

passenger vessels to have fewer than these passenger numbers.

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

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

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

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

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

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

with the access provisions applicable to larger passenger vessels.

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

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

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

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

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

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

Availability of Copies and Electronic Access

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

Emil H. Frankel,

Chair, Architectural and Transportation Barriers Compliance Board.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST-2004-19700]

RIN 2105-AB87

Nondiscrimination on the Basis of Disability: Passenger Vessels

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Department of Transportation is seeking comments on a number of issues concerning the accessibility of passenger vessels to individuals with disabilities. The Department is considering proposing rules on this subject under the Americans with Disabilities Act. This action is related to the issuance of a notice of availability and ANPRM being issued by the Access Board concerning accessibility guidelines for passenger vessels.

DATES: Comments must be received on or before March 28, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be filed with: the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Please identify the docket number OST-2004-19700 at the beginning of your comments. You may also submit comments through the internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments to the docket on the Internet at <http://dms.dot.gov>. Search by using the last set of digits in the docket number (omitting the "OST-2004").

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590-0001. Telephone (202) 366-9310 (voice); (202) 755-7687 (TDD). E-mail bob.ashby@ost.dot.gov

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation has long recognized that passenger vessels and the services they provide are a form of transportation that must be accessible to persons with disabilities if the purpose of the Americans with Disabilities Act (ADA) is to be fulfilled. In the notice of proposed rulemaking (NPRM) for the Department's initial ADA rule in 1991, the Department noted that vessels were subject to the ADA but said that it would not proceed to

rulemaking at that time because it lacked sufficient information (56 FR 13866-87; April 4, 1991). The Department understood that the marine industry's unique missions and operating environment made implementing ADA nondiscrimination requirements particularly challenging. The Department confirmed this position in its final rule, noting that it would work with the Access Board and Department of Justice (DOJ) toward future rulemaking (56 FR 45599-45600; September 6, 1991).

In this preamble discussion, the Department also stated its view that the ADA applies to private and public passenger vessels, including ferries, excursion and sightseeing vessels, floating restaurants, cruise ships, and others. With respect to cruise ships, which the Department viewed as both a type of "specified public transportation" and a place of public accommodation, the Department stated its position that the ADA applies to foreign-flag cruise ships that call at U.S. ports (id.). Privately-operated vessels would be covered under Title III of the ADA, while publicly-operated vessels would be subject to Title II. Publicly-operated vessels that receive Federal financial assistance (e.g., public ferry systems that receive funds from the Federal Transit Administration) would also be subject to section 504 of the Rehabilitation Act of 1973.

In the intervening years, the Department and the Access Board have worked to lay a foundation for rulemaking. In 1995-96, the Department, working through the Volpe National Transportation Systems Center (Volpe Center), conducted a preliminary regulatory assessment and provided a report assessing the feasibility of implementing the ADA in the passenger vessel industry. This study resulted in an assessment of technical feasibility and a set of cost data based on assumed access solutions. The Department has posted a copy of this study in the docket for this ANPRM. The Department realizes that this data is now several years old, and the Department and the Access Board are planning a new regulatory assessment. However, the Volpe Center study is the only existing study regarding the costs of vessel accessibility, and we believe that it may be useful to interested persons as they work on formulating comments on the ANPRM.

The Access Board, after an extensive period of study and public consultation, developed draft accessibility guidelines for large passenger vessels (i.e., those with a capacity of more than 150 passengers or more than 49 overnight

passengers) and has just issued a Notice of Availability concerning this draft. The Access Board also issued an ANPRM regarding the accessibility of smaller passenger vessels. They can be found elsewhere in this issue of the **Federal Register**.

We should say a word about the relationship between the Access Board and DOT rulemakings. Under the Americans with Disabilities Act, the Access Board adopts, through a rulemaking process, guidelines for the accessibility of facilities and vehicles. The Department of Transportation and the Department of Justice must then adopt, in their regulations, minimum standards that are consistent with the Access Board's guidelines. For example, the Access Board has adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAGs), codified at 36 CFR Part 1191. In turn, the Department of Transportation adopted these guidelines in its ADA regulations, as Appendix A to 49 CFR Part 37, the Department's ADA rules. The Department's rules require accessibility in certain situations; the Access Board guidelines that the Department has adopted define accessibility in considerable detail.

