

August 18, 2008

Department of Justice, Civil Rights Division
P.O. Box 1032
Merrifield, VA 22116-1032

Subject: Comments CRT Docket No. 106; AG Order No.RIN 1190-AA44

To whom it may concern:

The International Code Council submits the attached comments regarding the notice of proposed rule making for the implementation of the ADA/ABA Accessibility Guidelines.

The International Code Council is a 50,000 + member association dedicated to building safety and fire prevention, whose mission is to provide the highest quality codes, standards, products, and services for all concerned with the safety and performance of the built environment.

The codes developed under the auspices of the International Code Council serve as a baseline for the design, construction, operation and maintenance of the majority of both public and private sector buildings in the U.S. As such the codes developed by International Code Council, are readily recognized and understood by building owners, product manufacturers, designers, contractors, code officials and all others involved in building design, construction, approval, and operation. The majority of U.S. state and local government agencies that adopt codes adopt and implement building safety and fire prevention codes developed by the ICC. In addition most federal agencies have building construction policies that require the use of the I-Codes or those policies refer to the state or local code proximate to the federal facility.

The International Code Council has been and remains an active participant in the Access Board's efforts to harmonize the model codes and federal regulations. In support of that effort we offer the comments which follow this cover letter.

At this time International Code Council offers to be available as a technical resource to the Department of Justice during their review of comments for requirements in the International Building Code (IBC) and the technical standard ICC/ANSI A117.1 Accessible and Usable Buildings and Facilities (ICC/ANSI A117.1) and/or background on the reasons and development of those requirements.

The International Code Council appreciates the opportunity to provide comments. Should additional information be needed please do not hesitate to contact us. Please contact me by email at kpaarlberg@iccsafe.org or by phone at 888-ICC-SAFE, Ext. 4306. ICC's address is 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795.

Sincerely,

Kimberly Paarlberg
Senior Staff Architect
International Code Council
Enclosure

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Introduction

The International Code Council supports the United States Department of Justice (DOJ) in completion of a rule to adopt the revised ADA/ABA Accessibility Guidelines published by the United States Access Board on July 23, 2004. To assist the DOJ in advancing this proceeding the International Code Council presents its comments and concerns on several policy issues and limitations set forth in DOJ's Notice of Proposed Rulemaking. The International Code Council will answer or provide relevant information on the specific questions DOJ outlines in the NPRM (Part I) as well as addressing other areas of concern we feel need to be addressed but were not specifically identified by DOJ in one of its questions. Part II is dealing with technical issues that International Code Council has encountered during our coordination efforts with IBC and ICC A117.1 with the ADA/ABA Guidelines. The building codes do not differentiate between Title II and Title III in their requirements therefore our answers are applicable to both. Although churches and private clubs are exempted by ADA, these facilities are covered under the building codes.

The International Code Council has a standing committee called the Code Technologies Committee (CTC). For more information on the activities of the CTC, go to www.iccsafe.org/cs/cc/ctc/index.html. This committee currently has as one area of study the IBC coordination with the new ADA/ABA Accessibility Guidelines. The objective of this committee is to provide a single forum where pressing issues of new technology as well as other contemporary issues and concepts surrounding the current code provisions can be thoroughly and comprehensively discussed. The International Code Council Board of Directors determines the issues to be considered by the CTC. To date, the ICC Board has approved eight areas of study/investigation.

Part I

Question 1 (Title II and III): *DOJ invites comment on the anticipated costs or benefits for certain requirements. Therefore what would be the costs or benefits for these 8 existing elements, in particular as applied to alterations, in compliance with the proposed regulations (side reach, water closet clearances in single-user toilet rooms with in-swinging doors, stairs, elevators, location of accessible routes to stages, accessible attorney areas and witness stands, assistive listening systems, and accessible teeing grounds, putting greens, and weather shelters at golf courses), as well as additional practical benefits from these requirements, which are often difficult to monetize.*

Response 1 (Title II and III):

Side reach: While the A117.1 adopted the 15" to 48" reach range in the 1998 edition, concerns encountered include three areas: 1) alterations on light switches, environmental controls and outlets; 2) reaching upper cabinets over counters; 3) reaching outlets and switches over counters.

- 1) The first is substantially related to existing building. If it is clear that these elements are relocated when walls including these elements are altered, the burden is not great. However, if all these elements must be relocated when ever an area is altered or as a path of travel obligation, it can become a significant item. Some areas of the country require all wiring to be encased in conduit, or wiring or outlets is in a series, so in existing construction there may not be enough wire to relocate the outlets without re-

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wiring the room. Additional clarification is needed for technical infeasibility – such as situations where the outlets are below windows where space would not allow the outlets to be raised.

- 2) The second is a problem for new and existing construction. If upper cabinets or shelves are located over the standard 36" high counter, or even the portions of counters that are accessible at 34", the lower reach range does not allow for the counter to have enough clearance for many small appliances or office equipment. Assuming the top of the bottom shelf must be at or below 48", with the depth of the shelf and supporting construction for the cabinet, the result is either ineffective counter space or removal of all upper cabinets.
- 3) The third problem is a problem for new and existing construction. The provisions for employee work areas and all areas of kitchens except for the sink area and one work surface permit the standard 36" high counters or even higher, based on the anticipated work. The electrical code requires outlets over every piece of counter (counters on both sides of a stove would be considered two pieces) and at least one outlet for every 4 feet of counter. The 34" height and 24" depth for obstructed reach range would result in all outlets being out of compliance. In existing buildings, fixing this would not only involve the outlets but the counter and cabinets.

Water Closet clearance – The new requirements for single occupant bathrooms are incorporated in the ICC A117.1. The International Code Council views this as an improvement for access, especially for persons who need assistance for transfer. Appendix A of the NPRM also clearly illustrates that the new configuration will not cause a substantial increase in room size. The IBC has further encouraged this arrangement through the requirement for unisex/assisted use bathrooms required in large mercantile and assembly facilities. However, the International Code Council suggest that the DOJ consider that the change in room size could result in offsets for plumbing stacks, or possible obstruction of adjacent hallways. Horizontal offsets in plumbing can result in requirements for additional venting up through the floors above. Possible blockage of the path people take to the exits or stairs for emergency exiting should not be restricted for reasons of public safety. These should be considered grounds for technical infeasibility. The ADA/ABA already recognizes emergency egress as a concern when dealing with the addition of ramps in existing courtrooms.

