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April 4, 2012

Allison Nichol, Chief
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Submitted electronically via regulations.gov

Re: CRT Docket No. 123; AG Order No. 3327-2012

Dear Ms. Nichol:

The International Association of Amusement Parks and Attractions (IAAPA) is the largest trade association for permanently situated amusement facilities and attractions. IAAPA represents more than 4,000 facility, supplier, and individual members in the U.S. Member facilities include amusement and theme parks, waterparks, attractions, family-entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos. Our membership ranges from very large, multi-location facilities to small, single-site, family-owned operations.

The attractions industry strives to provide safe and accessible entertainment to all guests. For more than a decade, IAAPA has provided industry viewpoints to the U.S. Access Board and Department of Justice on the ADA Accessibility Guidelines (ADAAG) and the proposed recreation rules. IAAPA offers the following comments on the Department of Justice's guidance concerning the technical assistance document on accessible means of entry and exit into swimming pools ("TA Document"), and the proposal to extend the compliance deadline for accessible means of entry and exit into swimming pools by 180 days:

Unorthodox Regulatory Process

Throughout the promulgation of the Revised Title III Rules on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities ("Recreation Rules"), the U.S. Access Board and Department of Justice were very open to seeking feedback from industry, advocacy organizations, and the disability community on proposed guidelines and rules. Because of this record of open rulemaking, IAAPA is extremely disappointed the Department chose to essentially promulgate further regulation without seeking input from stakeholders.

The recent DOJ interpretation and TA Document goes beyond the regulations and 2010 Standard in requiring a fixed pool lift for new construction and asserting that installation of a fixed lift was also readily achievable as barrier removal. The interpretation also adds a requirement that all lifts be deployed during all hours that a pool or spa is open to the public. These requirements go beyond the recreation rules published in August 2010, and

introduce safety issues that have not been sufficiently addressed. We are extremely disappointed the Department did not provide an opportunity for comments on the technical assistance document prior to its issuance.

Additionally, we are disappointed the Department is only seeking public comment on the compliance date extension for this change, and not on the change itself. The ADA recreation rules were issued after lengthy deliberations, including the issuance of proposed rules, invitation for public comments, consideration of those comments, and public hearings. The rules were changed without any opportunity for stakeholder input.

Technical Assistance Document

In addition to its disappointment with the Department's unorthodox rulemaking, IAAPA has serious concerns with requiring fixed lifts in waterpark facilities. Pools found in waterparks are not the same as pools in other public accommodations. Waterpark pools tend to be large and/or serve a purpose other than recreational bathing. Furthermore, the vast majority of the pools found in waterparks are guarded by trained lifeguards and have pool attendants to assist guests. We believe the Access Board and Department of Justice understood this difference, which is why they applied special treatment to waterpark elements such as waterslide catch pools, lazy rivers, and wave pools.

Due to the unique pools found in waterparks, IAAPA believes waterpark operators should be able to use a portable lift to create accessible entry or exit from a waterpark pool. Portable lifts offer guests the opportunity to enter the pool in a place operators feel would be most easily and safely achieved. Pool use and guest traffic patterns in waterpark environments is not always predictable, especially when special programming is involved or when the waterpark is at peak capacity. Pool lifts may need to be placed in areas that allow for safe use away from traffic areas, but they may also need to be moved easily when traffic patterns change, for pool cleaning, or equipment access.

Pools that are clustered and attended pools should be able to share a portable lift. In clustered pools, pool deck space may be limited. Having one lift that can be repositioned to accommodate guests in multiple pools would allow operators to maximize the pool deck space between clustered pools for transfers to/from mobility devices, and lifeguard and maintenance access. If a pool is attended, the attendant will be able to reposition or deploy the pool lift "on-demand".

Fixed lifts present serious safety concerns. In a waterpark environment, where there are many fun water attractions, children may see a fixed pool lift as another attraction. Misuse of a fixed pool lift that is always deployed presents a significant risk to the safety of others.

We understand the Department does not want to consider comments on the rules or the TA Document, but we hope it will reverse its decision and consider the special circumstances of swimming pools in waterparks.

Extension of Compliance Deadline

Arguably, swimming pool operators have had years to make their accessibility plans. IAAPA has conducted education seminars and answered member questions on the ADAAG for nearly ten years. Our good-faith advice to members prior to the 2010 recreation rules mirrored that of the U.S. Access Board: to follow the Accessibility Guidelines when building or improving accessibility.

Members will now have approximately three months to comply with the TA Document and Department's new regulations concerning pool lifts. For many operators, and in the months leading up to peak season, this is simply not enough time. For this reason, IAAPA supports the Department's proposal to extend the compliance date for accessible entry and exit into swimming

pools until September 17, 2012. The TA Document created confusion in the aquatics industry and demand quickly shifted from portable pool lifts to fixed ones.

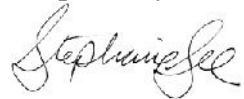
Existing facilities fulfilling their barrier removal obligations will have to quickly revise their accessibility plans, including soliciting bids on both the purchase and installation of fixed lifts, to determine what is readily achievable. If they choose to install a fixed lift, construction will have to be scheduled. There is simply not time for operators to do this before the start of the season (traditionally Memorial Day).

Facilities that are building new swimming pools have already developed building plans and obtained the necessary permits for elements that comply with the Department's 2010 recreation rule. For the reasons stated above, some operators may have planned for a portable lift. At this point, construction plans will need to be modified, which in some jurisdictions may lead to additional permitting, which will delay construction.

There is also the problem of supply: IAAPA members have been told there are simply not enough lifts currently available on the market, and operators may not receive their lifts until May or June.

In conclusion, IAAPA is concerned with the disregard for the Administrative Procedure Act the Department demonstrated by not consulting stakeholders before making regulatory changes that will have real financial and potential safety impacts for the waterpark industry. In light of these concerns, we request the Department extend the compliance date for 180 days until September 17, 2012, retract the current Technical Assistance Document and begin proper rulemaking to address the issues raised.

Respectfully,

A handwritten signature in cursive script that reads "Stephanie See".

Stephanie See
Director, Safety & Advocacy