With respect to passenger vessels, the draft Access Board guidelines will lead, after the conclusion of the Access Board's rulemaking process, to final guidelines for accessible passenger vessels. The Department's ANPRM will lead, following the conclusion of the Department's rulemaking process, to a regulation requiring nondiscrimination and accessibility in passenger vessel service. The Department's final rule will adopt minimum standards consistent with the final Access Board passenger vessel guidelines. Because the two agencies' rulemakings are so closely intertwined, and because they must result in regulations that are consistent with one another, the two agencies intend to work together closely together throughout this project.

The Department will also coordinate its proposed regulation with the Department of Justice (DOJ), which has responsibility for enforcing the Department of Transportation's ADA rules with respect to private entities (and most passenger vessel operators potentially covered by the Department of Transportation's rules are likely to be private entities). We will also coordinate closely with the Coast Guard, which is now part of the Department of Homeland Security. The Coast Guard has extensive expertise in passenger vessel matters that will be invaluable in this rulemaking, and the Department must also ensure that its rules are

compatible with Coast Guard safety rules for vessels.

Areas for Comment

In this ANPRM, DOT is interested in gathering up-to-date information on how it could best implement regulations ensuring that passenger vessels are accessible as required by the ADA. We would appreciate additional information on the following subjects to help us frame our forthcoming NPRM. Please note that there are important differences between large and small vessels and that, in some cases, it may be appropriate to respond to questions and requests for comment differently depending on the size of the vessel.

1. Vessel Sizes

As noted above, the Access Board materials distinguish between large and small vessels on the basis of passenger capacity. However, there are other ways in which this distinction might be made. For example, there could be a vessel size distinction based on applicable U.S. Coast Guard regulations (large vessels are subject to 46 CFR subchapters H or K and small vessels are subject to 46 CFR subchapter C or T). DOT invites comment on this and other potential approaches, and the basis for such approaches, to identify and categorize vessels subject to the regulations. These may include vessel length, displacement or other pertinent vessel design and operation characteristics. See V201.1 Scope.

2. Access Board Draft Guidelines

DOT plans to incorporate the Access Board's guidelines into a future rulemaking, and the Department will carefully review comments to the Access Board docket, so it is not necessary for commenters to send comments specifically referencing the Access Board draft to DOT as well. DOT also requests ideas for other means of achieving accessibility and any information that may be available to update the costs of industry implementation.

DOT also requests comments on the general applicability of the Access Board's guidelines. What should be considered a new vessel, triggering the requirement that the vessel be built to fully comply with the Access Board's guidelines? What date, design or construction should be used for determining the vessel's status with respect to new or old vessel? What lead time is necessary to ensure that new vessels are designed with the Access Board's guidelines in mind?

The DOT believes that access onboard passenger vessels involves issues

similar to those in other modes but that this mode also has unique issues due to the fact that vessels operate in a dynamic, waterborne environment. For example, accessibility in other modes does not need to contend with transitions from dock or gangway to vessel, transitions between decks, or the variable motion of passenger vessels. Many of these issues are likely to become increasingly difficult with smaller vessels. Moreover, the unique environment in which passenger vessels operate imposes several constraints on access solutions. For example, the safety of crew and passengers depends upon a stable and watertight platform and a structure capable of responding to dynamic loads and sustaining damage from collisions and groundings. Perhaps the classic example is that of coamings in doorways that increase the watertight integrity of vessels but present barriers to wheelchair users.

Coast Guard safety regulations affect all aspects of vessel construction and operation. Consequently, both the Access Board and DOT regulations must be consistent with Coast Guard requirements. The Department seeks comment on the interaction of the draft Access Board provisions and existing Coast Guard rules with future DOT ADA rules.

