on or after MONTH XX, 20XX". Changes for subsequent ships in a series due to new or changed regulations will result in a significant cost increase.

Application vis-à-vis the number of passengers or overnight passengers appears to be correctly stated here. The other statements in the Guidelines should be brought in line with this so as to be clear.

17. V202.1 and .2 – Additions: Consistent with ICCL's previous comment, these references to additions should be deleted.
18. V202.3 – Alterations: ICCL notes that some maintenance and repair could be considered alterations and trigger requirements for compliance. The term "alteration" should be defined in the context of the terminology used in the maritime industry. See also General Comments concerning alterations.

19. V203 – General Exceptions: The Passenger Vessel Accessibility Guidelines (“PVAG”) should contain an express exception clearly stating that the PVAG do not apply to crew areas. ICCL acknowledges that V201.1 references only “passenger areas.” However, a more explicit statement of the inapplicability of PVAG to crew areas is warranted, particularly given that the land-based accessibility guidelines (in particular the recently revised guidelines) are replete with exceptions for employee work areas.

Given the Supreme Court’s pronouncement in *Spector* that Title III’s requirements do not extend to matters that interfere with the “internal affairs” of a foreign-flag vessel, nor adversely affect shipboard safety or conflict with international requirements, a complete exception for crew areas is mandated. There can be no issue more clearly related to the “internal affairs” of a foreign flag vessel than the terms and conditions under which crew reside onboard the vessel. Moreover, international requirements, such as SOLAS, STCW and ILO establish strict physical and health requirements for all crew members and require that all crew members be capable of responding to emergency situations.

20. V203.2 – Limited Access Spaces: This section should be deleted since it does not deal with passenger spaces that are the subject of this proposed rule. A clear statement to this effect should be inserted at the front of the Guidelines under applicability.
21. V203.4 – Raised Refereeing, Scoring and Judging Areas: This exception should also be extended to temporary and/or raised areas that are constructed for a specific purpose similar to the above and are not for passenger use. For example, as discussed by the PVAAC, when a raised Jacuzzi type pool has a temporary platform placed over it for entertainment purposes.
22. V204.1 – Protruding Objects: This requires that all circulation paths (not just accessible routes) used by passengers comply with V307. ICCL recommends that this be changed to read “circulation paths *normally meant to be used by passengers.*” As currently written, it could be misinterpreted to mean that crew circulation spaces (stairways, service corridors, elevators etc.) not for use by passengers but which could be used by passengers either intentionally (against prohibition) or mistakenly in an emergency, would have to comply with the referenced section.
23. V205.1, Exception 1 – General: This is a sensible exception.
24. V205.1, Exception 3 – General: ICCL recommends that the term “kitchen” be changed to “pantry” to conform to shipboard terminology.
25. V206.2.1 and Exceptions thereto – Onboard Accessible Routes, Multi-Deck Vessels: The draft PVAG have significantly narrowed the application of the exceptions recommended by the Access Board’s own Passenger Vessel Access Advisory Committee (“PVAAC”) to the vertical access requirements set forth in V206.2, by excluding “entry decks” from the exceptions. Whereas PVAAC did not require vertical access between passenger decks on

vessels with fewer than three decks, on vessels with less than 3000 square feet per deck, or to any deck with less than 300 square feet, PVAG excludes all “entry decks” from these exceptions. The draft PVAG thus establish an absolute requirement for vertical access between all entry decks on a vessel.

It is unclear whether, or the extent to which, this vertical access requirement would extend to the small tender platforms or side pontoon door decks on cruise ships. Because this “passenger deck” is probably less than 300 sq ft. it appears that it may indeed be exempt under Exception 2. However, V206.4 appears to require that each entry and departure point used by passengers be on an accessible route. This should be clarified as these openings are, to our understanding, below the bulkhead deck and have special provisions for watertightness etc. Given this, safety feature/ requirement, it would appear that an elevator could not provide direct access to this deck. Also, any doors at this level would have to be watertight and thus have substantial sills if they were even allowed. This issue can be overcome with lifts and should be acceptable.

Cruise ships may provide multiple platforms, to facilitate efficient loading and unloading of passengers. Platforms typically are provided on each side of the ship, to accommodate tender approach to either side of the ship. Because multiple tender platforms may be provided, and individuals with mobility impairments can be assigned/directed to the tender platform with vertical access, vertical access should not be required to all such decks. ICCL respectfully submits that it would be more appropriate to require vertical access only to one such tender platform on each side of the ship (where such platforms are provided on both sides of the ship).

26. V206.2.1.1 – Stairs and Escalators: The term “additions” should be deleted per previous comments.
27. V206.2.2, Exception 1 – Spaces and Elements: Please refer to previous comments regarding the SOLAS definition of assembly area.
28. V206.2.3, Exceptions thereto – Restaurants and Cafeterias: Exception 1 does not require an onboard accessible route on vessels that otherwise are not required to provide onboard vertical access to mezzanine dining areas that contain less than 25% of the total combined dining and seating area, where the same décor and services are provided in the accessible area. Exception 2 does not require an onboard accessible route to raised or sunken dining areas in existing vessels, irrespective of the size of the area or whether the vessel is otherwise required to provide onboard vertical access, again provided the same décor and services are provided in the accessible area and the accessible area is not restricted to use by persons with disabilities.

These exceptions should be extended to raised and/or sunken dining areas on newly constructed cruise vessels as well. Raised dining areas may be created in dining areas for a multitude of design reasons, such as conditions stemming from use of the space below the dining area or even maintaining views through portals or of a focal point in the room. Such levels may not be served by an elevator (particularly if the raised area does not qualify a

higher deck or even a tween deck). Such levels also may not be served by an accessible route, as space constraints in combination with the necessary dining capacity may make stepped access the more viable solution. In such circumstances, where there truly is no difference in the experience being offered on the different levels of the dining area, and the areas have the same décor and service, these exceptions should apply irrespective of whether the vessel is otherwise exempt for the requirements for vertical access or is an existing vessel. It is also significant that in most main dining areas onboard a cruise vessel, passengers are assigned to a specific table and do not get to choose the particular table at which they sit.

29. V206.4 – Entry and Departure Points: Where ships have multiple tendering platforms that may be considered *entry decks*, it is unreasonable to require each to be accessible. Because access to the ship via these decks is controlled through the use of tendering vessels, operational methods can be employed to assure that persons needing an accessible route are brought to the correct platform that is so provided on each side of the ship. Also, see previous comment in response to V206.2.1.
30. V206.2.9 – Play Areas: ICCL recommends changing the term to “deck level” per prior comment relating to the term “ground level”.
31. V206.6 – Elevators: See comments in response to V407.4.
32. V206.6.1 – Existing Elevators: The Guidelines contain numerous exceptions and provisions for “existing” vessels or elements. This labeling is confusing in that it appears to suggest that these requirements are applicable to existing vessels and/or elements irrespective of whether they have otherwise been altered. All exceptions labeled “existing” should be revised or amended to “alterations to existing”. By their own terms, these guidelines only apply to newly constructed or altered vessels.
33. V207.1 – General: It should be made clear that accessible means of escape can be provided only to a certain point where escape must involve the use of lifeboats or other emergency methods of evacuation.
34. V207.2 – Accessible Means of Escape, Number Required: This section needs to be clarified. ICCL recommends that the requirements of SOLAS be adopted and that one of the two required means of escape be accessible in as much as SOLAS also requires all accommodation spaces be equipped with automatic sprinkler systems. Draft PVAG could have the unintended effect of requiring means of escape in excess of that required by SOLAS. SOLAS 2.2 states: Lifts shall not be considered as forming one of the means of escape as required by this regulation. While IMO Circular 846 permits lifts to be used as an additional means of escape (provided such lifts are crew-operated and have emergency power), such means of escape does not count toward satisfying the number required under SOLAS. This section and Exception 1 must be clarified.
35. V208.1 – Passenger Vessel Boarding: This requires that at least one passenger boarding system must be provided that complies with V412. While this may be possible in a

terminal with a bridge-way, this is not possible for a vessel carried gangway and in many instances, for gangways provided by the ports. Because of tidal fluctuations and the variation in vessels calling at a facility, and because of the design of gangways for safety purposes in all weather conditions, the requirements of V412 are not achievable. For example, gangways provided by ports such as Juneau and other Alaskan or New England ports where tidal changes may reach as much as 30 feet, can exceed the proposed slope requirements. While some ships may be able to minimize the impact by moving the boarding location from deck to deck, this will not always provide the shallow slopes desired. Additional relief in these situations may be provided by the shoreside infrastructure and any platforms and additional ramps available at specific ports as well as the physical space available for providing this equipment. All of this will vary however from port to port and ship to ship in an infinite combination. Thus, a single prescriptive requirement can not address each and every circumstance. Please see also the discussion in General Comments.

To take account of the wide variation in ship designs, port facilities and tidal ranges, a pragmatic approach is essential. ICCL recommends a performance standard that considers the following:

- a) A means of transfer is to be provided between a passenger vessel and regular ports of call on an itinerary.
- b) In all transfers, the safety of both passengers and crew must be the primary concern.
- c) The interface between the ship and the means of access both inside the vessel and on the quayside is to be suitable for passengers with reduced mobility.
- d) Due to safety concerns, independent access may not be possible in adverse tidal or weather conditions.
- e) Gangway surfaces are to have a non-slip finish and be suitable for the marine environment.

Additionally, in establishing requirements for accessible boarding systems, both the Access Board and DOT must be cognizant of the extraterritoriality issues that arise in extending these requirements to foreign ports of call. Attempting to impose requirements on a foreign-flag vessel docking at a foreign port is clearly an extraterritorial application of Title III. Moreover, there are serious legal issues regarding U.S. jurisdiction to impose accessibility requirements on foreign ports of call. We strongly encourage that PVAG adopt a performance standard for boarding systems and such standard should only apply with respect to U.S. ports. We note that DOT's implementation of the Air Carriers Act has essentially adopted a performance standard for boarding issues notwithstanding the fact that the distance between the aircraft and the ground is essentially fixed (unlike the variable ship/port interface). *See* 14 C.F.R. §§ 382.40(a), 382.40a(a). Furthermore, the performance standard is applicable only at larger airports receiving in excess of a given number of flights per year. *See Id.* (requirement to provide boarding assistance in situations where passengers are not boarded by "level-entry loading bridges or accessible passengers lounges" applies only to air carriers "conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements").

A passenger boarding system carried by the vessel can not possibly meet the proposed requirement for all ports visited that may not or do not have the shoreside system that meets these requirements. Even if the largest vessels were to carry a gangway equal to the beam of the ship (approximately 105 feet) this would only permit use in a 9 foot (if a 1:12 slope is permitted) difference between the ship and the “shore” landing point. Aside from the practical matter of constructing a strong enough gangway of this length that could be carried onboard a ship, there are many ports where the difference between the exit portal on the ship and the shore level are greater than this distance due to the interface between the ship and the port and/or extreme rise and fall of the tides. Additionally, some ports will not physically have the room for such a long gangway. The on/off matter has been identified as potentially the most complex and problematic for both the ships and the shore facilities. This matter is further complicated by extra-territorial concerns. Please see our previous comments.

36. V210 – Rinsing Showers: V210.1 provides that where rinsing showers are provided “at a location,” at least one shall be accessible, *i.e.*, comply with the requirements of V608. This scoping should be modified to provide greater clarity as to the meaning of “location.” For example, if rinsing showers are provided on both the port or starboard sides of a pool area, or alternatively are located at the forward and aft portions of the pool area, does this qualify as two different “locations” or simply one “location?” While it is appropriate that at least one accessible rinsing shower be provided in the pool area, ICCL questions the need to provide more than one in a single pool area simply because the rinsing showers are distributed around the pool area rather than clustered together at a single spot.
37. V212 – Kitchens, Kitchenettes, and Sinks: Kitchen and kitchenettes for guest use are referred to by their nautical name as pantries and should be referred to as such.
38. V211– Drinking Fountains: Delete reference to detention facility, as these are not passenger spaces.
39. V215.1 – Alarms: As an alternative to a visible alarm, technologies such as personal text pagers should be permitted. This text capable device, which is currently being employed on vessels, can provide the user with notification, instructions and other information. We believe that this and other technologies should be accepted as alternative compliance. Please see General Comments “Ships as a Safety System” and comments in response to V217 and V224.4.

It should be noted that modern ships no longer utilize separate bells or other devices to sound an alarm. Modern systems utilize the public address system that has very specific performance requirements in SOLAS. The public address system power is insufficient to also power a visual alert and thus would require a dedicated electrical system throughout the vessel that must be fed from the emergency system.

Unlike shoreside facilities, passenger ships have crewmembers that are trained and tasked with assisting persons in the event of an emergency. Therefore, we consider the existing SOLAS regulations for transmitting alarms when supplemented by alternative technologies

and operational practices, to be sufficient for assuring the safety of everyone onboard a passenger vessel.

