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U.S. House of Representatives
Judiciary Committee
Subcommittee on the Constitution
H2-362 Ford H.O.B.
Washington, DC 20515

Dear Chairman Franks:

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.

IAAPA thanks the subcommittee for holding a hearing on the recent Department of Justice guidance on accessible swimming pools. 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 recently submitted public comment in response to DOJ's Notice of Proposed Rulemaking proposal to extend the compliance deadline for accessible means of entry and exit into swimming pools by 180 days. In it, IAAPA requested 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. Those comments are included in this letter.

To summarize our comments to the DOJ:

1. IAAPA is concerned that the Department of Justice chose to promulgate additional regulation through a sub-regulatory interpretation and Technical Assistance Document, thereby avoiding the notice and comment requirements outlined in the Administrative Procedure Act. 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.

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.

2. 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. 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.

Fixed lifts present serious safety concerns. In a waterpark environment, where there are many fun water attractions, a fixed pool lift may become an attractive nuisance to children, who may see it as another attraction. Misuse of a fixed pool lift presents a significant risk to the safety of others. 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.

3. Waterpark operators have not been given enough time to comply with the regulatory change. 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.

With Memorial Day just around the corner, waterpark operators now have approximately one month to comply with the TA Document and Department's new regulations concerning pool lifts.

The TA Document created confusion in the aquatics industry and demand quickly shifted from portable pool lifts to fixed ones. There are supply issues: 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.

IAAPA thanks the subcommittee for holding this important hearing, and hopes it can persuade the Department of Justice to reconsider its recent actions, retract the current Technical Assistance Document and begin proper rulemaking to address the issues raised.

Respectfully,



Stephanie See
Director, Safety & Advocacy