



Passenger Vessels Accessibility Guidelines

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Submitted January 14, 2014

Comment period closes January 24, 2014

INTRODUCTION

The Regulatory Studies Program of the Mercatus Center at George Mason University is dedicated to advancing knowledge about the effects of regulation on society. As part of its mission, the program conducts careful and independent analyses that employ contemporary economic scholarship to assess rulemaking proposals and their effects on the economic opportunities and the social well-being available to all members of American society.

This comment addresses the efficiency and efficacy of this proposed reconsideration from an economic point of view. Specifically, it examines how the relevant rule may be improved by more closely examining the societal goals the rule intends to achieve and whether this reconsideration will successfully achieve those goals. In many instances, regulations can be substantially improved by choosing more effective regulatory options or more carefully assessing the actual societal problem.

SUMMARY

The Architectural and Transportation Barriers Compliance (Access) Board is proposing “accessibility guidelines for the construction and alteration of passenger vessels covered by the Americans with Disabilities Act (ADA).”¹ The proposed rule seeks to require certain design specifications and technical provisions for renovations and construction of passenger ships so that physically disabled passengers can make use of a greater range of amenities.² The proposed provision will provide more handicap-accessible routes, means of escape, service and sales counters, drinking fountains, seating areas, toilet rooms, guest rooms, storage areas, etc. on ferries, cruise ships, and other passenger ships. The rule also requires certain alert systems to be in place for

1. Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990). The section specifically referring to vessels is section 504 of the Americans with Disabilities Act (ADA).

2. US Department of Transportation (DOT) and US Department of Justice (DOJ), Architectural and Transportation Barriers Compliance Board, “Passenger Vessels Accessibility Guidelines; Proposed Rule,” 78 Fed. Reg. 122 (June 25, 2013).

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visually and hearing-impaired passengers.

Although well-meaning, the proposed rule fails to clearly define “benefits.” The proposed rule does cite Executive Order 13563’s³ recognition that “agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” However, the proposed rule fails to (1) define what equity or fairness means in this context, (2) provide a rigorous defense of the definition based on some respectable ethical theory, and (3) provide evidence that the requirements actually will improve equity under this definition. Without a definition or theory of fairness, dignity, or equity or a measure of benefits, there is no standard by which to determine whether these rules are too obtrusive or too lax. One way to address this lacuna is to follow the methodology used by the US Department of Justice (DOJ) in 2008 when evaluating the Nondiscrimination on the Basis of Disability in State and Local Government Services Rule⁴ and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Rule.⁵ In Appendix 4 of both Regulatory Impact Analyses (RIAs), the DOJ attempts to measure use value by estimating the monetized value of the time and quality of life gained through improved access.⁶ Following this line of analysis would vastly improve the RIA.

The rule also fails to account for changes in behavior that are likely occur when cruise ship and ferry operators face higher reconstruction and replacement expenses. Given the higher costs, the proposed rule needs to assess whether operators will delay renovations, delay vessel replacement, or potentially reduce or discontinue service. Without analyzing these potential changes in behavior, the rule may be overstating the net benefits by overestimating the benefits to the handicapped passengers and underestimating the costs faced by all potential travelers who may be forced to use other, more expensive transportation options.

NO ETHICAL FOUNDATION

The proposed rule cites Executive Order 13563’s⁷ recognition that “agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” Unfortunately, the proposed rule and RIA fail to define these qualitative values. Moreover, the proposed rule and RIA fail to define these values in the context of greater access to vessels. To improve the assessment of this proposed rule, the DOJ would be wise to (1) clearly state an ethical theory of fairness, justice, or equity, (2) justify the ethical theory with relevant, evidence-based research, and (3) provide evidence that the proposed rule will advance those values. Without a well-defined goal, the DOJ is unable to assess whether the proposed rule achieves its intended purpose.

NO BENEFITS CALCULATION

The proposed rule fails to provide any empirical measure of benefits from the new design and construction requirements. Although the proposal acknowledges that the “rule is difficult to quantify,” there is no mention of whether the agency attempted such quantification.⁸ Although greater accessibility “would enable these individuals to achieve greater participation in society, independent living, and economic self-sufficiency,” the proposed rule is unable to speak to whether these goals would be achieved, let alone maximized.⁹ There may be other, more beneficial regulations not provided for in the proposed rule that would further enhance

3. Exec. Order No. 13563, 76 Fed. Reg. 14 (January 21, 2011), 3821.

4. RIN 1190-AA46.

5. RIN 1190-AA44.

6. Department of Justice, *Disability Rights Section of the Civil Rights Division, Initial Regulatory Impact Analysis of the Proposed Revised Regulations Implementing Titles II and III of the ADA, Including Revised ADA Standards for Accessible Design*, Final Report, May 9, 2008.

7. Exec. Order No. 13563, 76 Fed. Reg. 14 (January 21, 2011), 3821.

8. US Department of Transportation (DOT) and US Department of Justice (DOJ), Architectural and Transportation Barriers Compliance Board, “Passenger Vessels Accessibility Guidelines; RIA.” 78 Fed. Reg. 122 (June 25, 2013), 38103.

9. *Ibid.*

the experience of the disabled.