40. V215.3 – Guest Rooms: See comments in response to V215.1.
41. V216 – Signs: ISO, at the direction of IMO, is currently preparing a directive with regard to signage onboard ships. These signs will be required to be certain sizes and contain certain safety information with regards to Assembly Stations. These signs are required to use international symbols which do not lend themselves to Braille or tactile lettering. Given the operational safety requirement onboard ship and the extent of crew training and intervention in an emergency, we do not believe that these signs should be required to have either Braille or tactile characteristics. The Board should also ensure that there are no additional conflicting requirements.
42. V216.4.1 – Signs: SOLAS requirements for Low Location Lighting (LLL) require a lighted sign at each emergency exit. It would be more reasonable to require that each of these LLL exit locations also be equipped with the sign envisioned by this requirement. Such an emergency exit indicator could be molded into the LLL fixture. The requirements in V703 should be adjusted to conform to the SOLAS technical standard for location, height etc.
43. V216.4.2 – Areas of Temporary Refuge: On a large passenger ship with sprinkler systems, and complex requirements for ventilation, etc., “areas of temporary refuge” are a misnomer when considering passenger ships that are in compliance with SOLAS and other international safety requirements.

ICCL recommends that an exception be included for those vessels that comply with SOLAS fire protection and sprinkler system requirements. See SOLAS Chapter II-2.

44. V216.4.3 – Directional Signs: ICCL recommends that this paragraph be deleted. Whereas the purpose of ADA is to ensure independent access, in an emergency onboard ship, safe egress is not an individual or independent function. The safety of ALL passengers onboard dictates that ALL will be assisted. The location of the safe means of escape will depend upon the circumstances of the emergency. Thus, the concept of directional signs onboard a ship to designate the direction of safe egress is inappropriate and such signs could easily misguide a person into danger rather than away from it.

Safe escape from any space onboard ship is a complex matter. For this reason, maritime experts such as the USCG and IMO are charged with assuring the safety of crew and passengers. Given current regulatory signage requirements, shipboard safety systems, and crew emergency procedures, the proposed signage will be counterproductive and may very well promote confusion. Moreover, SOLAS specifically prohibits the use of directional LLL. See SOLAS Chapter II-1 Regulation 13.3.2.5 – Marking of Escape Routes and associated guidance.

45. V217 – Telephones: This would imply by the definition that every single “house” phone would have to have a TTY. This is clearly in excess of shore side facility requirements. For private/non-government facilities, Revised ADAAG requires only one TTY per facility/floor/bank where 4 or more phones are provided in a facility/floor/bank. No persuasive rationale for requiring significantly greater scoping of TTY’s onboard vessels has been offered. ICCL recommends that no more than one TTY equipped phone be required per deck. Additionally, current technology already provides for effective communications and renders the requirement for TTY at all courtesy telephone locations unnecessary. See General Comments “Ships as a Safety System” and comments in response to V215.1 and V224.4.
46. Commentary to V217 – Relay Systems: The Board notes that the draft PVAG do not address whether “third party relay systems” must be provided by vessel operators and states that questions regarding such services should be directed to the Department of Justice. ICCL notes that that onboard phone systems/ communications are self-contained systems, and access to land-side relay systems is not available to any guest. Cruise ships staff the pursers desk on a 24/7 basis, and such staff are available to transmit communications to guest services departments or other passenger cabins not equipped with a TTY. Although this is a somewhat informal relay service, we believe it meets the intent of any requirement for a third party relay system. Additionally, the emergency “911” number on a ship rings in a space that is required by SOLAS regulations to be continually manned when there are passengers onboard. (SOLAS Chapter II-2 Regulation 22.1 and 22.2 as referenced in other regulations such as II-2-40.7.1; 41-2.4.2; and others.) We believe that this meets the intent of the requirement.
47. V218 – Two-Way Communication Systems: This section should be deleted since it has no relevance with regard to access to the ship or to restricted areas.
48. V219.3 – Assistive Listening Receivers: The minimum number of receivers is excessive based on experience that currently provided systems are seldom requested and therefore underutilized.
49. V221 et seq. – Assembly Areas: Please see ICCL’s previous comment regarding the SOLAS definition of “assembly area”.
50. V221.2.2 – Integration of Wheelchair Spaces in Assembly Areas: Given the difference between ship construction and shore-side theater, stadium or building construction, such as the maximum permitted length and area of fire zones and beam of the ship, full dispersion of seats horizontally and on all vertical levels, is not feasible.

Even the largest cruise ships feature theaters that are steeply sloped relative to slopes found in land-based theaters. Given the steepness of the slope, ramps that would be required to provide full vertical dispersion of wheelchair accessible and companion seats would be exceptionally long, to provide a maximum ramp slope of 1:12. Introducing such long ramps would mean excessive loss of non-accessible seating in the areas covered by the ramps. Although it is difficult to precisely define the number of non-accessible seats that

would be lost without reference to the specifics of a particular ship and theater, land based experience in arenas which feature similar slopes indicate that somewhere between five and eight non-accessible seats would be lost for every accessible seat gained. In a 500 seat theatre, dispersing six seats would, therefore, imply a loss of 30 to 48 seats in order to meet vertical and horizontal dispersion criteria suggested by the Access Board. Providing accessible seating to entry levels (usually found at top, middle or bottom levels of the shipboard theater) allows adequate sightlines and access to the activities occurring in the theater and minimizes the loss of other seating.

Exception 1 for horizontal dispersion is also complex and should be clarified.

51. V221.2.3.2 – Vertical Dispersion: Ships are not large enough to have “playing fields”, especially fields accompanied by seating in the classically accepted understanding of this concept. Therefore, reference to this should be deleted.
52. V223.1.1 – Alterations: Remove the term “added” as this is an alteration.
53. V224.1.1 – Alterations: Remove “added”. This paragraph as drafted is ambiguous. The intent is that cabins within the altered section are counted in the scoping calculation in Table V224.2. As currently written, one could infer that accessible cabins must be added until the requirement for the entire ship is met. This would result in the majority of accessible cabins being located in only the altered area. ICCL recommends that scoping be clarified to reflect the above explanation.
54. V224.2 – Guest Rooms with Mobility Features: Based on ICCL’s preliminary study regarding actual usage of accessible cabins, the scoping requirement for mobility accessible cabins is excessive. Please see Section 4 “Preliminary Report of Findings - ICCL Data Collection Project”.
55. V224.4 – Guest Rooms with Communication Features: In addition to the comments noted previously, the Board should take into account the impact of hardwiring cabins on stability and electrical requirements (i.e., the weight of certified marine cable, the size of emergency generators, the rating of the emergency switchboard, etc.).

Provision of equivalent or better capability on a request basis through portable equipment or personal communications devices will not only result in broader access but it can be achieved in a more cost effective manner without affecting the stability and electrical requirements of the ship.

Given the safety and emergency procedures in place on a vessel, the Board’s concern with individuals potentially being left in cabins, or in any public space, is without basis. See General Comments “Ships as a Safety System”.

56. V224.5 – Dispersion: See comments in response to V806.3.

57. V226.1 – Dining Surfaces: In show lounges and entertainments areas, lounges etc., small cocktail tables are provided. These tables are not intended to provide knee clearance or approach. These tables should be included in the exception under V226.1.
58. V227.3 – Counters: See comment in response to V904.4.
59. V230 – Detention Facilities: This section should be deleted, as detention cells are located in crew areas. These cells are intended for crew detention.
60. V233.2 – Play Components: See ICCL’s comments regarding the term “ground level”. Also, shore-side playground requirements should not automatically apply to shipboard play components.
61. V235.2 – Swimming Pools: Swimming pools on passenger vessels are limited in size due to stability requirements. It is simply not safe to place a large amount of water with a free surface at the top of a ship. To contain the waves that are set up during the natural roll and pitch of the vessel also means that we need to provide a beach area around the pool. The proposed guidelines allow either a ramp or a chair lift - given the limitations we already have in size, introducing a ramp will significantly reduce the pool area and become an obstacle for other swimmers. Chair lifts may not be the best solution on a moving platform and therefore ICCL recommend that the use of transfer benches also be considered. This would allow discrete access on a stable platform and they can be extended to include other pool features such as Jacuzzis.
62. V235.2, Exception 4: ICCL recommends that a “Cluster” be defined as “where two or more pools or spas are located in adjacent areas.”
63. V235.3 – Wading Pools: Sloped entries are not feasible given shipboard size limitations.
64. V236 – Shooting Facilities: ICCL members no longer provide this amenity onboard their ships due to security concerns.
65. V302.3 – Openings: Given the requirements for efficient drainage, where grates employing such openings would be required, square or circular openings greater than ½ inch should be permitted. We recommend that such openings be permitted to be ¾ inch square/diameter.
66. V305.2 – Deck Surfaces: When ramps are employed to overcome sills required for weathertight doors, it will be necessary to provide “clamshell” type design ramps extending beyond the edges of the door in order to avoid creating tripping hazards. The edges of these clamshell ramps will of necessity be of greater slope than 1:48.
67. V403.5.3 – Passing Spaces: Stair lobbies are located at the ends of fire zones. Since two fire zones are typically placed together, lobbies may be separated by the length of two fire zones or approximately 90 meters. Therefore for shipboard construction, this requirement should be consistent with these construction arrangements.

68. V403.6 – Handrails: It should be made clear that this provision does not apply to guard rails installed for safety purposes which are specifically addressed by both SOLAS and USCG regulations.
69. V404 – Doors, Doorways and Gates: The Board has the erroneous impression that a weathertight door requiring a substantial coaming or sill may be replaced with a watertight door that does not require the coaming or sill. This is not correct. The requirement for the depth of the coaming or sill is dependent on the location of the door on the ship and not the type of door. In this regard, the Board’s discussion of “third configuration of access” indicates that a watertight door with a sill/threshold of only 1-1/4 inches could be used versus a weathertight door with 3-6 inch coamings/threshold. For example, this would not be acceptable for position 1 (forward quarter of the ship’s length above the bulkhead deck) doors under international regulations.

The study *ADA Access to Passenger Vessels: Finding Safety Equivalence Solutions for Weathertight Doors with Coamings – Parts 1 and 2*, prepared for the Board by the U.S. Department of Transportation Research and Special Programs Administration John A. Volpe National Transportation Systems Center, does not address the circumstances and conditions under which cruise ships operate. The Board has drawn vast, overly broad and improper conclusions based on the results of this very limited case study.

This study only considered small passenger vessels (Subchapter T and K vessels) on a very limited operating route restricted to protected waters of the United States. The doors involved were required to be kept closed at all times while underway and involved arrangements that were permitted to be operated by crewmembers only. Additionally, the possibility of downflooding (flowing of water from the ingress point to other lower parts of the vessel) onboard the vessel was precluded by the watertight main deck which protected the machinery spaces and essential systems from damage due to water ingress. There is no rational basis to extend the study’s conclusions, based on these route restrictions and small passenger vessel design elements, to other vessels, particularly cruise ships that operate on unrestricted ocean service routes and to doors serving areas where passenger access is specifically permitted even while the ship is underway.

The safety philosophy as stated in *Part 2*, of the study is to:

- Keep water off the decks, through assignment of freeboard, i.e. the height of the deck above the water
- Get water off the decks, via freeing ports and other drainage features, and transverse and longitudinal deck slopes, known as camber and sheer
- Keep water out of interior spaces by proper design of structures and closures
- Control any water that does get in through protection of downflooding paths, subdivision of compartments below, and pumping arrangements

It is apparent that none of these restrictions are applicable to a vessel that is certified for full ocean service, has the possibility of downflooding in the event of water ingress at higher levels, and is significantly more complex in its design, construction and operation.

The overly simplistic discussion contained in the Draft Guidelines regarding sills and coamings on weathertight doors, proposes an alternative *presumed* to apply to cruise ships, without mention or reference to the very limited nature of the study and vessels involved in that study. At issue is a very critical and major element of ship survivability that is being lightly dismissed for a so-called equivalent arrangement that would not be applicable on oceangoing ships. The fact that the doors considered in the study are required to be kept closed when the vessel is underway and operated only by crew members, renders the study's conclusions wholly inapplicable to doors intended for passenger utilization.

70. V404.2.5 – Thresholds: The Board provides an exception for circumstances in which the “administrative authority” determines that space limitations make it infeasible to provide double or single ramp access at doors with coamings and water tight doors are provided instead of weathertight doors equipped with coamings, the threshold on the side of the watertight door containing the seal may have a non-beveled threshold 1¼” high max. In the preamble, the Board states that “marine door manufacturers” indicate that 1¼” is the minimum height necessary to form a watertight seal. Exception 1 is very narrow and unsuitable in light of maritime regulations. An exception should be made where high coamings are required by Loadline Convention regulations. Also, please refer to previous comments.
71. V404.2.5.1 – Doors without Coamings, Exception: The proposed rule does not have existing facilities within its scope and should not be addressed. Therefore, the term “existing” should be deleted in all locations.
72. V404.2.5.2 – Doors with Coamings, Exception: This statement appears to state that instead of a weathertight door with a sill and coaming, that a watertight door without a coaming may be used.

A watertight door or weathertight door in these locations on a passenger vessel certified for full ocean service would not normally be permitted to dispense with the coaming as this safety feature is dependent on the location of the door on the ship and not dependent upon the type of door. Also, please refer to previous comments.