3. Barrier Removal and Program Accessibility

Typically in ADA regulations, physical accessibility standards apply only to new facilities or vehicles or to alterations to those vehicles and facilities. Title III entities must make readily achievable changes to existing facilities to accommodate persons with disabilities, and Title II entities must ensure program accessibility by making modifications to existing facilities that are not unduly burdensome. DOT and DOJ rules in the context of other transportation modes make use of these concepts. Should these concepts apply unaltered to passenger vessels? Does the fact that passenger vessels may remain in service longer than many other types of facilities and vehicles suggest that a greater degree of retrofitting may be appropriate for vessels?

4. Shore to Vessel Transition

Getting on and off vessels can be difficult for passengers with disabilities, particularly those with mobility impairments, and challenging for vessel and dock/gangway operators. There must be a means by which a person with a disability can embark and disembark a vessel at all ports of call. Ramp slopes can vary with tidal fluctuations, and space constraints in

some dock or gangway areas may make accessible loading difficult.

One of the most important questions with respect to boarding concerns the allocation of responsibility between vessel operators and operators of docks, terminals, and other shore-based facilities. Some vessels may be based exclusively at one facility, which they own. Other vessels may call at a variety of ports, none of which they own. Vessels and shore based facilities can be privately or publicly owned, and thus subject to Title III or Title II of the ADA. The Department seeks comment on how accessibility responsibilities should be allocated, and on whether there should be the same or different requirements for public or private entities.

In this regard, we call to commenters' attention to at least somewhat analogous situation in the air travel industry. Under the Department's Air Carrier Access Act regulations (ACAA; 14 CFR §§ 382.40 and 382.40a) and section 504 rules (49 CFR §§ 27.70 and 27.71), airlines and airports have joint responsibility for providing boarding lifts for situations in which aircraft load from the tarmac rather than via level-entry loading bridges. The Department seeks comment on whether this concept can be adapted to at least some situations concerning boarding of passenger vessels. Also, see the Access Board's Large Passenger Vessels—Notice of Availability Summary Material at V208, which includes a requirement for a boarding system on the vessel and a similar requirement on the landside.

As noted above, boarding issues can become more difficult as vessels become smaller. Particularly for smaller passenger vessels, should vessel operators have greater discretion to use crew assistance as a means of access? What other special provisions, if any, should there be for smaller vessels, and in what size categories should they apply?

Is it feasible for vessels making multiple ports of call to provide a gangway that will allow people with disabilities to embark and disembark at each port of call? Do shore facilities need to standardize their facilities to ensure that a vessel's gangway will provide sufficient access? What additional barriers do smaller vessels face in providing accessible boarding at all ports of call?

In addition, the Department recognizes its lack of authority to regulate shore based facilities in foreign ports of call. However, many passenger vessels owned or operated in the United States make foreign ports of call. Is it feasible to require that these vessels provide an accessible means of

embarking and disembarking passengers with disabilities at all foreign ports of call despite the allocation of responsibility for providing such services in the U.S.? What additional considerations should be made in addressing foreign ports of call?

5. Accessible Paths

On vehicle ferries, passengers with disabilities may need access from their vehicles to an elevator to reach a passenger deck and the related amenities. How can access to the elevator be accomplished? Does it require a separate lane to allow the car of a passenger with a disability to be placed in position as necessary to ensure elevator access? Does it require a passenger with a disability to arrive earlier than other passengers to ensure that the space is reserved? The Access Board has considered some of these issues in its draft guidelines (see V201.4; V404.2.9; V404.2.5; V403.5; V404.2.3; V206.2.1; V206.2.2) as well as in its summary (V208) and we refer readers to that material for more detailed information.

6. Access to On-Board Facilities

The features of many passenger vessels—especially larger ones—are similar to those of land-based facilities. There are restaurants, snack bars, bathrooms, retail stores, entertainment venues, recreational facilities, places of public assembly, hotel-like rooms etc. Like places of public accommodation elsewhere, these facilities need to be accessible. Are there reasons to treat accessibility requirements for on-board amenities any differently on vessels than elsewhere? In particular, how can accessibility be accomplished on smaller vessels on which space is a premium? We would refer the reader to V201.4 of the Draft Access Board guidelines for more detailed information on these issues.