Stairs – The International Code Council is concerned about the scope of new stairway construction in Section 210, stating that requirements would apply to all means of egress stairways, inside and outside. This is a substantial change from current ADAAG which only addresses stairs between non-accessible levels. This is effectively a change from select stairways to every stairway, including those in areas not required to be accessible. While the advisory recognizes that not all stairways are part of a means of egress, this exception is not a common occurrence. The requirements in ADA/ABA match IBC requirements for stairways that are a straight run and in all uses except within individual dwelling units. Safety for all users on stairways has always been a primary concern for the International Code Council. However, the requirements for tread/riser measurements in ADA/ABA do not allow for any curved stairway or spiral stairways. In addition, the solid riser requirements do not allow for spiral stairways (where foot placement does not have space for risers) or stairways where solid risers and grill treads are allowed for snow accumulation or safety reasons (e.g. factories, catwalks, equipment platforms, penthouses, etc.). If the board wishes to broaden the application of stairways, they should consider exempting stairways to areas that are not required to be accessible and/or

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expanding the exception for jails (Section 210.1 Exp. 1) to address other non-public areas where open stairways are essential for safety.

For existing stairways, the application is limited to handrails for all stairways. It is not clear if changes would be required only when the stairway was altered (210.1, Exp. 2), or is part of the path of travel requirements in existing buildings (202.4) If they are considered part of the path of travel requirements, when stairways are not part of an accessible route, how will it be determined which stairways would need to be remodeled when altering part of a building?

Location of accessible routes to stages – The International Code Council's primary concern is that requirements for access to the stage within the assembly space may jeopardize the means of egress for the seating. Where the ramp would block the aisles needed for emergency exiting, an allowance should be made for technical infeasibility or perhaps a route outside of the existing auditorium.

Accessible attorney areas and witness stands - The United States Access Board created the Courthouse Access Advisory Committee to evaluate access in the courts. The International Code Council (ICC) was a member of the Committee and worked on access to various elements in the courtroom including access to the witness stand and attorney areas. The report (<http://www.access-board.gov/caac/report.htm>) outlines both minimum requirements and best practices for the witness stand and the courtroom well (attorney areas). It is important to allow a person using a mobility device access into the witness stand to maintain line of site requirements for all participants as well as establish witness credibility and comfort. Equal access in the courtroom well for both attorney and client, as well as accessible podiums for speaking, are important for equal participation and representation in our court system. ICC believes that the best practice recommendation in the Committee's report should be incorporated into DOJ's final rule as an advisory. Again, in existing courtrooms, consideration must be given to the emergency evacuation routes required for the jury, court staff and gallery. Since an emergency in this space may necessitate different parties leaving through different doors (e.g. defendant to holding cells, gallery to general evacuation routes, court staff and jury through restricted hallways), there may be unique considerations in these spaces. Example, the committee report indicated that a ramp to the witness box is preferred over a platform lift. However, if installation of a ramp would block or be a tripping hazard for emergency evacuation, a platform lift may become the only solution.

Question 2 (Title II and III): *DOJ would welcome comment on whether any of the proposed standards for the 8 areas (side reach, water closet clearances in single-user toilet rooms with in-swinging doors, stairs, elevators, location of accessible routes to stages, accessible attorney areas and witness stands, assistive listening systems, and accessible teeing grounds, putting greens, and weather shelters at golf courses) should be raised with the Access Board for further consideration, in particular as applied to alterations.*

Response 2 (Title II and III): The International Code Council suggests review by the Access Board of the issues brought up in Response 1 to see if there should be revisions to relevant advisories and/or requirements.

Question 3 (Title II and III): *DOJ would like information from operators of auditoriums on the likelihood that their auditoriums will be altered in the next 15 years, and if so, whether such alterations are likely to include accessible and direct access to the stage. In addition DOJ would like specific information on whether, because of local law or policy, auditorium operators*

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are already providing a direct accessible route to their stages. (DOJ wants to know if having to provide a direct access to the stage would encourage operators to postpone or cancel alterations to their facilities.) DOJ also seeks information on possible means of quantifying the benefits that accrue to persons with disabilities from this proposed requirement or on its importance to them.

Response 3 (Title II and III): Regarding importance to people with disabilities as well as the general public - please see the response to Question 1 regarding access to the stage.

Question 4 (Title II and III): *DOJ wants comment on how to measure or quantify the intangible benefit that would accrue from accessible witness stands including anecdotal accounts of courtroom experiences by people with disabilities as well as experiences of governments making the witness stands accessible.*

Response 4 (Title II and III): The Access Board on the Courthouse Access Advisory Committee examined the importance of ensuring that witnesses are able to testify from the witness box since this is crucial for a courtroom's line of sight from the witness to the judge and jury. Otherwise, the judge or members of the jury may miss key visual indicators, and the witness may be placed at a disadvantage in participating in the proceedings.

Question 7 (Title II and III): *Should DOJ exempt owners and operators of public accommodations from specific compliance with the supplemental requirements for play areas and recreation facilities, and instead continue to determine accessibility in these facilities on a case-by-case basis under existing law? Please provide information on the effect of such a proposal on people with disabilities and places of public accommodation.*

Response 7 (Title II and III): With existing recreational areas, the difficulty is often not the equipment but the route to the area and the surface of the area. For example, proving an accessible surface in many playgrounds would require the removal of the equipment to install the surface. Since these structures are often cemented into the ground for safety and stability, this may be very difficult or impossible without damaging or demolition of the equipment. School playgrounds and playing fields are often accessed across grass areas that also serve as playing fields. Re-grading of sites to create accessible routes could affect usability and drainage for the existing surrounding areas. Court sports in urban areas may be confined by streets or public sidewalks, which the facility has no control over. Parks and Schools typically own the playgrounds and are already operating under limited budgets.