73. V404.2.5.2.1 & .2 – Double and Single Ramp Access: The administrative authority requires coamings to prevent the ingress of water into the ship. It is not clear how the ramp requirements shown in the associated figures will maintain the integrity required. Installing a solid surface ramp on the exterior of a weather door also provides a ramp for water to travel into the space. This negates the purpose of the sill. An ICCL member installed grated ramps to avoid this situation and found that they soon needed to be removed for safety purposes. Experience showed that items such as women's shoe heels and canes became stuck in the holes/slots provided for drainage resulting in twisted ankles, falls, and damaged personal property. Also, individuals not wearing shoes on the main pool deck suffered cut feet.

74. V404.2.8 – Closing Speed: This section should be harmonized with SOLAS requirements found in Chapter II-2 Regulation 9.4.1.1.4. which states “the approximate time of closure for hinged fire doors shall be no more than 40 [seconds] and no less than 10 [seconds] from the beginning of their movement with the ship in upright position. The approximated uniform rate of closure for sliding doors shall be of no more than 0.2 m/s and no less than 0.1 m/s with the ship in upright position.” Furthermore, additional considerations apply to door closing such as vessel trim and list and the ability to close against wind or dynamic ship roll. A note should be included qualifying this for static design conditions.
75. V404.2.9 – Opening Force, Subparagraphs 1 & 2 reference wording: If the opening force is too light, it could result in doors swinging in heavy weather or wind causing injury. Therefore, this requirement should be deleted (i.e., delete everything after the words “administrative authority”).
76. V404.3 – Automatic and Power Assisted Doors and Gates: Reference to U.S. engineering standards is inappropriate per previous comment.
77. V405.2 – Slope: Slope limits for minor differences in deck height are necessary because of shipboard arrangements such as corridor widths that limit the length of the run. The obvious solution would be to add width to the corridors. However, what may be perceived to be a minor adjustment, will have a substantial, cumulative, negative effect on the design of the ship. For example, adding to the ramp run will increase the total corridor width in order to maintain the minimum clear width mandated by SOLAS. This issue also relates to cabin balcony access.

ICCL recommends following the technical standard that was initially agreed upon by the PVAAC (405.2, p. 11). It is as follows:

PVAAC – 405.2 – Slope: Ramp runs shall have a running slope not steeper than:

- a. 1:4 if the rise is 3 inches (75 mm) maximum;
 - b. 1:6 if the rise is 6 inches (150 mm) maximum;
 - c. 1:8 if the rise is 9 inches (230 mm) maximum; or
 - d. 1:12 if the rise is greater than 9 inches (230 mm).
78. V405.2, Exception 1 and Table V405.2 – Slope: The exception should read “in alterations to existing passenger vessels”.
 79. V405.6 – Rise: Rise for any ramp run shall be 30 inches. This means the longest run of a ramp can be 30 feet. This will not be possible in theaters and show lounges in existing vessels due to fixed boundaries, such as fire zone bulkheads, and limitations in structural modifications that would impact the basic structure of the ship. Therefore, an exception should be included for existing ships undergoing alteration.
 80. V405.7.3 – Landings, Length: For the same reasons stated in response to V405.6 above, there should be an exception for alterations to existing vessels. The length of the landing in these cases should uniformly be 48 inches.

81. V407.2.1 et al. – Height of Elevator Key Pads, Exceptions for existing installations: ICCL recommends that this be reworded to apply to alterations to existing vessels.
82. V407.4 – Elevator Car Requirements: The draft PVAG contain minimum interior dimensions of elevators that are identical to those set forth in the revised ADAAG for land-based facilities. Significantly, the Access Board has omitted two alternate minimum elevator configurations recommended by the PVAAC for elevators with a centered 36” wide door:
 - 1) 65” side-to-side width, with a depth 54” back-to- front return, and 57” from the back to the inside face of the door; and
 - 2) 54” side-to-side width, with a depth 65” back-to-front return, and 68” from the back to the inside face of the door.

The Board’s stated reason for omitting the first alternative was a desire for consistency with ADAAG and that the exception under V407.4.1 for existing vessels would permit these dimensions. The Board’s stated reasons for omitting the second alternative was again consistency with ADAAG. The Board also noted that the second alternative was intended primarily to address issues pertaining to casing widths in ferries, which the Board concluded could satisfactorily be addressed with one of the four configurations already contained in ADAAG for elevator cars with a 36” wide door: 54” side-to-side width, with a depth 80” back-to-front return, and 80” from the back to the inside face of the door. The Board dismissed that additional 15” depth requirement as not “critical” in the casings of large passenger ferries.

The Board’s omission of these two alternative elevator car configurations is problematic for several reasons. First, the mere desire to make PVAG consistent with ADAAG is an insufficient basis for rejecting the recommendations of the PVAAC. The Access Board convened the PVAAC precisely because passenger vessels pose unique design issues that differ significantly from the design of land-based facilities, and because the Board itself lacks sufficient expertise to assess these issues. Accordingly, disregarding the informed and experienced recommendations of the several naval architects who participated on the PVAAC based upon a primary desire to keep PVAG consistent with ADAAG is improper.

Secondly, it appears that the Board does not fully appreciate the full-range of factors necessitating these alternative configurations. These elevator configurations have implications for both existing vessels and newly constructed vessels. The overall deck space provided within these two alternate car configurations is substantially the same as those configurations in draft PVAG for cars with 36” centered doors. The key difference is the two different configurations provide slightly different width and depth dimensions to address complications that typically arise in vessel design (in addition to ferry casing issues and alterations to existing vessels.) The alternative designs accepted by the PVAAC are important when considering the orientation of elevators in the ship (transversely or longitudinally) and given the constraints on construction imposed by design requirements such as length of fire zones, required corridor width based on evacuation flow calculations

and other parameters. For example, depending on the orientation of the elevator, the need to maintain the required width of adjacent corridor may necessitate providing a car configuration that is slightly narrower or shallower than the land-based ADAAG permit. In developing these configurations, the PVAAC addressed these concerns while substantially maintaining the overall clear deck space within the elevator.

These design factors and other limitations (such as having to fit through the Panama Canal) for the entire ship must be considered. For example, an extra width on each elevator will cause the elevator bank to be that much wider. This will impact on the corridor width, which, because of safety regulations must be maintained, will cause the cabins to be that much smaller. Larger openings in the deck and bulkheads to accommodate larger elevators will have a direct impact on the structure. Increased scantling requirements (the amount and thickness of the steel framework) will directly increase the weight and may influence the ships stability. Because of the impact on the structure, and the cabin economics, ship designers may opt to reduce the number of elevators, resulting in reduced overall accessibility.

83. V407.4.6 – Elevator Car Controls: ICCL recommends that this be reworded to apply to alterations to existing vessels.
84. V409.1 – Platform Lifts, General: Given the range of operational uses onboard ship, this is too restrictive, as it does not reflect all the situations in which a platform lift may be used. The requirement that the lift not be attendant operated is inappropriate. Examples include: access to performance stages; lifts to tendering platform decks, etc.
85. V409.6 – Doors and Gates: This requirement does not recognize that some lifts do not require the use of doors and gates: e.g. use of lifts with edge protection for low-rise applications; for example, such as used on buses.

The requirement for low energy power operated doors or gates, where doors or gates are provided, introduces technical criteria which should be specified by the designer and not a part of an access requirement.

86. V410 – Means of Escape: Exception 2 under V410 applies to exit stairways where vessels are protected by an automatic sprinkler system. We recommend that this exception be extended to all parts of the vessel that are protected by an automatic sprinkler system. Please see also comments in response to V207.
87. V411 – Areas of Temporary Refuge: There should be a specific exception stating that the requirements for Areas of Temporary Refuge do not apply to passenger ships that comply with the fire safety standards of SOLAS including the installation of sprinkler systems.
88. V412 – Passenger Boarding Systems: See General Comments regarding on/off issues and in response to V208.1.
89. V413 – Gangways: See General Comments regarding on/off issues.

90. V502.2 – Treads and Risers: This needs to be consistent with SOLAS and Flag Administration requirements.
91. V602.6 – Drinking Fountains, Water Flow: This should give a range versus specific dimensions and angles as non-U.S. flag ships built in non-U.S. ship yards using non-U.S. equipment may not specifically meet these dimensions etc.
92. V604 – Water Closets and Toilet Compartments: General comment – it is apparent that these clearances are inappropriate onboard ship. Also, these dimensions should be consistent with the IMO Guidelines.
93. V604.3.2 – Overlap: In addition to the overlap elements already permitted, the Guidelines should expressly permit required clearances at fixtures and turning space within the bathroom to overlap with clear deck space provided in standard configuration roll-in showers.
94. V604.5.1 – Grab Bars: The IMO Guidelines specify a rising side bar on the wide or open side of the water closet. This element has also been adopted in European recommendations. ICCL recommends that this type of grab bar be allowed.
 1. Exception: This exception should be deleted. See previous comments regarding detention facilities.
95. V604.6 – Flush Controls: All modern cruise vessels use a vacuum toilet flushing system. For safety reasons, the flush control is mounted behind the toilet where it is protected from accidental operation while the toilet is in use and not on the open side as required by this section. The wording must be modified to recognize actual shipboard practice and safety concerns.
96. V604.9 – Water Closets for Children’s Use, Location etc.: This needs to be consistent with the USPHS, Centers for Disease Control and Prevention (CDC) Construction guidelines and guidelines in the Vessel Sanitation Program (VSP) Operations manual.
97. V604.9.5 – Flush Controls: All modern cruise vessels use a vacuum toilet flushing system. For safety reasons, the flush control is mounted behind the toilet where it is protected from accidental operation while the toilet is in use and not on the open side as required by this section. The wording must be modified to recognize actual shipboard practice and safety concerns.
98. V607 & 608 – Bathtubs and Showers: These standards reflect installations typically found in shore facilities. The dimensions are not appropriate for shipboard facilities. We suggest that standards be modified or included to address installations as encountered onboard ship.

99. V609.3 – Grab Bars, Spacing: It is noted that the spacing requirement is absolute. Given construction issues in shipbuilding, a range for this spacing would be more appropriate. We recommend 1¼ inches to 2 inches.
100. V612.3 – Saunas and Steam Rooms, Turning Space: It is an unreasonable requirement to provide a turning circle in these confined spaces. Providing a turning space will significantly reduce the usable area in the sauna. In our experience wheelchair users will use a transfer bench, as it would be a safety hazard to the passenger to stay in their metal wheelchair or leave the wheelchair inside the sauna while in operation. Providing wheelchair access into the sauna and a transfer area is appropriate.
101. V702 – Emergency Alarm Systems: The PVAAC identified a conflict between ADAAG and USCG regulations. The Board concluded that there is no conflict. How did the Board come to this conclusion over that of the Committee? The Board should justify and explain its conclusion and how they arrived at such a conclusion.

Additionally, the Board addressed only whether or not there is a conflict with USCG Regulations. How does this apply to conflicts with international requirements? In general, IMO does not recognize NFPA standards unless specifically adopted. While ICCL is aware that USCG rules recognize NFPA, we are not aware of international acceptance of the standard referenced.

The Board and staff should recognize that the requirements in SOLAS are expanded in IMO Assembly, MSC and Subcommittee Resolutions, Circulars, and Guidelines as well as in Codes and referenced international engineering standards such as those published by the International Standards Organization (ISO) and the International Electrotechnical Commission (IEEE). These too are an extension of the regulatory scheme and part of the safety system which govern the construction and operation of ships and can not be ignored. For instance, was the IMO *Code on Alarms and Indicators* reviewed by the Board?

While there may or may not be a direct conflict with the wording of a specific SOLAS regulation, further in-depth research must be conducted before the Board can conclude, without any reference or justification, that there is no conflict. This section needs further comparison to IMO and associated requirements to assure there is no conflict.

102. V702.1 – General: Installed alarms are required to comply with SOLAS Resolution A830(19) Code on Alarms and Indicators.
1. NFPA is not appropriate for ships that have to comply with SOLAS
 2. Please reference earlier comments regarding visual and audible alarms.
103. V703.2.4 & .5 – Characters: This needs to be compared to the ISO standard for shipboard signs that will soon be adopted by IMO.
104. V703.5.1. – Finish and Contrast: This conflicts with the SOLAS requirements for Low Location Lighting signs that may be photoluminescent or photointumescent.