One way the agency could begin to assess the benefits of the proposed regulation would be to gather information about cruises that are offered specifically for the disabled. The analysis could compare the prices for similar destinations and itineraries. Because cruises offered for the disabled would likely include a greater choice of handicap accessible off-ship options than traditional cruises, the price measure might be higher than regulation-approved cruise ships that do not have a wide variety of off-ship excursions for the physically disabled. But this would give the agency an upper bound on the benefits physically disabled cruise passengers would receive under this proposed rule.

Another way the agency might assess the regulation's benefits would be to follow the method used by the DOJ in 2008 to estimate the additional benefit realized by greater accessibility from the Nondiscrimination on the Basis of Disability in State and Local Government Services Rule¹⁰ and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Rule.¹¹ The DOJ's accompanying 2008 RIAs defined three types of benefits: use value, option value, and existence value.¹² Use value is the value realized by those actively using the new accommodations. Option value is the benefit from having those new accommodations as an option when determining whether to use the facility or not. The existence value is simply the value of knowing that the accommodations are available. In Appendix 4 of the RIAs, the DOJ estimates the use value by estimating the number of visits (or uses) by adults, adjusted by age and income, the average time spent on each visit (or uses), the time premium for the increased quality of experience, the likelihood of realizing the benefit, and adjusting the demand to account for improved access. Following this methodology would vastly improve the agency's assessment of the benefits generated by this proposed rule.

DELAYED RENOVATIONS AND REPLACEMENT

The proposed rule assumes "an expected service life of 25 to 40 years based on the vessel type and size."¹³ Yet the rule fails to address whether or how operators might respond to the new, more expensive guidelines. According to the RIA, the costs of building new ships will be higher and the revenue produced per square foot is expected to be lower. Faced with these higher costs of renovation or replacement and lower revenues post-renovation, vessel operators will likely extend the service life of current vessels as a way to reduce the present value of the expenses associated with the rule. Without evidence supporting the agency's assumption on service life, the rule may be overestimating the present value of potential benefits realized by handicapped passengers.

POTENTIAL ELIMINATION OF ROUTES

The RIA fails to address whether this rule will reduce the number of sailings between ports or result in the termination of ferry or cruise ship routes. Raising the operating costs while lowering revenue may cause operators to reduce the number of sailings between ports as a way to ensure more passengers, and thus more revenue, per departure. If the costs are high enough, an operator may cease offering connections between certain ports. Previous studies analyzing the effects of ADA regulations have found numerous unintended negative consequences for the intended beneficiaries. For instance, economist Thomas DeLeire finds that the ADA caused an 8 percent decline in the employment of men with disabilities.¹⁴ MIT economists Daron Acemoglu and Joshua Angrist find that the ADA caused a large decline

10. RIN 1190-AA46.

11. RIN 1190-AA44.

12. DOJ, RIA, May 9, 2008.

13. US Department of Transportation (DOT) and US Department of Justice (DOJ), Architectural and Transportation Barriers Compliance Board, "Passenger Vessels Accessibility Guidelines; RIA," 78 Fed. Reg. 122 (June 25, 2013), 12.

14. Thomas DeLeire, "The Unintended Consequences of the Americans with Disabilities Act," *Regulation* 23, no. 1 (2000): 21–24; Thomas DeLeire, "The Wage and Employment Effects of the Americans with Disabilities Act," *Journal of Human Resources* 35 (Fall 2000): 693–715.

in the number of weeks worked by those with disabilities.¹⁵ Moreover, their study shows that the largest decline was at medium-sized firms covered by the ADA and not small firms, with fewer than 15 employees, that are exempt from the regulation. To enhance the proposal, the RIA should include the expected loss of service in the cost calculation, including those who would need to seek out potentially longer rides that are more expensive in both price and travel time.

Furthermore, by offering a greater number of accessible rooms and facilities on traditional cruise lines, thereby competing with cruise lines dedicated to handicapped individuals, the rule may have the unintended effect of reducing the number of handicapped-dedicated cruise options. Because dedicated cruises ensure that most, if not all, off-ship excursions are accessible to those with physical disabilities and general cruises do not, a reduction in the number of dedicated cruises may actually reduce the number of off-ship excursions available for those with physical disabilities.

CONCLUSION

To meet the goal of greater equity, human dignity, or fairness, the Access Board's proposed rule must clearly define a theory of fairness, dignity, or equity so that there is a standard by which effectiveness of the rule can be determined. The RIA should follow the methodology used by the DOJ in 2008 when evaluating the Nondiscrimination on the Basis of Disability in State and Local Government Services Rule¹⁶ and Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Rule.¹⁷ In Appendix 4 of both RIAs, the DOJ attempts to measure use value by monetizing the time value and quality-of-experience value realized by those experiencing greater accessibility. Following this line of analysis would vastly improve the RIA. The rule should also estimate the unintended changes in behavior by vessel operators, such as postponed renovations, delayed vessel replacements, and the potential elimination of routes, so that the rule can more accurately determine potential costs that will be incurred by all types of passengers.

15. Daron Acemoglu and Joshua Angrist, "Consequences of Employment Protection? The Case of the Americans with Disabilities Act," *Journal of Political Economy* 109 (October 2001): 915–957.

16. RIN 1190-AA46.

17. RIN 1190-AA44.