Question 13 (Title II and Title III): *Should the Department expand its definition of "wheelchair" to include Segways?*

Response 13 (Title II and III): The definition of a wheelchair should not be expanded to include the Segway type device due to impact to wheelchair specific requirements within 2004 ADAAG. A wheelchair is a type of mobility device distinct in use and elevation from a Segway, and inclusion of the Segway would complicate and confuse requirements for wheelchair access in certain instances. An example would be conflicts with line of site for persons behind wheelchair spaces in assembly seating if the wheelchair spaces were used by a person on a Segway.

Question 23 (Title II and III): *Is the proposed rule regarding the number of tickets that a public*

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accommodation must permit individuals who use wheelchairs to purchase sufficient to effectuate the integration of wheelchair users with others? If not, please provide suggestions for achieving the same result with regard to individual and group ticket sales.

Response 23 (Title II and III): In working with designers, it is our understanding that the number of adjacent seating for families or groups is a function of ticket policy and not design. As seating areas in new venues are becoming more integrated in the seating manifest, ticketing policies to accommodate groups and families who wish to sit together can be achieved. Per NPRM Section 36.406(3) requiring 5 locations to have three “companion” locations is really a nondiscriminatory ticket policy issue. In addition, it is a concern to ICC that the requirements for companion seating in Section 802.3 of shoulder alignment and immediately adjacent to the wheelchair would not work for a series of ‘companions’ and would limit options.

Question 26 (Title III) and Question 49 (Title II): DOJ believes that requiring captioning of safety and emergency information made over the public address system in stadiums seating fewer than 25,000 has the potential of creating undue burden for smaller entities. However, DOJ requests public comment about the effect of requiring captioning of emergency announcements in all stadiums, regardless of size. Would such a requirement be feasible in small stadiums?

Response 26 (Title III)/49 (Title II): The Code Council's concern is first with the implementation of this requirement. We suggest that the Access Board work further with The International Code Council and NFPA to incorporate this information into the existing codes and standards. Present means of presenting captioning for understanding theater and game events may not be consistent with the needs for clear, thorough and reliable presentation of public safety advisories in an emergency situation. While captioning does allow persons with hearing impairments to understand the game, the high level of noise in these facilities make this an important safety issue for all person within the assembly facility and should be dealt with as a general emergency evacuation issue.

Our concerns include items such as the following: Emergency evacuation of a stadium can be for a variety of reasons besides fire. If signage is provided, what should that emergency message say? When the fire department arrives, audible communication becomes ‘live’. This policy must examine whether the facility must have the technology and/or staff to translate this information. Will this information be required on the main scoreboard, or also the television monitors sometimes provided in the spaces behind the seating bowl? Many smaller stadiums do not have signage that can provide text messaging. While hand held devices may be a solution, people may forget to turn them back in so this option could also be very expensive for small facilities.

Rather than identify seating capacity as a fixed criteria, The International Code Council believes that the type of facility and the resources the facility has should be the factors to consider. Many NHL hockey arenas only seat 18,000 to 20,000 but NHL teams have more resources than say a high school or college arena that seats the same number of people.

The IBC includes requirements for large assembly facilities that have the capability of providing the information.

1108.2.6.2 Public address systems. Where stadiums, arenas and grandstands provide audible public announcements, they shall also provide equivalent text information

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regarding events and facilities in compliance with Sections 1108.2.6.2.1 and 1108.2.6.2.2.

1108.2.6.2.1 Prerecorded text messages. Where electronic signs are provided and have the capability to display prerecorded text messages containing information that is the same, or substantially equivalent, to information that is provided audibly, signs shall display text that is equivalent to audible announcements.

Exception: Announcements that cannot be prerecorded in advance of the event shall not be required to be displayed.

1108.2.6.2.2 Real-time messages. Where electronic signs are provided and have the capability to display real-time messages containing information that is the same, or substantially equivalent, to information that is provided audibly, signs shall display text that is equivalent to audible announcements.

In addition, the 2009 edition of the ICC A117.1 will include technical provisions for variable message signage.

Question 27 (Title III) and Question 50 (Title II): DOJ is considering requiring captioning of safety and emergency information in sports stadiums with a capacity of 25,000 or more within a year of the effective date of the regulation. Would a larger threshold, such as sports stadiums with a capacity of 50,000 or more, be more appropriate or would a lower threshold, such as stadiums with a capacity of 15,000 or more, be more appropriate?

Response 27 (Title III)/50 (Title II): See response to Question 26/49.

Question 28 (Title III) and Question 51 (Title II): If DOJ adopted a requirement for captioning at sports stadiums, should there be a specific means required? That is, should it be provided through any effective means (scoreboards, line boards, handheld devices, or other means), or are there problems with some means, such as handheld devices, that should eliminate them as options?

Response 28 (Title III)/51 (Title II): See response to Question 26/49.

Question 29 (Title III) and Question 52 (Title II): DOJ is aware that several major stadiums that host sporting events, including NFL games at Fed Ex Field in Prince Georges County, Maryland, currently provide open captioning of all public address announcements, and do not limit captioning to safety and emergency information. What would be the effect of a requirement to provide captioning for patrons who are deaf or hard of hearing for game-related information (e.g., play-by-play information), safety and emergency information, and any other relevant announcements?

Response 29 (Title III)/51 (Title II): See response to Question 26/49.

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Question 30 (Title III) and Question 25 (Title II): DOJ would welcome comment on whether there are state and local standards specifically regarding play and recreation area accessibility. To the extent that there are such standards, DOJ would welcome comment on whether facilities currently governed by, and in compliance with, such state and local standards or codes should be subject to a safe harbor from compliance with applicable requirements in the 2004 ADAAG. DOJ would also welcome comment on whether it would be appropriate for the Access Board to consider implementation of guidelines that would permit such a safe harbor with respect to play and recreation areas undertaking alterations.

Response 30 (Title III)/25 (Title II): See response to Question 7.

Question 31 (Title III) and Question 26 (Title II): DOJ requests public comment with respect to the application of these requirements to existing play areas. What is the “tipping point” at which the cost of compliance with the supplemental requirements for existing play areas would be burdensome that the entity would simply shut down the playground?

Response 31 (Title III)/26 (Title II): See response to Question 7.

Question 32 (Title III) and Question 27 (Title II): DOJ would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing play areas less than 1,000 square feet be exempt from the requirements applicable to play areas?

Response 32 (Title III)/27 (Title II): See response to Question 7.