105. V706 – Assistive Listening Systems: These requirements should only apply to permanently installed local entertainment systems.
106. V707.5.2 – ATM Machines: The requirement should be to provide machines that meet accessibility requirements. It is the manufacturers responsibility to provide machines that meet the standards, thus the requirements should be for the machines and directed to the machines manufacturers or the third party owner, and not the ships.
107. V804 – Kitchens and Kitchenettes: See our previous comment that these should be referred to as “pantries”- Section 212.
108. V806.2.2 – Exterior Spaces: This would require a full turning circle on balconies. This is not possible given space restrictions limited by the ship’s breadth. Balconies can not be simply “hung” off the side of the ship.
109. V806.2.3 – Sleeping Areas: The flexible nature of cabin bed configurations permits arranging the bed to provide an accessible route with either a right-side or left-side approach to the bed according to the passenger’s need or preference, thus obviating the need for a permanent accessible route to both sides of a single bed. See also response to DOT’s ANPRM.
110. V806.2.7 – Doors to Adjacent Guest Rooms: It should be clarified that accessibility into the adjacent non-accessible room is enter and exit only without maneuvering clearance.
111. V807 – [Detention] Cells: This is a crew space requirement and should not be included. See comments in response to V203.
112. V904.3.2 – Counter: The requirement to provide a low level sales counter (36 inches high), 30 inches in length is disproportionate to the limited size of the shipboard stores on passenger vessels and current use of point of sale counters. At these locations, the counter is the entire selling space. ICCL recommends that the length of this low level counter be limited to a length of 24 inches with a parallel approach. We believe that this is commensurate with the space available in these stores where further expansion is not appropriate. Alternatively, the use of clipboards or other portable or moveable counters should be allowed. The current proposal is appropriate for other shipboard counters such as at the Pursers desk, shore tour bookings, etc. It should also be noted that cruise ships are cashless and any onboard purchases will be made using the cabin keycard.
113. V104.2.6.1 & .2 – Accessibility and Use Zones: Again, reference is made to US engineering standards which may not be recognized in locations where passenger ships are designed, the design is approved and where the ship is constructed.
114. V1004 – Play Area, general comment: Due to the limited space available in children’s play areas it will not be possible to incorporate the listed requirements for access and transfer.

Children's shipboard play areas are usually densely packed with play components. Most of these components would qualify as ground level components usable by children in wheelchairs. The path of travel to and between some play components may not be achieved in all circumstances given the number of components available and the total space limitations in the children's play areas.

Generally speaking, the incidence of disabilities increases with age. Only 0.2 percent of children between the ages of six and 14 use a wheelchair, for example. Only 2.1 percent have any difficulty walking or running (Bureau of the Census- 1997 data).

115. V1005 – Swimming Pools: Swimming pools on passenger vessels are limited in size due to stability requirements. It is simply not safe to place a large amount of water with a free surface at the top of a ship. To contain the waves that are set up during the natural roll and pitch of the vessel also means that we need to provide a beach area around the pool. The proposed guidelines allow either a ramp or a chair lift - given the limitations we already have in size, introducing a ramp will significantly reduce the pool area and become an obstacle for other swimmers. Chair lifts may not be the best solution on a moving platform and therefore ICCL recommend that the use of transfer benches also be considered. This would allow discrete access on a stable platform and they can be extended to include other pool features such as Jacuzzis.
116. V1005.5.5 – Surface: Please clarify the definition of a sharp surface.
117. V1005.6 – Pool Stairs: Please include an express exception for pool ladders.
118. V1006 – Shooting Positions: In accordance with current security provisions, shooting is no longer an option onboard cruise ships.

Section 3:

**ICCL COMMENTS ON
PASSENGER VESSEL ACCESS
DOT ANPRM**

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Comments on: **DOT's ANPRM: Non-discrimination on Passenger Vessels – 49 CFR Part 37**

1. The Extent to Which the Passenger Vessel Accessibility Guidelines will Apply to Foreign-Flag Vessels Requires Further Clarification:

ICCL Comment: In its Advance Notice of Proposed Rulemaking (“ANPRM”) issued November 26, 2004, the U.S. Department of Transportation (“DOT”) stated its position that the Americans with Disabilities Act (“ADA”) applies to foreign-flag cruise ships that call at U.S. ports. While the U.S. Supreme Court’s recent decision in *Spector v. Norwegian Cruise Line Ltd.*, 125 S. Ct. 2169 (June 6, 2005), ultimately held that the Fifth Circuit erred in concluding that Title III of the ADA does not apply to foreign-flag cruise vessels, the Court did so, however, only on the grounds that the Fifth Circuit’s decision was so broad it would apply to every facet of the business and operations of foreign-flag ships – not only removal of physical barriers but also non-architectural issues such as ticket pricing and eligibility for sailing – and thus was contrary to prior Supreme Court precedent that a “clear statement” of Congress’ intent to apply a statute of general application to foreign-flag vessels temporarily in U.S. waters is required only when such application would interfere with the “internal affairs” of that vessel. Significantly, the Court stated that its prior case precedent “could limit Title III’s application in some instances, *when it requires removal of physical barriers ...*” *Id.* at 2175 (emphasis added). The plurality opinion of Justice Kennedy (in which Justices Stevens and Souter joined) further suggests that many structural modifications arguably required under Title III could easily be construed as relating to internal ship affairs, thus triggering the “clear statement” rule.

The Court also emphasized that Title III of the ADA does not require a foreign-flag vessel to undertake any physical modification that: 1) would bring a vessel into noncompliance with the International Convention for the Safety of Life at Sea (“SOLAS”), Nov. 1, 1974, [1979-1980], 32 U.S.T. 47, T.I.A.S. No. 9700 or any other international legal obligation; or 2) when it would jeopardize shipboard safety.

Spector thus makes it abundantly clear that safety requirements mandated by international laws/regulations such as SOLAS supercede accessibility requirements that conflict with international requirements, whether those requirements are set forth in the SOLAS regulations themselves or in accompanying IMO interpretations and circulars that are equally binding on vessels operating in international waters. Though not specifically addressed by the Court in *Spector*, ICCL respectfully submits that requirements imposed by the vessel’s flag state also supercede conflicting Title III requirements.

Pursuant to *Spector*, Title III (and any accessibility guidelines for passenger vessels issued thereunder) may not apply to foreign-flag vessel to the full degree that it pertains to U.S.-flagged vessels. Although *Spector* was decided in the context of barrier removal on an existing vessel, its rationale is equally applicable to the promulgation of accessibility

requirements for newly constructed and altered passenger vessels. Thus, issuance of a single set of accessible design requirements that pertain equally to U.S. and foreign-flag vessels alike may be inappropriate. DOT, in particular, must clarify the manner and extent to which specific requirements will apply to foreign flag vessels, delineating between those that affect the ship's "internal affairs" and those that do not. Finally, both DOT and the Access Board must exercise great care in ensuring that none of the accessibility requirements they issue for foreign-flag vessels creates any conflict with international requirements or with the requirements of the vessel's flag state.

2. Vessel Sizes:

ICCL Comment: Both the Access Board and DOT seek public comment regarding whether, or the extent to which, the draft Guidelines should be applied to small passenger vessels. The Access Board proposes four alternatives. Option 1 lists fewer than 150 passengers or fewer than 49 overnight passengers while Option 4 lists vessels carrying more than 150 passengers or more than 49 overnight passengers. Vessels carrying exactly 150 passengers or exactly 49 passengers are not covered.

Should state: passenger vessels carrying "more than 150 passengers or more than 49 overnight passengers."

3. Rules Being Published by DOT:

ICCL Comment: Specific recognition of the ship to tender issue should be made clear. In particular, the relative motion between tendering vessels and the "mother ship" makes the transfer of all persons between the two vessels a very important operation that must be conducted with great care to assure the safety of both passengers and crew. In many instances, this relative motion is such that safe transfer of mobility assist devices such as wheelchairs and scooters is not possible without great risk of injury to either the user or crew members who are assigned to assist. In some instances, all tendering operations are canceled.

ICCL recommends, due to the complexity of this issue involving transfer between two different vessels, each subject to their own varying motions in a seaway, that the guidelines and any future rules expressly exempt requirements for transfer between two vessels.

4. Coamings for Watertight Integrity:

ICCL Comment: While the Draft Guidelines appear to recognize the need for Watertight and Weather tight doors with associated sills and coamings, in another location it appears that the Board accepts coamings only up to 1½ inch in height. This does not satisfy the safety regulations for doorways in certain locations. Please see our detailed comments at Section V404.2.5.2 of the Draft Guidelines.

5. “Readily Achievable” Barrier Removal and Program Accessibility:

ICCL Comment: DOT is seeking public comment on whether greater barrier removal is required in light of a longer service life than other types of facilities and vehicles. Vessels do not have longer life span than buildings, and, in fact, they typically have shorter ones. For ICCL member operators, most vessels will be transferred out of US service and into a different trade or secondary foreign market within 25 to 30 years. Thus, passenger ships should not be held to a higher standard.

Additionally, costs applying to retrofit of ships will be significantly higher than for shore-based facilities due to structural constraints, complexity of design, and safety requirements (e.g. stability, arrangement of fire bulkheads, structural fire protection, design requirements for emergency escape, etc.).

6. Shore to Vessel Transition:

ICCL Comment: This is a major concern for all vessels regardless of size or location. Specific comments are set forth in the General Comments and commentary on the guidelines.

7. Securement:

ICCL Comment: We are not aware of any studies that support the need for securement systems onboard small or large passenger vessels. Without this background such a requirement is not reasonable. On some vessels, such as cruise ship tendering vessels, tie-downs or other means of securement may be provided for safety reasons. We suggest that the Board provide supporting data for this proposed requirement.

On larger vessels, such as cruise ships, where wide circulation is generally available and expected between public areas and program areas, such a system may be counter productive to accessibility. Also, because the decks are so large and accessible, it is not practical to provide tie-downs at every possible location so the question would become – where would they be placed. It should be noted that in extremely heavy seas, all passengers are requested to stay in their cabins. For vessels that merely transport passengers from point to point, and where seats are provided, securement may be appropriate. However, on a cruise ship where the purpose is to promote circulation throughout the vessel, securement devices are inappropriate.

8. Accessible Cabins:

ICCL Comment: DOT indicated in the ANPRM that it is “reasonable” to follow the requirements imposed by the Department of Justice (“DOJ”) for accessible lodging in establishing requirements for accessible cabins for passenger vessels with overnight accommodations. DOT is specifically seeking comment regarding the appropriateness of doing so not only with respect to scoping and technical requirements for accessible cabins, but also availability and pricing.

Cabin Configurations are more Flexible than Hotel Room Arrangements

ICCL respectfully submits that there are numerous differences between cruise operations and land-based lodging operations that render wholesale application of land-based accessible lodging requirements to cruise vessels inappropriate. Unlike land-based lodging, cruises uniformly require advance reservations. An individual cannot simply “walk-in” off the street, as he/she can in obtaining a hotel or motel room. Accordingly, cruise vessels have greater ability and flexibility than do land-based lodging facilities to arrange or reconfigure a room for the particular needs of an individual with a disability. Cabins on cruise ships typically are furnished with modular furnishings that can easily be rearranged in advance of the passenger’s arrival. For example, the beds used in cabins can be arranged as a single bed or separated to provide two twin beds. As part of their regular duties, assigned cabin stewards routinely configure the bed according to the stated preference of the passenger, rearranging other cabin furniture as necessary. This differs significantly from the practice of lodging facilities, which offer separate rooms with multiple bed types in set configurations (*e.g.*, 1 king, 1 queen, 2 queens, 2 doubles, etc.), rather than reconfiguring the room for the guest’s preferred bed configuration.

In setting specific requirements for accessible cabins, DOT and the Access Board should take into account the more flexible nature of a cruise vessel’s cabin layout. This greater flexibility renders certain technical requirements unnecessary in the cruise context. For example, DOJ’s current Standards for Accessible Design, 28 C.F.R. pt. 36, app. A, require that where a lodging room contains only a single room, an accessible route must be provided to both sides of the bed. The flexible nature of cabin bed configurations permits arranging the bed to provide an accessible route with either a right-side or left-side approach to the bed according to the passenger’s need or preference, thus obviating the need for a permanent accessible route to both sides of a single bed. This issue also can be addressed through other operational means, such as cabin assignment. Cabins located port and starboard typically have “mirror” layouts. Thus, the cruise operator can assign an individual with a disability to an accessible cabin located either port or starboard, depending on whether he/she requires a left or right side approach.

Dispersion of Cabins

DOT has inquired whether cabins accessible to individuals using wheelchairs can be provided in all classes of service. For newly constructed cruise ships, it generally is possible to provide accessible cabins among the basic cabin types provided on the vessel, cruise lines essentially categorize cabins into the following four basic types: standard inside, standard outside, outside with balcony, and suite. For existing facilities, providing additional accessible cabins is not practical.

It is important to note, however, that within cabin type there can be more than one rate category. Cabin rates are based not only on the type of cabin, but also the cabin’s location, both vertically and horizontally within the ship. Given the multitude of rate categories that may exist on a vessel, which may change over time, accessible cabins should not be required in all rate categories, even on newly constructed vessels.

Accessible cabins generally are positioned on the vessel in order to facilitate egress in the event of an emergency as well as locating the cabins on convenient routes to ship amenities in particular elevator banks. Design concerns also often lead to the “stacking” of accessible cabins, (i.e. concentration within certain vertical zones of the vessel) to facilitate the provisions of plumbing lines, etc.

9. Vision and Hearing Impairments:

ICCL Comment: Please see the General Comments regarding ships as a safety system and the recognition of operational aspects including crew actions in an emergency and crew training.

Specifically, an accessibility requirement, such as the one for hardwired communications assistance systems, is based on the erroneous belief that someone may get left in their stateroom in the event of an emergency. International regulations require a system for trained crew to search every space on the ship to assure that no one is left behind (as noted in the testimony presented by ICCL member, Jeff Frier, at the July 25, 2005 public hearing in Washington, D.C.).

Hearing assistance systems should be permitted to be portable and other technology should be permitted as developed. These technologies may include wireless text messaging and alerting by handheld devices, such as PDA's. The benefit of portable technology is that it can be used in any shipboard location, and can be used for both emergencies and for communication of other general announcements.