A. Securement

Although the Access Board's guidelines would not require deck fittings on larger vessels and would require only some securement on smaller vessels, (see Option 2 in the Access Board's ANPRM), DOT requests comments on several general issues related to securing wheelchairs in a moving environment. Is it necessary to provide deck fittings to secure wheelchairs? Will such fittings be necessary in passenger rooms, dining areas, and other common areas? If so, will they be necessary whenever the person in a wheelchair stops? How should the deck fitting locations be determined? How will a person in a

wheelchair secure the wheelchair to the deck or will this require crew assistance? If crew assistance will be necessary, how will a passenger summon such assistance?

B. Accessible Cabins

Can cabins for passengers with wheelchairs be made available in all classes of service? What modifications must be made to passenger cabins? How many accessible cabins should there be on vessels of various size that have overnight accommodations? Generally, the Department believes it would be reasonable to follow the lead of the Department of Justice concerning requirements for accessible lodging and its availability and pricing to people with disabilities. We seek comment on whether the Department of Justice's approach is appropriate in the context of passenger vessels and whether, if at all, it should be modified. We refer the reader to V224.2 and V224.5 of the draft Access Board guidelines for more detailed information on these matters.

C. Vision and Hearing Impairments

What accommodations should be made for passengers with vision and hearing impairments to ensure that they are alerted to emergencies, informed of passenger announcements and events, and capable of enjoying passenger entertainment and functions? Could passengers with hearing impairments be issued a paging device for their stay on board to alert them to emergencies and inform them of passenger announcements? What type of accommodation should be provided to ensure that passengers with hearing impairments can enjoy passenger entertainment? What accommodations are necessary for ports of call, including cruise ship arranged tours or activities? What other accommodations are appropriate (e.g., relay or interpretive services, methods of communicating public announcements)?

7. Service Policies

Not only physical accommodations but vessel operator policies may create barriers to persons with disabilities. If vessel operators impose restrictions on the use of vessels by passengers with disabilities, then the passengers' ability to have nondiscriminatory access is impaired. The Department's Air Carrier Access Act regulations have a variety of requirements to ensure that air carrier policies do not discriminate on the basis of disability. For example, the rules prohibit denials of service (except where a direct threat is shown), requirements for attendants (except if the passenger is unable to assist in his

or her own evacuation), limits on the number of passengers, and extra charges for accommodations. The rules also require such things as on-board stowage for mobility aids, assistance with carry-on luggage and transfers among gates, boarding assistance, and seating accommodations for passengers with disabilities. The Department seeks comment on whether similar provisions should apply to passenger vessels and the extent, if any, to which they should be modified, especially in the case of smaller vessels.

Should DOT rules prohibit limits on the size or number of mobility aids a passenger may bring on board, including power wheelchairs or scooters permitted on board? Is it possible to charge batteries for power wheelchairs or scooters while on board? Under what circumstances, if any, should a vessel operator be permitted to require an attendant?

The Department uses the concept of "direct threat" as a standard for evaluating claims that safety-based restrictions on the activities of persons with disabilities should be permitted. The Department seeks comment on whether there is any direct threat-based rationale for any restrictions on passengers with disabilities in the vessel context.

DOT has recently provided detailed policy guidance concerning service animals in air transportation, which can be found at 68 FR 24874 (2003) and at <http://airconsumer.ost.dot.gov/rules/20030509.pdf>. DOT requests comments on what changes, if any, need to be made in this guidance to make it applicable to passenger vessels. What accommodations are necessary on board passenger vessels for service animal relief?