Question 33 (Title III) and Question 28 (Title II): DOJ would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing play areas be permitted to substitute additional ground level play components for the elevated play components it would otherwise have been required to make accessible? (Title II) -Are there other select requirements applicable to play areas in the 2004 ADAAG for which DOJ should consider exemptions or reduced scoping?

Response 33 (Title III)/28 (Title II): See response to Question 7.

Question 34 (Title III) and Question 29 (Title II): DOJ would welcome comment on whether it would be appropriate for the Access Board to consider implementation of guidelines for play and recreational facilities undertaking alterations that would permit reduced scoping of requirements or substitution of ground level play components in lieu of elevated play components, as DOJ is proposing with respect to barrier removal obligations for certain play or recreation facilities.

Response 34 (Title III)/29 (Title II): See response to Question 7.

Question 35 (Title III): Should DOJ require only one play area of each type to comply in existing sites with multiple play areas? Are there other select requirements applicable to play areas in the 2004 ADAAG for which DOJ should consider exemptions or reduced scoping?

Response 35 (Title III): See response to Question 7.

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Question 30 (Title II): *Is a “reasonable number, but at least one” a workable standard for determining the appropriate number of existing swimming pools that a public entity must make accessible for its program to be accessible? Should DOJ provide a more specific scoping standard? Suggest a more specific standard if appropriate. In the alternative should DOJ provide a list of factors that a public entity could use to determine how many of its existing swimming pools to make accessible, e.g., number of swimming pools, travel time or geographic distances between swimming pools, and the size of the public entity?*

Response 30 (Title II): Using a ‘program’ or geographic distance will present a challenge for cross-jurisdictional code enforcement . While very large public entities, may have multiple swimming pools on multiple sites within the same jurisdiction, many school districts or park districts cross code enforcement boundaries. Another ‘program’ that crossed town and even county boundaries would be a state park system. A problem for a code official in dealing with the term “program” would be when a program overlapped multiple jurisdictions. The code official may only administer requirements for a facility in their area. Rather than looking at a “program” which may deal with multiple location, it seems more reasonable to look at each site to determine what can be accomplished to improve accessibility. People go to the pool in their community so that they can interact with the people in that community.

The term “reasonable number, but at least one” can be too limiting or not enough, depending on the facility. I would like to use the pools in my home town as examples of pool configurations.

1) In the high school there is a lap pool that varies from 3 feet to 8 feet in depth used for swimming lessons. Immediately adjacent is a 15 foot deep pool that is used for swimming lessons and diving - admittedly two types of pools. The areas around the pool are limited by concrete block walls on three sides and the locker rooms on the fourth side. Since both pools are used for school swimming lessons, and diving boards are exempted from access under the ADA/ABA Guidelines Section 203.14, it would seem reasonable in this situation that proving an accessible route into the lap pool would allow participation without requiring both pools to have an accessible route.

2) At the local park district center there is indoor and outdoor facilities. The types of pools are children's wading pool, slide catchment pool, lap/swimming pool, diving pool, and lazy river. While some types of pools are offered both inside and outside, due to staffing and weather, they only have either the inside or outside portion open. If you looked at one of each type – four of the types are offered inside and outside, but providing access to one of each type would not always allow someone to swim when the facility is open. The current language does not state that inside and outside must be accessible when they are the same type.

Depending on the materials the pools are made from (e.g. premolded fiberglass, reinforced concrete), the water/filtration system and the path required around the pools for access (so that a person can be rescued from the side) and means of egress (emergency exiting from the building or area), requiring zero level entry or transfer steps may require a major structural issue or be a safety concern. Almost all pools (except wading pools) seem to have space for a lift. At wading pool the space constraints may not allow for a sloped entry in existing sites. Slopes for these entries are almost always designed at less than 1:12 for use by infants and toddlers. Even at 1:12, a typical wading pool would end up with a minimum 12 ft. to 18 ft. long entry. A description of what would be considered technically infeasible or safety concerns that would allow exemptions is needed.

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Question 36 (Title III) and Question 31 (Title II): *Should DOJ allow existing public accommodations to provide only one accessible means of access to swimming pools more than 300 linear feet long?*

Reason 36 (Title III)/31 (Title II): See the response to Question 30 (Title II).

Question 37 (Title III) and Question 32 (Title II): *Should existing swimming pools with less than 300 linear feet of pool wall be exempt from the requirements applicable to swimming pools?*

Reason 37 (Title III)/32 (Title II): See the response to Question 30 (Title II).

Question 38 (Title III): *What types of facilities provide more than one swimming pool on a site? In such facilities, do the pools tend to be identical or do they differ in type (e.g. in size, configuration, function, or use)?*

Reason 38 (Title III): See the response to Question 30 (Title II).

Question 39 (Title III) and Question 33 (Title II): *What site constraints exist in existing facilities that could make it difficult or infeasible to install a sloped entry in an existing wading pool? Should existing wading pools that are not being altered be exempt from the requirement to provide sloped entry? What types of facilities provide more than one wading pool on a site? In such facilities, do the pools tend to be identical or do they differ in type (e.g. in size, configuration, function, or use)?*

Reason 39 (Title III)/33 (Title II): See the response to Question 30 (Title II). Adding a sloped entry on a wading pool would always require reconstruction of the wading pool area. The wading pool should be made accessible when altered unless technically infeasible – not as a requirement for barrier removal. When more than one wading pool is provided on a site, then are more likely to be different than the same. The pools are set for different age level and activity levels. The example of the park district center in Question 20 has one pool that includes water sprinklers to play with and another that includes some climbing equipment and small slides.

Question 41 (Title III) and Question 35 (Title II): *Are team or player seating areas in certain types of existing facilities (e.g., ice hockey rinks) more difficult to make accessible due to existing designs? What types of existing facilities typically have design constraints that would make compliance with this requirement infeasible?*

Reason 41 (Title III)/35 (Title II): See the response to Question 7. There are three types of team or player seating areas that would be difficult to make accessible: 1) dug outs as commonly found at baseball fields from grade school and little league to professional sports; 2) team seating that is located at the edge of a playing field where it is located on grass or sand that vary locations - it may be just where the players drop their equipment and water bottles and wait to be sent in (e.g. park district, intramural or grade school football fields or soccer fields, sand volley ball) and 3) team seating that is only available across the playing surfaces (e.g., ice rinks). The problem is typically the route to the player seating – which in a multi-field site can be very lengthy. Creating a route could affect the drainage of the site and/or play on adjacent

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fields. When there are multiple playing fields or courts, to make the fields and courts flat the site may have been tiered. The cost implication for long ramps or platform lifts at dugouts may be more expensive than the cost of replacing the dugout with ground level facilities.