The requirements specified by the Board (V224.4) assume that there is an “effective demand” for communication features on the part of people who have severe hearing loss. (In economics, effective demand is defined to mean that the individuals expressing the demand have sufficient funds to purchase the item being demanded. In this case, the effective price is zero, since no charge can be made for amenities which contribute to increasing access.) Even at a zero price, however, there is a very limited demand for TTY kits on the part of people with impaired hearing. To test this hypothesis, we examined the experience of 12 ships during their voyages in the first three months of 2005. During this period the ships carried approximately 200,000 passengers on 86 cruises. On 81 of 86 cruises no passenger requested that a TTY kit be placed in a cabin. On two of 86 cruises, one passenger requested that a TTY kit be placed in the cabin. In two cases, six individuals on a cruise requested TTYs. To put it simply there is ample evidence that the demand for portable TTY kits is extremely low. Currently the usage level is so low that the kits are not used in 94 percent of all voyages. The fact that groups of individuals may sometimes request kits does indicate that ships should have ready access to such kits. It would be most efficient to maintain kits in home ports, making them available on an on-call or rental basis as needed for specific cruises. Ships might carry one or two TTYs for emergency purposes but, as noted, these will go unused approximately 95 percent of the time.

Current practice is to provide a portable hearing assist kit that may be installed in any stateroom onboard ship. This kit is installed by a ships electrician and tested for proper operation. Even with the use of personal communications devices, appropriate elements of these kits will also be provided. Kits include:

- Lights that flash when the doorbell is rung or someone knocks on the door
- An under pillow bed shaker that serves as an alarm
- A portable TTY hookup for the cabin telephone with the assurance that the pursers desk is staffed 24 hours a day, 7 days a week

Therefore, ICCL recommends that requirements be drafted to permit the use of portable equipment in lieu of hardwired devices.

10. Shore Excursions:

ICCL Comment: DOT has specifically requested comment on the provision of accommodations at ports of call, specifically “cruise ship arranged” tours or activities, commonly referred to as “shore excursions” within the cruise industry. Although DOT has raised this issue within the context of vision and hearing impairments, it has potential application for individuals with mobility impairments as well. DOT’s query raises two substantial concerns that require careful consideration: 1) third-party operators; and 2) extraterritorial application to foreign territory.

Shore excursions typically are operated by independent third-party vendors. Even though the shore excursion is operated by a third party, cruise lines typically facilitate the booking of shore excursions by providing a means whereby such reservations can be made in advance and payment conveniently made. Though passengers may erroneously perceive shore excursions to be operated by the cruise line, this does not change the fact that the excursions typically are operated by independent third parties. Most cruise lines publish express notices on their websites, in general promotional materials and in specific shore excursion informational materials alerting passengers that the cruise line has no legal liability for damages or claims stemming from shore excursions operated by third party vendors. Transportation at the port of call and the nature of the accommodations provided as part of the shore excursion are the sole responsibility of the third party operator. Any requirement imposed by DOT regarding shore excursions should expressly exclude those operated by third-party vendors. For example, provision of auxiliary aids and services on excursions to historical sites or cultural entertainment are the responsibility of the excursion operator.

Secondly, there is no legal authority for imposing accessibility requirements with respect to shore excursions at non-U.S. ports of call. With respect to cruise vessels, the overwhelming majority of shore excursions occur on foreign soil. (Some domestic shore excursions are available, depending on a vessel’s itinerary, in places such as Alaska, New Orleans, Florida, New York, Baltimore etc.) Extending Title III requirements to shore excursions that take place outside the United States would clearly be an extraterritorial application of the ADA. Nothing in *Spector* or in the ADA itself extends applicability of Title III to activities conducted outside of the United States on foreign soil.

In addition to the lack of any legal authority for extending Title III to foreign shore excursions, there are also practical issues that make regulating foreign shore excursions improper. Accessibility and availability of accommodations and auxiliary aids and services at foreign ports of call and in foreign countries varies widely. The level of accessibility that has become the norm in the United States and the availability of auxiliary aids and services (such as sign language interpreters) are not necessarily characteristic of that in foreign locations.

Finally, ICCL notes that to its knowledge, the Department of Justice has not taken a similar approach in interpreting Title III and its accessibility standards for land-based facilities. For example, several large hotel chains either own, operate or are affiliated with lodging facilities in foreign countries and enable individuals to make reservations at such facilities through central reservations systems. To ICCL's knowledge, however, the Department of Justice has never interpreted Title III as requiring that such lodging facilities located on foreign soil comply with Title III's requirements and the design standards for land-based facilities. A different interpretation should not apply to foreign shore excursions.

For all the foregoing reasons, ICCL respectfully submits that it would be improper for DOT to issue a regulation that renders passenger vessel operators responsible for the accessibility of shore excursions. Given that foreign shore excursions are clearly extraterritorial in nature and that domestic shore excursion operators are already subject to the "land-based" requirements of Title III that are enforced by the Department of Justice, ICCL questions the need for DOT to address this issue at all.

11. Service Policies:

ICCL Comment: Any regulations DOT promulgates to address non-discrimination obligations in the context of service and operational policies must take into account both the unique issues presented onboard cruise vessels and the significant differences between cruise vessel travel and travel via other means, such as airplanes. Additionally, with respect to foreign-flag vessels, DOT must also consider the extent to which the requirements it ultimately promulgates will interfere with or affect the "internal affairs" of the vessel.

Eligibility Criteria and Direct Threat

One of the most critical issues pertains to eligibility criteria for cruising and direct threat. For the safety of the individual with a disability and in the interest of other cruise passengers, it is absolutely imperative that cruise vessels be able to impose eligibility criteria and employ the direct threat defense to ensure that all passengers, including passengers with disabilities, are fit to travel and do not pose a risk to themselves, other passengers, or disruption of the cruise. *Spector* makes clear that the direct threat defense is equally applicable in the cruise context, and that Title III does not require cruise vessel operators to take actions that jeopardize shipboard safety and that safety risks can stem not only from the individual with a disability, but also from accommodations requested.

Sea/ocean travel poses very different risks than air travel, especially in the context of direct threat. The trips are several days, a week or longer, rather than just a few hours, with only limited medical service available onboard the vessel during that time. In the event that any passenger suffers a medical emergency that cannot be safely handled by the limited medical facilities onboard, the only available options are medical evacuation by helicopter or alternatively diverting the ship to the nearest port (which, given the distances vessels can travel between ports, can be a considerable distance away). When time is of the essence, both options still present a considerable risk that appropriate medical treatment will not be obtained in time. For this reason, cruise lines strictly require that all passengers be sufficiently fit to travel safely within the maritime environment. This requirement applies both to individuals with and without disabilities. For example, women in advanced stages of pregnancy and individuals with certain contagious diseases typically are not permitted to sail.

The fact that cruises are typically longer in duration than air flights and that aircraft generally can more quickly deliver a passenger in medical distress to an appropriate medical facility underscore that cruise lines must be given greater latitude in establishing eligibility criteria and utilizing the direct threat defense. Additionally, DOT should also take into consideration the interests of other passengers, aside from just safety issues. There typically is considerably less disruption to other passengers when an aircraft is diverted due to medical emergency than when a ship is. In the context of aircraft, the diversion typically just results in arrival at the intended destination simply being delayed by a few hours. In the case of a cruise vessel, however, diversion can result in passengers being deprived of stopping at one or more scheduled ports entirely and in missing shore excursions planned for those ports.

Requirements for Attendants

For passenger vessels, the circumstances under which a passenger can be required to be accompanied by an attendant must encompass more than just the passenger's ability to evacuate. For cruises of any duration, the ability to care for one's self and see to one's own personal needs is of paramount importance. Cruise vessels are not attendant care facilities, and consequently must require that all passengers who do not have sufficient physical or mental capacity to see to their own personal needs be accompanied by an attendant to do so. Instances where passengers board cruises anticipating that their cabin steward can provide personal assistance, or where passengers are booked on cruises under the assumption that onboard staff will "look out for" them, pose risks to those passengers' safety and well-being, and interferes with the stewards ability to perform his/her job responsibilities. It also creates significant difficulty in the vessel arranging for the passenger to be disembarked and safely transported home.

Mobility Aids and Services

DOT notes in its ANPRM that it is considering prohibiting any limits on the size or number of mobility aids that passengers may bring on board, including power wheelchairs and scooters. As an initial matter, ICCL requests that DOT's forthcoming regulation make clear that cruise vessels are not required to provide passengers with personal mobility

devices, including wheelchairs, while onboard ship or for use off ship in ports of call. Cruise vessels typically carry a number of wheelchairs on board for use in medical emergencies and also utilize wheelchairs in assisting passengers with special needs in embarking and disembarking the vessels. Some passengers,¹ however, erroneously believe that cruise vessels are obligated under the ADA to provide them with wheelchairs or scooters for use throughout the duration of the cruise (both on and off the ship).²

Given space limitations on board and safety risks posed by mobility aid equipment being left in corridors, cruise vessels must require that all such devices be capable of being stowed in the passenger's cabin. Passengers often attempt to leave wheelchairs and power scooters in the ship corridors, elevator lobbies and sometimes in crew stairways given space limitations in their cabins. (Again, these typically are passengers who use such mobility aids only for distance.) Doing so obstructs required emergency routes and creates a safety risk for all passengers. Given their larger size, power-scooters are particularly troublesome in this regard. (Passengers using power wheelchairs generally prefer to keep them close at hand in the cabin.)

Cruise vessels do not restrict the number of mobility aids that a passenger may bring. They typically advise passengers traveling with wheelchairs or scooters that such equipment must be stowed in their cabin and recommend appropriate-size equipment that can be accommodated in the cabin.

There is limited ability to recharge batteries for power wheelchairs or scooters onboard. The power equipment must be compatible with the electrical supply provided onboard the vessel. For newer vessels, the equipment typically can be recharged by the passenger in his/her cabin. For older vessels, in cabin electrical supply may not be compatible with the equipment. On those vessels, there is limited ability to recharge the equipment at the purser's station. Depending on the number of passengers requiring this service, however, not all passengers will be able to recharge the batteries of their power wheelchairs or scooters at their preferred times. Wet cell batteries are not permitted onboard due to safety considerations of hydrogen gas generation when this type of battery is charged.

DOT's Guidance on Service Animals Issued under the Air Carrier Access Act is not Appropriate for Application to Passenger Vessels Absent Modification.

ICCL respectfully submits that the differences between cruise travel and air travel render DOT's policy regarding service animals, issued under the Air Carrier Access Act, inappropriate for application to cruise vessels without significant modification. Again,

¹ This issue typically has arisen with passengers who use such devices for mobility over distances, but do not require such devices for all mobility.

² Similarly, ship board medical supplies are maintained for unanticipated medical needs and medical emergencies. Passengers who routinely require medical supplies, such as dialysis equipment and fluid, oxygen supply, insulin injections, etc., are required to bring a sufficient supply for the duration of the cruise. While cruise lines typically assist such passengers in locating an appropriate medical supply company and in coordinating delivery at the pier, provision of the supplies remains the responsibility of the passenger. DOT's regulations should make clear that cruise vessels are not required to provide such "maintenance" medical supplies and can deny passage to a passenger when such medical supplies are not timely delivered to the port.

ICCL must emphasize that cruises are of significantly longer duration than air flights. Consequently, the accommodation of service animals on cruise vessels raises several concerns not associated with air travel, such as provision of food and a sufficient “relief” area for the animal. Foreign ports have varying restrictions regarding entry of animals into port, and have differing requirements regarding the necessary documents and health certificates when entry is permitted. Moreover, for the welfare and safety of the service animal, other passengers and crew, service animals generally cannot be left unattended on the cruise vessel, even in the guest’s stateroom. DOT’s service animal policy for aircraft must be modified to address these concerns, and also to more appropriately balance the concerns raised in providing access for individuals with disabilities against the limitations inherent in cruise travel. Significantly, it is extremely important that DOT’s service animal guideline not conflict with applicable Public Health requirements restricting animal presence in pools, pool “beach areas”(that flat area around shipboard pools that contains sloshing), and whirlpools.

For passengers traveling with service animals, cruise vessels typically require that passengers make their own arrangements for delivery of appropriate food for the animal. DOT’s service animal policy should affirm this practice. To the extent that a cruise operator chooses to supply food for the animal, there should be no prohibition against charging an additional fee for this service. DOT’s current air carrier guidance prohibits charging “carriage” fees for service animals, this prohibition should not extend to additional fees for items such as food.

Cruise vessels typically require that service animals be housed within the passenger’s guest room. While cruise vessels typically do not restrict the number of service animals that an individual brings or impose a strict size limitation, the number and size brought must be safely accommodated within the passenger’s cabin. A relief area is established either on an exterior deck or alternatively, where the passenger is booked into a cabin with a balcony, on the balcony.