8. Foreign-Flag Vessels

Cruise ships clearly fall into the categories of public transportation and public accommodation and, thus, are subject to the requirements of the ADA. It is the position of the United States that the ADA applies to foreign-flag vessels operating within the internal waters of the United States. In its 1991 final rule, the Department announced that it had jurisdiction over foreign-flag vessels that call at U.S. ports, consistent with any applicable treaty obligations. The Department of Justice has taken the same position in its title III regulation and technical assistance materials, and has successfully articulated this position in numerous amicus briefs at the district and appellate court levels. See, e.g., *Stevens v. Premier Cruise Lines*, 215 F.3d 1237 (11th Cir. 2000). In a recent decision, *Spector v. Norwegian*

Cruise Line, 356 F.3d 641 (5th Cir. 2004), petition for cert. filed, 72 U.S.L.W. 3644 (U.S. April 1, 2004) (No. 03–1388), the Fifth Circuit reached the opposite conclusion. The Supreme Court has agreed to consider the case in its 2004–2005 term. Meanwhile, the United States continues to believe that its position is correct as a matter of law. Consistent with the government's position on this issue, the Department intends to draft its proposed regulation to apply the ADA to foreign-flag vessels operating within the internal waters of the United States.

9. Economic Considerations

The Volpe Center study mentioned above determined the costs of implementation, including capital and operating expenses and revenue impacts, based on an assumed set of regulations and solutions.

After determining the costs associated with the assumed set of regulations and solutions, Volpe Center determined the unit costs which reflect the increased cost of providing access relative to current practice. Volpe Center further determined the affected vessel population, including the numbers of new construction vessels, vessels requiring alteration and vessels expected to be decommissioned prior to being retrofit and calculated the industry implementation costs based upon analysis of fleet growth and replacement rates of 25 to 40 years. This cost analysis suggested that the total fleet cost, including new construction and alterations spread over 20 years and operating costs and lost revenue for 25 to 40 years depending on the class of vessel, would be \$888.9 million in 1996 dollars.

After determining the costs associated with the assumed set of regulations and

solutions, Volpe Center also determined the unit costs which reflect the increased cost of providing access to shore facilities relative to current practice. Volpe Center based the industry implementation upon an assumed replacement/upgrade of existing dock and pier population within 40 years. Volpe Center projected that the industry implementation for shore facilities would be between \$79.5 million and \$263.8 million in 1996 dollars.

The Department seeks information and comment on the potential costs of vessel accessibility requirements, including smaller vessels. To assist commenters, we have placed a copy of the Volpe study in the docket, where interested persons can review it on line or download it. The Department also seeks comment on the potential benefits of accessibility requirements. Often, people assume that the benefits of civil rights regulations are limited to nonquantifiable benefits to members of a protected class. However, it is possible that there can be some level of economic benefits to transportation providers as well, as the result of increased business from passengers who would otherwise be deterred or prevented from traveling.

In addition, the Department recognizes that the Volpe study is ten years old and, therefore, the Department and the Access Board will be conducting a new regulatory assessment. The Access Board has included a Draft Plan for Regulatory Assessment in its Large Passenger Vessels—Notice of Availability. While the Department encourages comments on the Access Board's Draft Plan, it is not necessary for commenters to send comments to the Department because the Department will carefully review comments to the Access Board docket.

Regulatory Analyses and Notices

This ANPRM is a significant rule under Executive order 12886, because it affects a wide variety of vessel operators and passengers and because passenger vessel accessibility requirements could impose considerable costs. The ANPRM has been reviewed by the Office of Management and Budget (OMB). The Department and the Access Board intend to work together on a regulatory assessment of accessibility requirements for passenger vessels in connection with the next stage of their rulemakings. The assessment would examine the costs and benefits of provisions the agencies propose in forthcoming NPRMs.

Depending on the scope and provisions of an NPRM that may follow this ANPRM, this rulemaking could have a significant economic impact on a substantial number of small entities, since many vessel operators are small entities. At the time of the NPRM, the Department will determine whether it is necessary to conduct a Regulatory Flexibility Analysis. This ANPRM does not include information collection requirements. The Department does not anticipate effects on state and local governments sufficient to invoke requirements under the Federalism Executive Order. Because it is based on civil rights statutes, this rule is not subject to the Unfunded Mandates Act.

The Department seeks comment on any issues related to the application of these or other cross-cutting regulatory process requirements to rulemaking on passenger vessel accessibility.

Issued this 16th Day of November 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

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