Question 42 (Title III) and Question 36 (Title II) – (Title III) - Should DOJ interpret the barrier removal requirement to require only a reasonable number but at least one of each type of playing field to be served by an accessible route? (Title II and III) - Should DOJ create an exception to this requirement for existing courts (e.g., tennis courts) that have been constructed back-to-back without any space in between them?

Response 42 (Title III)/36 (Title II): Is this question about routes to fields or the route to the player seating at each field? In either case, person playing, or persons watching need to be at the field where their team is playing. See the response to Question 7 and 41. There should be an exception for not just courts, but any fields-of-play that has been constructed back-to-back or side-by-side. There should be information on existing site constraints and how that could provide some allowances. However, the exception should not eliminate providing an accessible route where it is readily achievable.

Question 47 (Title III): *Are there types of personal mobility devices that must be accommodated under nearly all circumstances? Conversely, are there types of mobility devices that almost always will require an assessment to determine whether they should be accommodated? Provide examples of devices and circumstances.*

Reason 47 (Title III): The International Mechanical Code does not permit combustion engine vehicles unless the mechanical system has been designed to evacuate the exhaust and fumes. If there are types of mobility aides that used these types of engines, allowing them inside buildings would require a substantial alteration of the buildings heating and air conditioning systems (with the exception of parking garages and repair shops which are designed to accommodate vehicles). Below is the requirements in the International Mechanical Code:

502.14 Motor vehicle operation.

In areas where motor vehicles operate, mechanical ventilation shall be provided in accordance with Section 403. Additionally, areas in which stationary motor vehicles are operated shall be provided with a source capture system that connects directly to the motor vehicle exhaust systems.

Exceptions:

1. This section shall not apply where the motor vehicles being operated or repaired are electrically powered.
2. This section shall not apply to one- and two-family dwellings.
3. This section shall not apply to motor vehicle service areas where engines are operated inside the building only for the duration necessary to move the motor vehicles in and out of the building.

403.3 Ventilation rate.

Ventilation systems shall be designed to have the capacity to supply the minimum outdoor airflow rate determined in accordance with Table 403.3 based on the occupancy of the space and the occupant load or other parameter as stated therein. The occupant load utilized for design of the ventilation system shall not be less than the number determined from the estimated maximum occupant load rate indicated in Table 403.3. Ventilation rates for occupancies not represented in Table 403.3 shall be determined by an approved engineering

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analysis. The ventilation system shall be designed to supply the required rate of ventilation air continuously during the period the building is occupied, except as otherwise stated in other provisions of the code.

Exception: The occupant load is not required to be determined, based on the estimated maximum occupant load rate indicated in Table 403.3 where approved statistical data document the accuracy of an alternate anticipated occupant density.

Question 48 (Title III): *Should motorized devices that use fuel or internal-combustion engines (e.g., all-terrain vehicles) be considered personal mobility devices that are covered by the ADA? Are there specific circumstances in which accommodating these devices would result in a fundamental alteration?*

Reason 48 (Title III): See response to Question 47 (Title III).

Question 49 (Title III): *Should personal mobility devices used by individuals with disabilities be categorized by intended purpose or function, by indoor or outdoor use, or by some other factor? Why or why not?*

Reason 49 (Title III): See response to Question 47 (Title III).

Question 50 (Title III): *DOJ proposes using the start of construction as the triggering event for applying the proposed standards to new construction under title III. DOJ asks for public comment on how to define the start of construction and the practicality of applying commencement of construction as a triggering event. Is the proposed definition of the start of construction sufficiently clear and inclusive if different types of facilities? Please be specific about the situations that are not covered in the proposed definitions, and suggest alternatives or additional language. DOJ asks that the public identify facilities subject to title III for which commencement of construction would be ambiguous or problematic.*

Response 50 (Title III): The International Code Council believes that the triggering event should be the date permit application for the start of construction as the applicant would have had to consider the applicable state and federal standard in schematic design that is often necessary to submit with the application. The date of permit application is a typical triggering event when jurisdictions introduce an updated code because in many cases, the date for actual start of construction is too late as plans have already been developed with an anticipated approval from the authority having jurisdiction.

The difficulty with "start of construction" is that a building may need to be demolished on a site before the new building can be started – so is the start when you tear the building down as preparation for building the new one. Some sites that contained contaminants (e.g., gas tanks) may need to be cleared before they can be sold for a new building. For modular buildings, the building code considers them new construction when installed – so even if the site was prepared years previously – the requirements are based on time of installation. For facilities that fall below the building permit requirements (e.g., ATM's, prefabricated saunas, small sheds) the space for the item may be constructed when the building is constructed. A better trigger seems to be the date of installation. The 2006 International Building Code includes a list of items where a building permit is not required in Section 105.2.

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105.2 Work exempt from permit.

Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

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Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

105.2.1 Emergency repairs. Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

105.2.3 Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related equipment that is under the ownership and control of public service agencies by established right.

Question 51 (Title III) - DOJ requests comments on determining the appropriate basis for scoping for a time-share or condominium hotel. Is the total number of units in the facility, or some smaller number, such as the number of units participating in the rental program, or the number of units expected to be available for rent on an average night the most appropriate measure?

Response 51 (Title III): When a facility serves two different purposes (e.g., hotel and condominium), the International Codes require the facility to comply with the applicable provisions for both, whichever is more restrictive (2006 IBC 302.1). In this situation, a certain

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percentage of the rooms would have to be constructed accessible consistent with hotel requirements. This exceeds the residential facility requirements found in ADA/ABA Section 233 and 809. Therefore, the units meeting the transient lodging accessibility requirement would be permitted to be counted as meeting the residential unit accessibility requirements for the condominium.