ICCL also wishes to note that due to the limited space available onboard and the extended length of the voyage, there is a limit to the number of service animals that can be accommodated on a particular voyage. Cruise vessels typically operate at full passenger capacity and are designed to maximize the number of passengers that can be accommodated in the available space. For any given voyage, typically few passengers bring service animals. While the presence of relatively few service animals is not disruptive to the ship’s operations, in those circumstances where a group of individuals using service animals books passage, the number of service animals onboard can be disruptive to onboard ship operations and the quality of the cruise experience for other guests.³ DOT’s current guidance regarding service animals on air craft states that “inconvenience” to other guests is an insufficient basis upon which to deny transport of a service animal in the aircraft cabin. Whereas individuals purchase airline tickets for transport, individuals purchase cruises both for transport and the quality of the onboard experience. In those situations where the presence of a large number of service animals is

³ One ICCL member reports receiving an inquiry from a large group seeking to bring an estimated 100 service animals onboard a single cruise.

disruptive to shipboard operations, the overall experience and quality of service provided for all passengers is adversely impacted. Consequently, cruise lines should be permitted to establish reasonable limits on the aggregate number of service animals permitted on a single voyage.

Furthermore, the guidance should address in greater detail situations wherein the service animal exhibits threatening behavior or otherwise causes a significant disruption to the cruise. Unlike land facilities or aircraft, cruise vessels have only a limited means of addressing the situation. Land-based facilities can simply evict the animal from the premises. Aircraft can refuse the animal carriage in the passenger cabin, instead transporting the animal in the baggage compartment in an appropriate traveling container. These options are not available onboard a ship. There is no appropriate space in which to sequester the animal away from other passengers and crew. Additionally, as noted above, the safety and well-being of the service animal preclude leaving the animal unattended. The only option available is to disembark the animal at the next port. This, however, does not solve the question of what to do with the animal in the interim.

Finally, DOT's recognition of "emotional support" animals as service animals, severely complicates the ability to deny passengers the ability to travel with pets. It also is not entirely consistent with DOJ's limited guidance on the issue (*i.e.*, that service animals must be trained to perform a specific function or task for the individual with a disability). ICCL disagrees with DOT's conclusion that "emotional support" animals are in fact proper service animals within the meaning of the ADA and DOT should adopt DOJ's decision on this issue.

12. Economic Considerations:

ICCL Comment: DOT discusses the economic evaluation done by the Volpe Center in July 1996. DOT also seeks comment on the benefit of the accessibility requirements by stating that more of the population base could then benefit. The cost basis used for the evaluation was understated in terms of costs of modifications and typical salaries paid workmen and crew members even at the time the study was conducted. Overall, that Volpe study is out of date and inappropriate for modern cruise ships. This very limited study did not consider any modern, large cruise vessels. Those considered were constructed decades ago and the information is inaccurate. See also ICCL response to Regulatory Assessment Plan, Section 5.

Section 4:

Preliminary Report of Findings - ICCL Data Collection Project

Preliminary Report of Findings - ICCL Data Collection Project

Introduction

In the year 2004, the ICCL and its member cruise line companies initiated a data collection project to provide a factual basis for discussion of an appropriate scoping level for accessible cabins on cruise ships. The data collection process was to generate two data sets: the first data set is longitudinal data collected for as long a period as could be found. This data set would be used to identify changes in the demand for accessible cabins over time, by passengers using wheelchairs. The data would also serve as a basis for projecting the growth of demand for accessible cabins into the future - over the 25 to 30 year expected lifetime of a cruise ship.¹ The second data set was to be a representative sample of use of accessible and non-accessible cabins by passengers using wheelchairs during the 2005 cruise year. Data collection began on January 1, 2005 and will be carried out throughout the year. This is a preliminary report based on data collected from voyages during the first half of the year.²

Caveats

Good data collection is expensive and time consuming. All data collectors have to follow standardized procedures and utilize standardized definitions. Incoming data is reviewed as it is entered into a growing data base, and data observations are checked for accuracy and completeness. While the data being submitted is of high quality, there are some observations which may over-count and some which may undercount wheelchair use. For the purpose of this study, any individual who requested and booked an accessible cabin was counted as a wheelchair user. Also counted were any individuals who used a wheelchair (or scooter) in relation to the cruise even if only for embarkation and/or debarkation. In most cases, observations on the number of wheelchair users are taken from reports of special needs passengers prepared by the operator as passengers board the ship. In this circumstance, the ship's staff is aware of both wheelchair users who requested and booked into accessible cabins, and arriving wheelchair users who did not notify the cruise line of any special need prior to sailing. All lines ask that passengers identify special needs as part of the reservation process, so that necessary arrangements can be made to provide appropriate assistance, equipment or supplies.³ It should also be noted that the International Convention for Safety of Life at Sea (SOLAS) Chapter III Regulation 27.2 requires that "Details of persons who have declared a need for special care or assistance in emergency situations shall be recorded and communicated to the master prior to departure".

¹ Cruise ships may be in use for as much as 40 years, but common industry practice is to operate a ship for 25-30 years in the North American market, and then sell or transfer the ship to other markets.

² The data collection process is not complete for the whole six months. Some observations cover trips for January through March, other observations cover voyages through May or June.

³ There are many types of special needs. Diabetics for example may need refrigerators in their cabin to preserve insulin. They may also need Sharps Containers to safely dispose of used syringes. Other passengers may need accommodations such as bed boards, Dialysis supplies, Oxygen or Special Transfers. In this report we focus only on the use of wheelchairs, since this may require extensive modifications of cabins, particularly in the bathroom.

In some cases, lines have reported wheelchair usage based on the reservation reports. These reports list special needs for all passengers identifying themselves as having a special need. These counts would not include any passengers who reported onboard with a wheelchair (or some other disability) but provided no prior notification. Typically the majority of passengers using wheelchairs who require an accessible cabin provide prior notification. Therefore, while limited reliance on data from reservation reports may result in a slight undercount, it should not have a major effect on the findings of the study. As the data collection continues, the data will be reviewed to identify and eliminate potential data collection errors. In the meantime, the data set being developed on wheelchair usage is statistically large enough and robust enough to warrant a preliminary report.

Description of the Initial Survey Counts

To date, the survey has collected the following information.

Number of Voyages: 1159

Passenger Capacity for these Voyages: 2,403,326

Actual Passengers Carried: 2,583,824⁴

Total Number of Wheelchair Users: 6,129

Total Wheelchair Users in Accessible Cabins: 2,223⁵

Total Wheelchair Users in Non-Accessible Cabins: 3,906

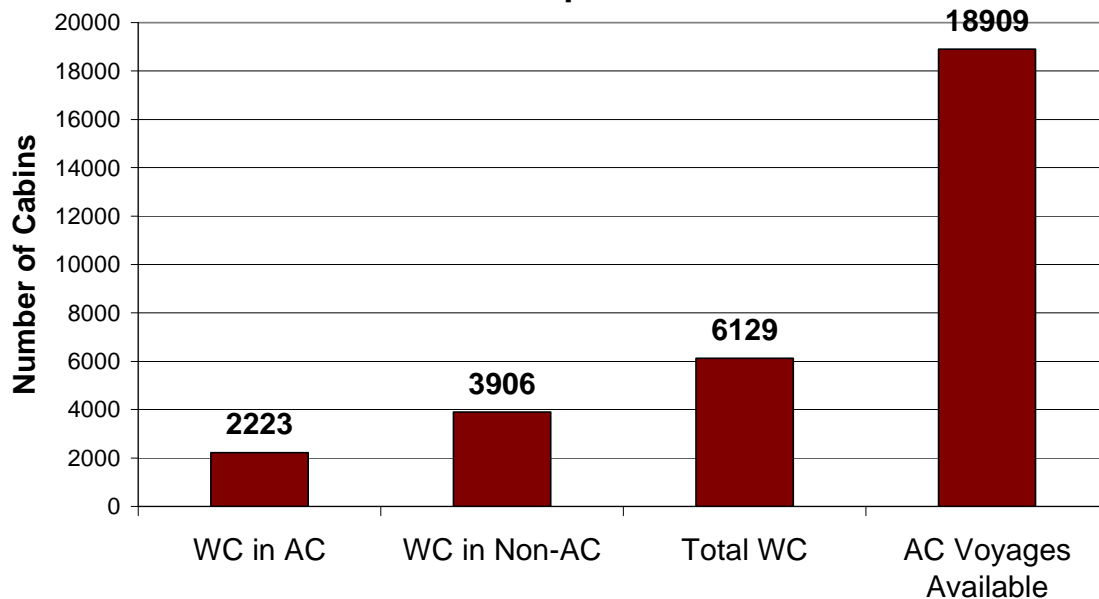
Total “Accessible Cabin Voyages” Available: 18,909⁶

⁴ This is a slight undercount, since some cruise lines identified only standard capacity. Standard capacity is defined as the total number of lower berths, with two lower berths per cabin. The actual onboard count may exceed rated capacity since some cabins may have upper berths or rollaway cots to accommodate more than two passengers in a cabin. The undercount is probably equal to no more than one percent of the total count.

⁵ This assumes that there is one wheelchair user in each accessible cabin. In a very few cases there may be two wheelchair users sharing a cabin. Assuming only one person using a wheelchair in each cabin provides an upper bound on the measured demand for accessible cabins.

⁶ “Accessible Cabin Voyages” is a summation of the number of accessible cabins on each ship times the number of voyages for each ship.

CHART 1
Accessible Cabins and Cabin Use, Initial 2005
Sample



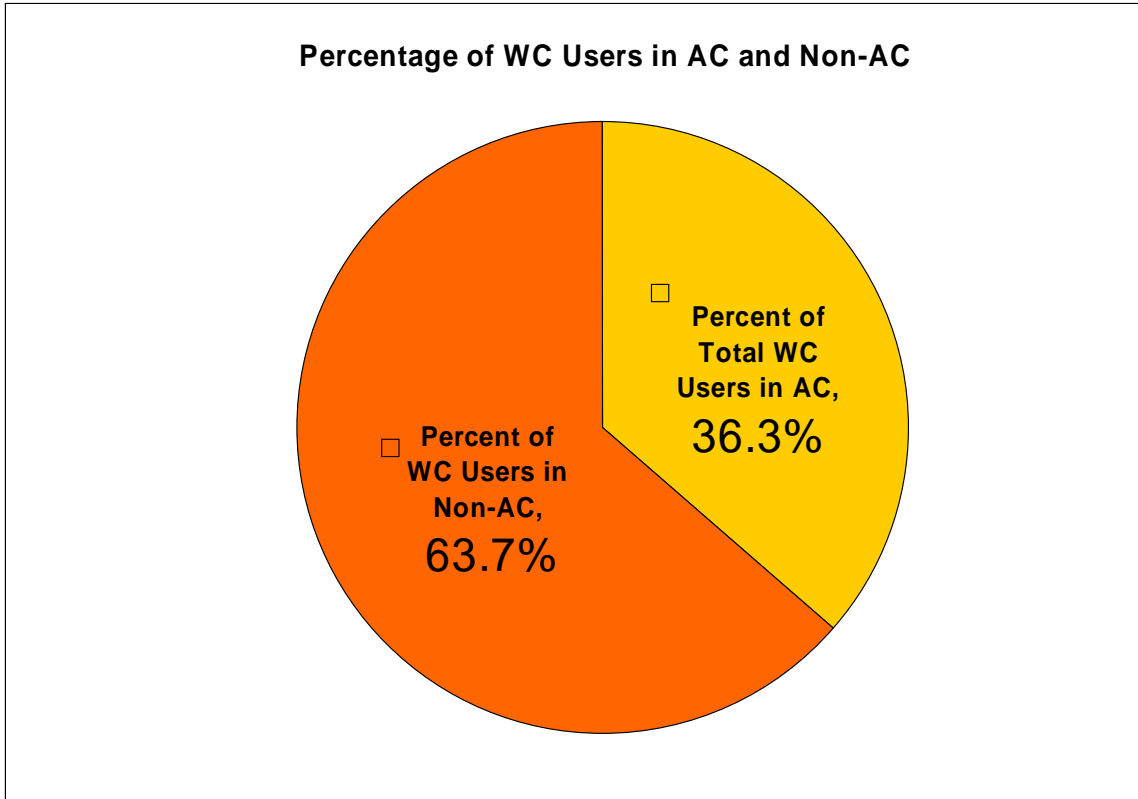
Some of these numbers may be somewhat surprising. Many people are unaware that actual onboard counts of passengers are greater than published capacity.⁷ It should be noted that most ships on most cruises sell out all cabins. Only rarely do ships sail with empty cabins.⁸ It may be surprising that the number of accessible cabins occupied by passengers using wheelchairs (2,223) is so small relative to the number of accessible cabins available (18,909) on the sample voyages. It appears that many passengers using wheelchairs actually request and use non-accessible cabins (3,906). There are several possible reasons for this relatively high usage of non-accessible cabins by individuals using wheelchairs. One reason is that many individuals use wheelchairs for embarkation and debarkation only, and do not otherwise use a wheelchair while onboard. Another reason is that not all passengers using wheelchairs do not do so full time and therefore, do not request an accessible cabin.

Whatever the reason, 63.7 percent of individuals using wheelchairs on the sample voyages chose to occupy non-accessible cabins. Only 36.3 percent requested and occupied accessible cabins.

⁷ See explanation in footnote 4.