Question 52 (Title III): *DOJ's proposed definition of "place of lodging" includes facilities that are primarily short-term in nature, i.e., two-weeks or less in duration. Is "two weeks or less" the appropriate dividing line between transient and residential use? Is 30 days a more appropriate dividing line?*

Response 52 (Title III): Two weeks or less to establish a dividing line between transient and residential is too short a duration as some business and vacation travelers may stay for more than a two week duration. The International Codes application of transient vs. non-transient relies on a timeframe of 30 days or more. The concept of 30 days for the difference between transient and non-transient had also been in the three legacy model codes since the mid-1980's. ICC believes that this should be the definition adopted by DOJ in order to harmonize the standards.

Question 53 (Title III): *DOJ believes that the scoping and technical requirements for transient lodging, rather than those for residential dwelling units, should apply to those places of lodging. Is this the appropriate choice?*

Response 53 (Title III): Yes, this is an appropriate choice. The IBC currently requires transient lodging facilities to provide a certain number of Accessible units (IBC 1107.6.1.1) based on the number of units provided. The transient nature of the facility does not allow for units to be readily adapted based on individual's needs (e.g., installation of grab bars, reconfiguration of bathrooms).

Question 56 (Title III) and Question 40 (Title II): *To what extent has conflicts between ADA and section 504 affected these facilities (homeless shelters, transient group homes, halfway houses, and other social services establishments)? What would be the effect of applying the residential dwelling unit requirements to these facilities, rather than the requirements for transient lodging guest rooms?*

Response 56 (Title III)/40 (Title II): The IBC currently requires transient facilities to provide Accessible units in all transient facilities. In Group Homes (Group R-4) or larger half-way facilities (Group I-1) a minimum of 4%, but at least 1 unit must be constructed Accessible (IBC 1107.5.1.1 and 1107.6.4.1). The transient nature of the facility does not allow for the unit to be readily adaptable based on the individual's needs (e.g. installation of grab bars, reconfiguration of bathrooms). While group homes may be of longer duration, they must be ready to serve all individuals. Requiring alterations to portions of the units before someone could move in would not be cost effective for the facility or beneficial for the person with a disability that needed those modifications.

Question 57 (Title III) and Question 42 (Title II): *Would the residential facility requirements or the transient lodging requirements in 2004 ADAAG be more appropriate for housing at places of education? How would the different requirements affect the cost when building new dormitories and other student housing?*

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Response 57 (Title III)/42 (Title II): In order to ensure compliance with Section 504 of the Rehab Act, Accessible dwelling units should be required at places of education (e.g., dormitories, fraternities, sororities) in order to ensure equal opportunities in housing for students with disabilities. The cost at the time of initial construction would be minimal, while retrofitting for a student who needed the extra features in an Accessible unit would be time consuming and much more expensive. The scoping found is found in IBC Section 11107.6.2.2.1 requires Accessible units consistent with hotel accommodations.

Question 58 (Title III): *Is there a way to ensure accessible hospital rooms are dispersed throughout the facility in a way that will not unduly restrain the ability of hospital administrators to allocate space as needed? The 1991 Standards require that 10% of patients' bedrooms be accessible. If it is not feasible to distribute these rooms among each of the specialty areas, would it be appropriate that required accessible rooms be dispersed so that there are accessible patient rooms on each floor? Are there other methods of dispersal that would be more effective?*

Response 58 (Title III): Care areas in hospitals are grouped more by types of special care (e.g., obstetrics, pediatric, Intensive Care, Critical Care, psychiatric) needed rather than by floor. Patients in hospital rooms that do not have special care may be grouped for the convenience of doctor's rounds or specialties; or for movement of patients (e.g., mobility injuries near the therapy area; recovery rooms near the operating room or lab where the procedure was performed). This increases as more procedures are considered 'out patient' so that patients may only be staying a short period. Hospitals often move areas of patients around depending on need (e.g., influenza patient numbers increase during the winter months) For a good balance, it seem appropriate to ask for dispersal by type and allow the hospital to control locations. This would cause a level of complexity in enforcement that would be an ongoing concern during hospital operations and would require ongoing monitoring.

Question 43 (Title II): *DOJ is seeking information from hospital designers and hospital administrators that will help determine how to ensure that accessible hospital rooms are dispersed throughout the facility in a way that will not unduly restrain the ability of hospital administrators to allocate space as needed. The proposed standards require that 10% of the patient bedrooms in hospitals that do not specialize in treating conditions that affect mobility be accessible. If it is not feasible to distribute these rooms among each of the specialty areas, would it be appropriate to require accessible rooms to be dispersed so that there are accessible patient rooms on each floor? Are there other methods of dispersal that would be more effective?*

Response 43 (Title II): See response to Question 58 (Title III).

Question 59 (Title III) and Question 44 (Title II): *DOJ would like to hear from the public about the suggestion of allowing multiple breaks in the sequence of accessible holes on miniature golf courses, provided that the accessible holes are connected by an accessible route. Should DOJ ask the Access Board to change the current requirement in the 2004 ADAAG?*

Response 59 (Title III)/44 (Title II): Because of the nature of their construction, miniature golf courses are considered structures and covered by building codes. Allowance for the 50% accessible holes in a pee-wee golf course to be intermixed instead of consecutive seems like it would allow a better mix of integration for the experience and would allow for someone to 'play along' with their friends and family even if they could not actually participate at every hole.

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Question 45 (Title II): *Are the requirement for accessible cells in §§ 232.2 and 232.3 of the 2004 ADAAG adequate to meet the needs of the aging inmate population in prisons? If not, should the percentage of cells required to have accessible features for individuals with mobility disabilities be greater and, if so, what is the appropriate percentage? Should the requirement be different for prisons that for other detention and correctional facilities?*

Response 45 (Title II): The current requirement for scoping for jails in ADA/ABA Section 232 may not be adequate for the aging population. The ICC codes deal with facilities based on what occurs in the space (not the building type), especially in mixed use buildings. The current scoping for assisted living facilities is 4% Accessible units; for residential care facilities it is 10% Accessible units; and nursing homes it is 50% Accessible units. Where it can be determined in a jail where inmates needing some level of assistance for daily activities would be housed, that portion of the facility should have Accessible units consistent with the anticipated need as reflected in the IBC scoping.

Part II

Part II deals with additional areas of concern by the International Code Council that is outside the scope of the questions asked in the NPRM. As in the response to the questions above, the text from the NPRM or ADA/ABA Accessibility Guidelines is listed in italics and Times Roman font. Comments from the International Code Council are not italicized and are in Arial font.

Notice of Proposed Rule Making

Subpart F – Certification of State Laws or Local Building Codes.

The NPRM makes the following statement –

The Department also supports the views of commenters who stressed the importance of continued harmonization efforts by the Access Board, in addition to the benefits of providing more technical guidance regarding the consistency of model codes with the ADA's requirements. In that regard, the Department expects to make available, in conjunction with its publication of the proposed standards, information indicating differences between the 1991 Standards and the proposed standards, and the model code of the International Code Council and other model codes.

The next edition of the International Codes will be published in January of 2009. However, the final text will be decided during the public hearings in September 2008. To provide the most current evaluation of coordination between the International Codes and ADA/ABA please contact us so that we can provide the most current text. Information on the adoption of codes in each state can be found at <http://www.iccsafe.org/government/adoption.html>. The International Building Code (IBC) is adopted at the state or local level in 50 states plus Washington, D.C.

Section 36.406 – Standards for new construction and alterations –

The International Code Council feels that if the information in this section will be applicable to construction that it needs to be incorporated into the final rule. Comments regarding the (c) places of lodging, (d) social service establishments, (e) housing in places of education and (g) medical care facilities, are included in the responses to DOJ questions.

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The International Code Council would like to provide additional information on (f) Assembly areas.

(f) Assembly areas. Assembly areas subject to the proposed standards shall comply with the provisions applicable to assembly areas, including, but not limited to, sections 221 and 804. In addition, assembly areas shall ensure that:

Comment – The reference should be to Section 802

(1) Wheelchair and companion seating locations are dispersed to all levels of the facility that are served by an accessible route;

Comment - The requirements in Section 221 and 804 include provisions for dispersion for assembly seating by type, luxury boxes, other boxes, comparable line of site, horizontal distance and vertical distance. Seats must also be located on levels that contain services (e.g., concessions, souvenirs). Designers of sports facilities and theaters have indicated that access to the main seating level and at least one of every two balconies is sufficient (along with the dispersion requirements) to meet the intent of the dispersion criteria. This text is located in 2006 IBC Section 1108.2.3.

1108.2.3 Dispersion of wheelchair spaces in multilevel assembly seating

areas. In multilevel assembly seating areas, wheelchair spaces shall be provided on the main floor level and on one of each two additional floor or mezzanine levels. Wheelchair spaces shall be provided in each luxury box, club box and suite within assembly facilities.

Exceptions:

1. In multilevel assembly spaces utilized for worship services where the second floor or mezzanine level contains 25 percent or less of the total seating capacity, wheelchair spaces shall be permitted to all be located on the main level.
2. In multilevel assembly seating where the second floor or mezzanine level provides 25 percent or less of the total seating capacity and 300 or fewer seats, all wheelchair spaces shall be permitted to be located on the main level.
3. Wheelchair spaces in team or player seating serving areas of sport activity are not required to be dispersed.

(2) Wheelchair and companion seating locations are not located on (or obstructed by) temporary platforms or other movable structures. When wheelchair seating locations are not required to accommodate people who use wheelchairs, individual, removable seats may be placed in those spaces;

Comment – While the International Codes understands the concern for “creating” wheelchair space platforms over typical seats, the language as written would prohibit wheelchair spaces from being location on any temporary platforms or movable structures. Large venues often serve for multiple sports and entertainment events. Entire sections of the seating can be provided by temporary and moveable structures. If wheelchair seating locations are included as part of integration and dispersment, this should not be prohibited.

(3) Facilities that have more than 5,000 seats shall provide at least five wheelchair spaces

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and at least three companion seats for each wheelchair space; and

Comment – The requirements for adjacency and shoulder alignment in companion seating in ADA/ABA Section 802.3 is confusing with this requirement for additional companion seating. It should be permitted to include additional seats immediately surrounding the wheelchair space and adjacent companion seating. This would allow options within box seating as well as other options for families and groups.

(4) Stadium-style movie theaters shall locate wheelchair seating spaces and companion seating on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria:

- (i) It is located within the rear sixty percent (60%) of the seats provided in an auditorium; or*
- (ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).*

Comment – Where this type of seating is provided, additional information is needed on what happens when a combination of sloped seating and stadium styles seating is provided in a theater. When seating is provided as indicated in this requirement, will additional dispersion be required? The International Building Code provides specific means of egress requirements for assembly seating on sloped or tiered floors (2006 IBC Section 1007.1 and 1025.8). Requirements for accessible ingress and egress need to be considered together to allow for accessibility as well as safety.

ADA/ABA Accessibility Guidelines

211 Drinking Fountains

211.1 General. Where drinking fountains are provided on an exterior site, on a floor, or within a secured area they shall be provided in accordance with 211.

EXCEPTION: In detention or correctional facilities, drinking fountains only serving holding or housing cells not required to comply with 232 shall not be required to comply with 211.

211.2 Minimum Number. No fewer than two drinking fountains shall be provided. One drinking fountain shall comply with 602.1 through 602.6 and one drinking fountain shall comply with 602.7.

EXCEPTION: Where a single drinking fountain complies with 602.1 through 602.6 and 602.7, it shall be permitted to be substituted for two separate drinking fountains.

211.3 More Than Minimum Number. Where more than the minimum number of drinking fountains specified in 211.2 are provided, 50 percent of the total number of drinking fountains provided shall comply with 602.1 through 602.6, and 50 percent of the total number of drinking fountains provided shall comply with 602.7.

EXCEPTION: Where 50 percent of the drinking fountains yields a fraction, 50 percent shall be permitted to be rounded up or down provided that the total number of drinking fountains complying with 211 equals 100 percent of drinking fountains.

Comment - The concern is when facilities are designed for child sizes, such as in a grade school or preschool. The exception for child size provisions is only for the lower fountain. This

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literally would require a standing fountain sized for adults for every child size drinking fountain provided. There either needs to be a technical provisions for standing drinking fountains for children, or an exception for children's sizes for both the lower and higher drinking fountain.