⁸ An observation was made during the Washington hearing on July 25, 2005 that it is frustrating for an individual with a disability not to be able to obtain an accessible cabin on the dates for which they wish to travel. It should be noted that many passengers, both able-bodied and disabled face this frustration. Unlike hotels, ships do not have drop-ins or casual travelers arriving without reservations or asking for reservations at the last minute. Reservations are typically made six to 12 months in advance. Popular voyages, dates and seasonal/holiday periods sell out very quickly. Passengers, disabled or not, requesting reservations for particular time frames are frequently told that the voyage they want is already sold-out and are offered other available dates. If any cabins remain available as the sail date nears, the cruise lines aggressively market to fill these available cabins. The result is that there are rarely unsold (or unused) cabins available.

Chart 2



The Basic Data Matrix - Table 1 (Attached)

The data totals for the number of ships, number of voyages, number of wheelchair users in accessible cabins, number of wheelchair users in non-accessible cabins, total wheelchair users, and total passengers were discussed briefly above. Table 1 provides the detail behind the total and provides a view of the variance in usage among the ships included in the sample. This section briefly describes the structure of the Table and provides a few preliminary observations about the data. No attempt is made to extrapolate from this data to an implied or preferred scoping level. This scoping analysis will be provided when the final data collection, review and analysis is completed.

- Column A numbers the ships in the sample from 1 through 65.
- Column B lists the number of voyages for each ship in the sample.
- Column C indicates whether the vessel has more or less than 1000 cabins. (To preserve confidentiality of the subject vessels, actual cabin counts have not been listed in the table.)

- Column D indicates the number of accessible cabins available, as identified by the cruise line providing the information.⁹
- Column E provides the number of wheelchair users occupying an accessible cabin traveling on a given ship during the voyages noted in Column B. For ship number one, for example, there were a total of 28 wheelchair users in accessible cabins over a total of 12 voyages.
- Column F provides similar data for wheelchair users in non-accessible cabins.
- Column G adds Columns E and F to provide total wheelchair users for the ship.
- Column H provides total passengers onboard.
- Column I is the ratio of the total number of passengers using wheelchairs to the total number of passengers onboard. This should be interpreted for ship one as “The probability that the next person embarking on this ship is using a wheelchair is 0.00389 or slightly less than 4/10th of one percent”.
- Column J shows the ratio of passengers using wheelchairs in accessible cabins to total passengers.
- Column K is the ratio of wheelchair users in accessible cabins to the total number of wheelchair users. For ship one, only 35 percent of wheelchair using passengers asked for or used an accessible cabin.

A similar table could be prepared listing each voyage and the numbers of people using wheelchairs (in both accessible and non-accessible cabins) but in the interest of brevity this list is not provided here. As might be expected, the number of passengers using wheelchairs, and the distribution of wheelchair using passengers between accessible cabins and non-accessible cabins will vary by voyage as well as by ship. The data for each ship in the Table provides an average usage rate. This rate may vary considerably on a trip by trip basis. Given this variance a mean usage rate can be developed (divide the entries in columns E, F, and G, by the entries in Column B) and a standard deviation around the mean can be calculated. To complete the standard deviation analysis, the complete data listing for each voyage is necessary. The standard deviations and the implications from the standard deviation analysis will be performed after the data collection process is completed, reviewed and analyzed.

Longitudinal Data

A second data set was collected on an annual sample of 15 to 20 ships for each year from 2000 through 2005. Although the data from 2005 is incomplete, it is presented here in order to provide the longest period of observation available. The underlying data set, not shown here, is very large, containing approximately 1200 voyages per year on the 15 to 20 ships in the sample. Between 2,000,000 and 3,000,000 passengers are in each yearly sample. The number of ships varies by year because new ships are entered in the sample as they come on line, and older ships that are sold are removed from the sample. While the proportion of passengers using wheelchairs varies across all cruise ships, the cruise ships in this longitudinal sample are clustered at the high end of the range of average wheelchair usage. The high end range was

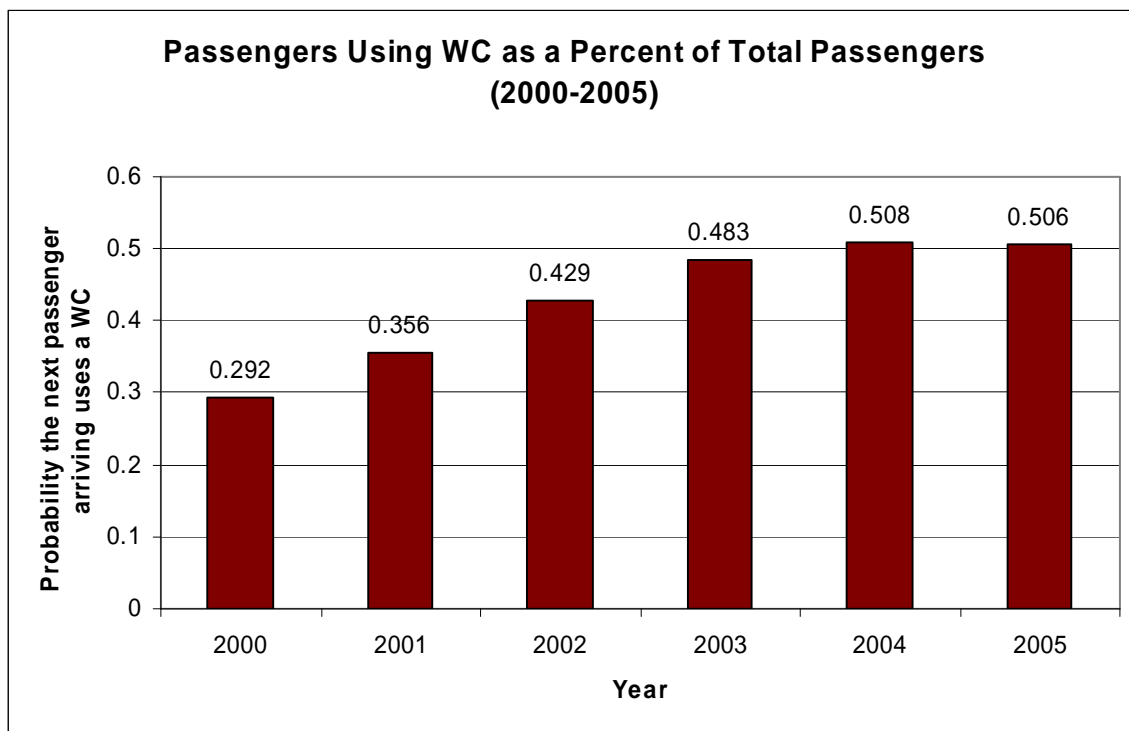
⁹Note that the term “Accessible Cabin” is not strictly defined prior to the completion of the rule-making process. Because no regulations exist at this time, each line operates with its own definition of an accessible cabin. It is therefore possible that some cabins would not provide all of the amenities that may be specified in a completed rule and the provided amenities may differ from line to line.

chosen so that the findings would reflect maximum wheelchair usage. The sub-sample of longitudinal data is not completely representative since the ships in the sample generally exhibit higher than average wheelchair usage rates than other ships in the cruise line domain. The average for the whole industry will be somewhat lower, therefore. There may be sampling errors introduced due to data collection methodology on some ships, as discussed in the Caveat section above.

The longitudinal data set has been analyzed in many ways to look at the effect of length of voyage (the longer the voyage, the higher the usage rate by people with wheelchairs, the shorter the trip, the lower the usage rate), by itinerary (Caribbean trips show lower usage rates, partially because there are more short trips in the Caribbean, and partially due to the demographics of the passengers on these shorter voyages).

To capture the data in this large data set as simply as possible, the ratio of passengers using wheelchairs (called total wheelchair usage in earlier tables) to total passengers has been calculated for each year. This number is expressed as a percentage in Chart 3, below.

Chart 3



The number for 2000, 0.292 or approximately 3/10th of one percent can be defined as the probability that the next person arriving at the ship is using a wheelchair. If 300 people board a ship in the year 2000, one of them could be expected to use a wheelchair. Note that the proportion of passengers using wheelchairs increases significantly in the years 2001, 2002 and 2003. In 2004 the proportion increased again, but at a lower rate of increase compared to earlier years. The 2005 year-to-date data indicates that the usage rate has leveled off. It should be noted however, that this is partial-year data. The analysis of the complete data from earlier years

for the ships in the longitudinal sub-sample does indicate that there is a seasonal bias in wheelchair usage rates, with rates likely to increase in the summer and fall, relative to the earlier months. The data collection during the remainder of 2005 will probably indicate an increase in the annual wheelchair usage rate for the full year.

The increased rate of wheelchair use on cruise ships over time is due to several factors including a growth in the proportion of the population using wheelchairs. This growth is expected to continue. However, improvements in medical care and in general good health and hygiene (better diets, more exercise, less smoking) may mitigate some of the effects in the growth of the elderly population. However, the more likely explanation for the observed growth in the use of wheelchairs from 2000 through 2005 is the quality of the cruise experience for individuals using wheelchairs. In addition, the cruise industry in North America has expanded steadily through the 2000-2005 period, as reflected in the size of the sample, which increased by one-third over the period. Prices for cruises have actually declined (very slightly), but given even the low inflation rates experienced over the period, cruising has become a better buy. Even in the absence of any accessibility standards specific to passenger vessels, ships have continued to be designed and built to be more accessible to passengers using wheelchairs.

The Revenue Impacts of Accessible Cabins

Accessible cabins require more space than standard cabins. Two accessible cabins occupy the footprint of three standard cabins; it takes three standard cabins to construct two accessible cabins. Thus for each two accessible cabins that are built one standard cabin is lost for the life of the ship along with the future income that would be generated by that cabin. Each cabin sold produces revenue as reflected in the ticket price for the voyage. The rented cabin also produces service income as passengers buy things such as spa treatments, beverages, etc. On average, the typical cabin produces a revenue stream of approximately \$400 per day for each day the cabin is occupied.¹⁰ The typical ship sails with passengers 350 days per year. A typical cabin therefore produces an annual income stream of \$400 X 350 days or \$140,000 per year.

Multiplying the \$140,000 lost revenue per cabin per year times the expected 30 year life of the ship results in \$4.2 million unearned income per lost cabin over the life of the ship.

Assume 80 new ships are added to the fleet over the next 20 years to account for the industry growth rate. This equates to 4 ships per year being added to the fleet and does not account for additional ships that must be built to replace aging ships transferred to other markets.

Multiplying the \$4.2 million times the 80 ships equals \$336 Million lost in unearned revenue over the aggregate life of the ships (30 years per each ship) for each lost cabin.

Assuming a net loss of 3 standard cabins per ship based on a 0.5% increase in scoping applied to an average ship of 1200 cabins the above numbers yield a \$1.008 Billion total revenue loss in unearned income.¹¹

¹⁰ Source: Compiled for ICCL by Business Research & Economic Advisors.

¹¹ This revenue stream is not discounted to present value.

It is important that excessive scoping requirements not be imposed on cruise ships, so that cruise lines and their shareholders do not bear excessive costs. The data collection process described in this report will help to develop an appropriate scoping level for accessible cabins.

Table 1

A	B	C	D	E	F	G	H	I	J	K
Ship Code	# Voyages	# of Cabins	AC Available	WC in AC	WC in Non-Access	Total WC	Pax (Total)	Ratio of Total WC to Total Pax	Ratio of WC Users in AC to Total Pax	WC Users in AC/Total WC users
1	12	<1000	17	28	52	80	20580	0.00389	0.00136	0.3500
2	12	>1000	28	48	90	138	38803	0.00356	0.00124	0.3478
3	24	>1000	24	103	155	258	56083	0.00460	0.00184	0.3992
4	12	>1000	24	62	72	134	28014	0.00478	0.00221	0.4627
5	24	>1000	24	91	137	228	55669	0.00410	0.00163	0.3991
6	24	>1000	24	91	136	227	55227	0.00411	0.00165	0.4009
7	24	<1000	21	66	110	176	38692	0.00455	0.00171	0.3750
8	22	>1000	24	53	121	174	50226	0.00346	0.00106	0.3046
9	24	>1000	24	106	165	271	56156	0.00483	0.00189	0.3911
10	12	>1000	16	50	96	146	28276	0.00516	0.00177	0.3425
11	12	>1000	24	31	54	85	27407	0.00310	0.00113	0.3647
12	12	>1000	16	45	99	144	28267	0.00509	0.00159	0.3125
13	12	>1000	24	28	67	95	28089	0.00338	0.00100	0.2947
14	12	>1000	16	59	201	260	27940	0.00931	0.00211	0.2269
15	12	>1000	30	57	141	198	38254	0.00518	0.00149	0.2879
16	12	>1000	28	47	148	195	38951	0.00501	0.00121	0.2410
17	12	>1000	30	59	119	178	37385	0.00476	0.00158	0.3315
18	11	<1000	28	59	48	107	20328	0.00526	0.00290	0.5514
19	8	<1000	21	40	26	66	10528	0.00627	0.00380	0.6061
20	11	<1000	6	25	30	55	13838	0.00397	0.00181	0.4545
21	11	<1000	28	50	36	86	20328	0.00423	0.00246	0.5814
22	13	<1000	16	56	66	122	34486	0.00354	0.00162	0.4590
23	19	<1000	16	73	90	163	50337	0.00324	0.00145	0.4479
24	3	<1000	2	0	1	1	688	0.00145	0.00000	0.0000
25	3	<1000	2	3	2	5	948	0.00527	0.00316	0.6000
26	2	<1000	2	1	3	4	727	0.00550	0.00138	0.2500
27	3	<1000	2	0	3	3	559	0.00537	0.00000	0.0000
28	20	>1000	26	18	43	61	67690	0.00090	0.00027	0.2951
29	15	>1000	15	30	45	75	32357	0.00232	0.00093	0.4000
30	26	>1000	14	14	48	62	53705	0.00115	0.00026	0.2258
31	22	>1000	26	44	77	121	75405	0.00160	0.00058	0.3636
32	22	<1000	14	18	72	90	45691	0.00197	0.00039	0.2000
33	20	>1000	19	38	61	99	44398	0.00223	0.00086	0.3838
34	11	<1000	17	23	29	52	19632	0.00265	0.00117	0.4423
35	22	>1000	26	42	102	144	75815	0.00190	0.00055	0.2917
36	43	>1000	4	15	37	52	106984	0.00049	0.00014	0.2885
37	43	>1000	4	11	47	58	106984	0.00054	0.00010	0.1897

A	B	C	D	E	F	G	H	I	J	K
Ship Code	# Voyages	# of Cabins	AC Available	WC in AC	WC in Non-Access	Total WC	Pax (Total)	Ratio of Total WC to Total Pax	Ratio of WC Users in AC to Total Pax	WC Users in AC/Total WC users
38	24	<1000	4	16	19	35	39967	0.00088	0.00040	0.4571
39	21	>1000	26	32	60	92	71755	0.00128	0.00045	0.3478
40	20	>1000	14	22	53	75	44522	0.00168	0.00049	0.2933
41	22	<1000	17	27	66	93	46976	0.00198	0.00057	0.2903
42	21	<1000	17	13	49	62	39433	0.00157	0.00033	0.2097
43	20	>1000	19	19	36	55	43809	0.00126	0.00043	0.3455
44	43	>1000	6	10	60	70	107124	0.00065	0.00009	0.1429
45	22	<1000	17	22	58	80	47523	0.00168	0.00046	0.2750
46	22	>1000	26	52	57	109	75155	0.00145	0.00069	0.4771
47	20	<1000	8	17	37	54	36968	0.00146	0.00046	0.3148
48	18	>1000	26	8	48	56	37710	0.00149	0.00021	0.1429
49	12	<1000	8	9	16	25	22359	0.00112	0.00040	0.3600
50	16	<1000	4	6	14	20	21278	0.00094	0.00028	0.3000
51	12	>1000	26	30	37	67	23635	0.00283	0.00127	0.4478
52	20	>1000	26	35	67	102	41582	0.00245	0.00084	0.3431
53	16	<1000	8	24	30	54	30500	0.00177	0.00079	0.4444
54	14	>1000	26	18	60	78	27827	0.00280	0.00065	0.2308
55	14	<1000	4	13	19	32	19152	0.00167	0.00068	0.4063
56	22	>1000	6	23	41	64	44044	0.00145	0.00052	0.3594
57	14	<1000	5	7	15	22	15456	0.00142	0.00045	0.3182
58	19	>1000	24	58	37	95	42256	0.00225	0.00137	0.6105
59	21	<1000	13	21	15	36	36708	0.00098	0.00057	0.5833
60	21	<1000	4	33	27	60	30702	0.00195	0.00107	0.5500
61	22	<1000	4	7	29	36	33396	0.00108	0.00021	0.1944
62	20	<1000	5	15	41	56	38872	0.00144	0.00039	0.2679
63	19	>1000	20	47	45	92	42560	0.00216	0.00110	0.5109
64	21	<1000	20	36	22	58	50400	0.00115	0.00071	0.6207
65	21	<1000	13	19	19	38	36708	0.00104	0.00052	0.5000
TOTALS	1159	1201663	18909	2223	3906	6129	2583824	0.00237	0.00086	0.3627

Section 5:

ICCL Comments on the Access Board Draft Plan for Regulatory Assessment

ICCL Comments on the Access Board Draft Plan for Regulatory Assessment

Question 1: Are the passenger vessels proposed for the case studies representative of the types which may be constructed in the future or should other vessel types be included in the case studies?

ICCL Comment:

Although it is difficult to predict how markets and products offered in markets will shift over time, it is clear that there are at least four types of cruise ships that may be built in coming years. These include the large cruise ship described in the Regulatory Assessment Plan. ICCL recommends that case studies be developed for three additional types of cruise ships. The first of these would be the post-panamax. This is a ship so large that it cannot move through the Panama Canal, and containing somewhere from 1350 to 1600 cabins. The second type is an “intermediate size cruise ship, carrying somewhere between 200 and 400 passengers, utilizing 100 to 200 cabins. The third type is a sailing ship carrying more than 50 passengers. Space on a sailing ship is always at a premium and the potential impact of accessibility requirements on sailing ships should be examined carefully. ICCL respectfully suggests that a total of four case studies, as defined above be completed as part of the Regulatory Assessment Process. ICCL also recommends that the studies be made in the context of the most recent additions to the cruise line fleets, to reflect the accessibility that is already, in the absence of regulation, being designed and built into new ships.

Potential Impacts

The Board notes that it will examine the potential impact of accessibility requirements on the electrical power supply of a vessel. It also indicates that it will examine the impact of the guidelines on doors which are required to have coamings. Lastly, the Board proposes to evaluate the impact of the guidelines on the weight, speed, and stability of the vessels. We concur with the examination of these potential impacts. We respectfully suggest that at least two more areas of concern should be added to this explicit list. The first of these is the impact of accessibility requirements on the space available for program use or other activities, and on the total passenger capacity of a ship. Second, increases in weight (ship displacement), as well as increases in electrical generating capacity, coupled with maintenance of speeds necessary for maintaining and developing itineraries, may require larger engines, resulting in higher fuel consumption. These are substantial effects on any passenger vessel and should be examined carefully, particularly in relation to rapidly-rising fuel costs. For the smaller vessels listed in the table on page two of the proposed Regulatory Assessment Plan, usable space, engine size and fuel consumption may be critical variables.

Question 2: Will any scoping or technical provisions that are marked with the letter “N” in the table below (beginning on page 3 of the Regulatory Assessment Plan) have potential impacts that should be evaluated in the case studies?

ICCL Comment:

The following Scoping Provisions marked with an “N” may have a measurable impact on some of the ships selected for case studies. ICCL recommends these provisions be reviewed and the “N” changed to “Y” so that the impact of these provisions is included in the case studies.

- V204 - Protruding Objects: Safety equipment attached to bulkheads may narrow the path of travel on some of the smaller ships suggested for review.
- V206.2.9 - Play Areas: This may create problems given the degree to which play elements are squeezed into less total space on shipboard than on land-based facilities. Path of travel considerations and restrictions on the mix of play elements in the designated play areas may require extensive additional space, or the elimination of a number of play elements, even on the largest ships. Note that Section V233, also dealing with play areas, is marked as “N”.
- V206.5 - Doors: The provision of power assisted or whether tight sliding doors (if required) may have significant cost impacts on some ships. Additionally, ramping requirements and related features, such as sills on weathertight doors, will add significantly to costs.
- V214 - Laundry Equipment: If laundry equipment refers to equipment usable by passengers, then additional space requirements may force deletion of cabin space or loss of cabins. Laundry rooms on ships are usually designed to minimize the space required for use.
- V217 and V-224.4 - TTY and Communication Accessible Features: The Regulatory assessment should also address these items that are not currently included in the plan. Hard wiring these systems will not only heavily impact the cost but it will also increase the weight of the ship. Because this weight will be added relatively high in the ship, the stability will be impacted and will require a commensurate weight reduction elsewhere or the addition of ballast lower in the ship. This will also require an increase in electrical generating capacity. Hard wiring will also lock-in use of existing technology, when use of wireless portable instruments (PDA’s, two-way pagers) is increasing rapidly. Portable instruments allow emergency information to be received anywhere on the ship as well as text messaging of announcements. The use of wireless technology also enables upgrading as new communication devices are developed.

- V227 - Sales and Service: This section will carry a heavy economic penalty if it requires vendors to provide lowered counters or both parallel and direct approaches to counters. Space is at a premium in sales areas on ships, and it may be appropriate to use equivalent facilitation as opposed to rigid structural requirements. Clipboards could be used to facilitate signing of sales slips or credit slips, since cash is not used for sales transactions.
- V234 - Saunas and Steam Rooms: These elements may take up considerably more space which impact revenue earning capacity. Larger spaces also require higher operating costs. These rules should be examined carefully to determine the implications on the number or even on the availability of saunas and steam rooms.

Section 6:

APPENDIX

**Images Demonstrating the Complexity of On/Off Access at the Ship/Port
Interface and Justifying the Need for a Performance Standard**



Bridgeway in Well-Developed Infrastructure



Gangway with Steps High Tide



Ketchikan Floating Pier



Ketchikan Floating Pier #2



Ketchikan Stairs or Steep Ramp



Limited Dock Space



No Infrastructure



Platform Lift to Tender Deck



Ramp Assist, Performance Standard Needed



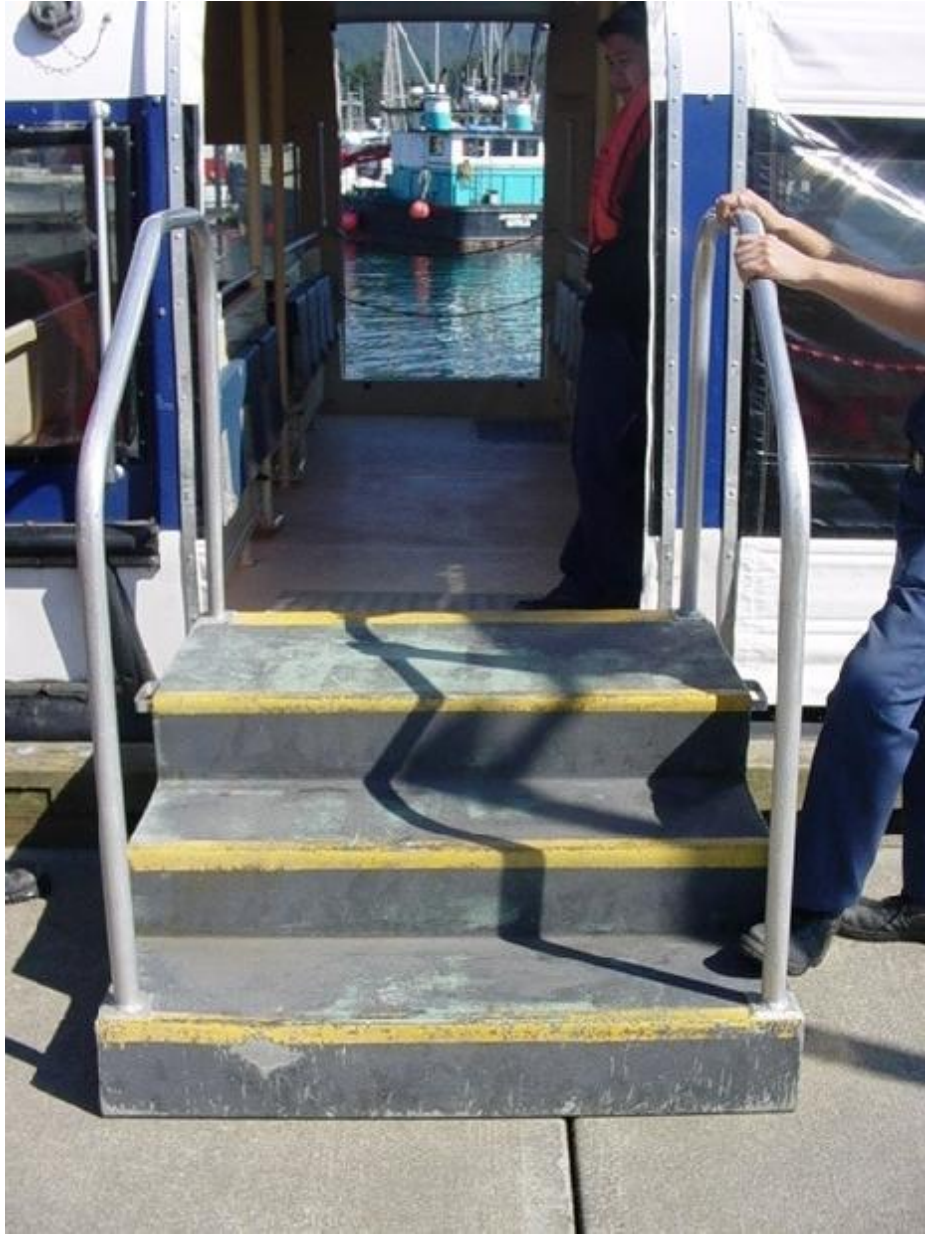
Seward High Tide Situation



Seward Shifting Gangway



Ship Tender Interface with Shore Facility



Ship Tender Shore Facility Mismatch



Small Boat Access



Tender Deck LULA



Tender Interface Direct to Ship



Tender Interface with Ship's Platform



Tender Vessel and Ship Platform



Tendering With Local Resource