804 Kitchens and Kitchenettes

804.1 General. Kitchens and kitchenettes shall comply with 804.

804.2 Clearance. Where a pass through kitchen is provided, clearances shall comply with 804.2.1. Where a U-shaped kitchen is provided, clearances shall comply with 804.2.2.

EXCEPTION: Spaces that do not provide a cooktop or conventional range shall not be required to comply with 804.2.

804.2.1 Pass Through Kitchen. In pass through kitchens where counters, appliances or cabinets are on two opposing sides, or where counters, appliances or cabinets are opposite a parallel wall, clearance between all opposing base cabinets, counter tops, appliances, or walls within kitchen work areas shall be 40 inches (1015 mm) minimum. Pass through kitchens shall have two entries.

804.2.2 U-Shaped. In U-shaped kitchens enclosed on three contiguous sides, clearance between all opposing base cabinets, counter tops, appliances, or walls within kitchen work areas shall be 60 inches (1525 mm) minimum.

Comment – The new ADA/ABA Guidelines significantly increase the size of galley kitchens that are closed at one end. The provisions that require a 60" space between cabinets in not needed. The clearance under the sink or work surface within the space could be utilized to allow for a T-shape turn within the area. This requirement should be reconsidered.

804.5 Storage. At least 50 percent of shelf space in storage facilities shall comply with 811.

Comment – There is a concern with the combination of this requirement and the new reach range provisions. With the appliances mostly located incorporated into the lower cabinets, and the bottom shelf not being within the lower reach range, only the top shelf and the drawers can be considered accessible storage.

There are two concerns with the upper cabinets. With the 48" upper reach range, if the upper cabinets are to serve as part of the accessible storage, the usable space on the top of the counter is extremely limited. With the thickness of the bottom shelf and the edge support of cabinet construction – the distance between top of counter and underside of upper cabinets is around 12". This will not fit most small appliance or microwaves. In addition, if a standard height cabinet (36" high) is provided below, the obstructed side reach range provisions in Section 308.3.2, would not even allow consideration of any of the upper counter space, no matter how low. The ICC A117.1 has identified this problem in their deliberations and have revised this requirement.

205.1 General. Operable parts on accessible elements, accessible routes, and in accessible rooms and spaces shall comply with 309.

EXCEPTIONS:

1. Operable parts that are intended for use only by service or maintenance personnel shall not

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be required to comply with 309.

2. Electrical or communication receptacles serving a dedicated use shall not be required to comply with 309.

3. Where two or more outlets are provided in a kitchen above a length of counter top that is uninterrupted by a sink or appliance, one outlet shall not be required to comply with 309.

4. Floor electrical receptacles shall not be required to comply with 309.

5. HVAC diffusers shall not be required to comply with 309.

6. Except for light switches, where redundant controls are provided for a single element, one control in each space shall not be required to comply with 309.

Comment – There is a concern with the electrical outlets located over kitchen counters (Section 804) and the obstructed reach range provisions (Section 309, and by reference 308). The Electrical Codes require one outlet over each piece of counter and not less than one outlet for every 4 feet of counter length. A piece of counter would include each side of an appliance or each side of a sink. Therefore at least one outlet or more is required every time a piece of counter is provided. The kitchen requirements in Section 804 require the sink and a work surface (i.e., not all counters) to be located at 34" or less in height. That allows for the remainder of the kitchen to use the standard 36" high lower cabinets with a 25-1/2" deep counter. This allows cost effectiveness in kitchen design and allows for counter tops to align with the tops of standard ranges and the installation of stock under counter appliances such as dishwashers and compactors. However, note that this conflicts with the allowances for obstructed side reach range when looking at any outlets on that back wall (except over the sink and accessible work surface). Exception 3 does not address most kitchen counters and wall outlets because it always asks for at least one accessible outlet. Information or revisions are needed to address this issue.

Appendix A

Under Entrances, Appendix A stated –

However, in order to ensure the Department is fully informed about the potential results of retaining the requirement, the Department is asking for detailed comments about this issue.

Comment – The International Code Council has included the 60% of public entrances requirement in Section 1105.1. However, we receive interpretation requests on this issue mostly dealing with small tenant spaces in mall with two doors – a front entrance and a back door required for means of egress only, but sometimes as a convenience door for deliveries or to take out the trash. Requiring an accessible route to what is often a back lot or alley, sometimes with a gravel surface, creates questions about the accessible route requirements and if there is any benefit for persons with disabilities. Sites that slope from front to back so that there is also a drop off or steps at the back door creates additional difficulties. The exception for 'doors intended only for means or egress' is debated when the business owner uses the door for any other access. It has been suggested that the 60% should be applicable for facilities with three doors or more, and the 50% retained for tenant spaces or buildings with one or two doors.

Under 210 and 504 Stairways, Appendix A stated –

Commenters were divided in their response to this provision. The Department believes that it strikes an appropriate balance by focusing the expanded requirements on new construction.

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Comment - The International Code Council has been asked repeatedly about the scoping requirements for stairways in both ADAAG and the ADA/ABA Accessibility Guidelines. Most people seem to go directly to Section 504 and do not understand the change in scope in Section 210. Please see the comments to Question 1 in Part I regarding stairway scoping and technical provisions.

Under 404 Doors, Doorways and Gates, Appendix A states

Maneuvering Clearance or Standby Power for Automatic Doors. The 1991 Standards, Section 4.13.6, do not require maneuvering clearances at automatic doors. Section 404.3.2, Exception of the proposed regulations will require automatic doors that serve as an accessible means of egress to either provide maneuvering clearance or to have standby power to operate the doors in emergencies. The provisions has limited application and will affect, among others, in-swinging automatic doors that serve small spaces.

The International Code Council has a question about the new requirement for maneuvering clearance at automatic doors that also serve as an accessible means of egress. The technical requirements in ADA/ABA Section 404.3.2 reference 404.2.4. This reference would not require the automatic door to have a single leaf with a clear width of 32" (Section 404.2.3) but would require maneuvering clearance. IBC allows automatic double doors to meet the 32" clear width with both panels, so this is consistent. However, would a break-away feature for both leaves of the automatic door be considered an alternative to stand-by power? Is that the intent of the exception where it says "remain open in the power-off condition"? An advisory would be helpful at this requirement.