Federal Register

7–23–04 Friday
Vol. 69 No. 141 July 23, 2004

United States
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Washington, DC 20402

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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

7–23–04 Friday
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Pages 43891–44456

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–109–2]

Imported Fire Ant; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of 20 counties in North Carolina and restricting the interstate movement of regulated articles from those areas. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on April 29, 2004

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 7 CFR 301.81–10 and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

In an interim rule effective and published in the **Federal Register** on April 29, 2004 (69 FR 23415–23417, Docket No. 03–109–1), we amended the regulations in § 301.81–3(e) by designating as quarantined areas all or portions of 20 counties in North Carolina.

Comments on the interim rule were required to be received on or before June 28, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 23415–23417 on April 29, 2004.

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 19th day of July 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16816 Filed 7–22–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

New Animal Drugs; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The NADA provides for veterinary prescription use of ceftiofur crystalline free acid suspension in swine, by intramuscular injection, for the treatment of swine respiratory disease (SRD).

DATES: This rule is effective July 23, 2004.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov.*

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed NADA 141–235 for EXCEDE (ceftiofur crystalline free acid) for Swine Sterile Suspension. The NADA provides for the veterinary prescription use of ceftiofur crystalline free acid suspension in swine, by intramuscular injection, for the treatment of SRD associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Haemophilus parasuis*, and *Streptococcus suis*. The application is approved as June 18, 2004, and the regulations are amended in 21 CFR 522.315 and 556.113 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning June 18, 2004.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.315 is amended by revising paragraphs (a) and (d) to read as follows:

§ 522.315 Ceftiofur crystalline free acid.

(a) *Specifications*—(1) Each milliliter (mL) of suspension contains 100 milligrams (mg) ceftiofur equivalents (CE).

(2) Each mL of suspension contains 200 mg CE.

* * * * *

(d) *Conditions of use*—(1) *Swine.* The formulation described in paragraph (a)(1) of this section is used as follows:

(i) *Amount.* 5.0 mg CE per kilogram (kg) of body weight by intramuscular injection in the postauricular region of the neck.

(ii) *Indications for use.* For the treatment of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Haemophilus parasuis,* and *Streptococcus suis.*

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Following label use as a single treatment, a 14-day preslaughter withdrawal period is required.

(2) *Cattle.* The formulation described in paragraph (a)(2) of this section is used as follows:

(i) *Amount.* 6.6 mg CE per kg of body weight by a single, subcutaneous injection in the middle third of the posterior aspect of the ear.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (BRD), shipping fever, pneumonia) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Haemophilus somnus.* For the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica, P. multocida,* and *H. somnus.*

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 4. Section 556.113 is amended in paragraph (b)(1) by removing "*Swine, poultry,*" and by adding in its place "*Poultry*"; by redesignating paragraph (b)(2) as paragraph (b)(3); by adding new paragraph (b)(2); and by revising newly redesignated paragraph (b)(3) to read as follows:

§ 556.113 Ceftiofur.

* * * * *

(b) * * *

(2) *Swine.* The tolerances for desfuroylceftiofur (marker residue) are:

(i) *Kidney (target tissue).* 0.25 parts per million (ppm).

(ii) *Liver.* 3 ppm.

(iii) *Muscle.* 2 ppm.

(3) *Cattle.* The tolerances for desfuroylceftiofur (marker residue) are:

(i) *Kidney (target tissue).* 8 ppm.

(ii) *Liver.* 2 ppm.

(iii) *Muscle.* 1 ppm.

(iv) *Injection site muscle.* 166 ppm.

(v) *Milk.* 0.1 ppm.

Dated: July 13, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–16760 Filed 7–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 25

[FBI 108F; AG Order No. 2727–2004]

RIN 1110–AA07

National Instant Criminal Background Check System Regulation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice ("the Department") is publishing a final rule amending the regulations implementing the National Instant Criminal Background Check System ("NICS") pursuant to the Brady Handgun Violence Prevention Act ("Brady Act").

EFFECTIVE DATES: The effective date for the final rule is July 20, 2004.

FOR FURTHER INFORMATION CONTACT: Eugene Donaldson, Federal Bureau of Investigation, National Instant Criminal Background Check System (NICS) Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, (304) 625–3500.

SUPPLEMENTARY INFORMATION: This notice finalizes the rule proposed in the **Federal Register** on July 6, 2001 (66 FR 35567). The Federal Bureau of Investigation ("FBI") accepted comments on the proposed rule from interested parties until October 22, 2001, and 1,164 comments were received. With the exception of certain changes explained below, the proposed rule is adopted as final.

Significant Comments or Changes:

The Department on July 6, 2001, published a notice of five proposals for changes in the regulations governing the NICS. The changes relate to the amount of time that the NICS retains information about approved firearm transfers in the system's chronological log of background check transactions ("Audit Log") and the manner in which that information may be used to audit the use and performance of the NICS. The proposed changes sought to balance the Brady Act's mandate that the Department protect legitimate privacy interests of law-abiding firearm transferees and the Department's obligation to enforce the Brady Act and the rest of the Gun Control Act and prevent prohibited persons from receiving firearms.

The comments about each of the five proposals are addressed below.

1. Proposal #1: Prompt Destruction of Records of Allowed Transactions (§ 25.9(b)(1), (2) and (3))

The majority of the comments received addressed the proposal that would require information relating to allowed firearm transfers, other than the NICS Transaction Number (NTN) and the date the number was assigned, to be destroyed before the beginning of the next day of NICS operations. The NICS regulations currently require destruction of this information within 90 days of the system allowing a transaction. 28 CFR 25.9(b)(1).

Since the closing of the comment period, Congress passed, and the President signed into law, a requirement that addresses the time within which the NICS is required to destroy certain information in the records of allowed transactions. Section 617 of Pub. L. No. 108–199, the Consolidated Appropriations Act, 2004 (or "Omnibus"), requires the NICS to destroy "any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law." Section 617 of the Omnibus bill becomes effective on July 21, 2004, 180 days after January 23, 2004, the date the Omnibus bill was signed into law.

For this reason, proposal #1 has been superseded by a legislative enactment setting a limit on how long the NICS may retain certain information on allowed transactions. The final rule has been revised to conform to the 24-hour record retention provision in the Omnibus bill. However, because many of the comments on proposal #1 raised questions about the effect of the shortened retention period on the operation of the NICS, we discuss those comments below to explain how the NICS will operate under the Omnibus provision and continue to enforce relevant Federal laws effectively.

Commenters questioned whether the FBI could audit system performance adequately when the retention period for most information relating to approved transfers is less than 24 hours. The FBI uses information currently retained in the Audit Log to ensure quality performance from the NICS employees and the operators at the contract Call Centers who take transferee information from Federal Firearms Licensees ("FFLs"). The FBI's procedure for these audits under the existing regulations is to review a sample of decisions ("proceed," "denied," and "open") made by NICS employees and of entries by Call Center operators of transferee information. If an erroneous decision to allow a firearm transfer is detected during the audit, the FBI seeks to rectify the mistake by referring the case to the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") for retrieval of the firearm. In addition, retraining may be given to the employees involved or all employees relating to the issues raised by the error to prevent similar mistakes.

Under the Omnibus 24-hour destruction provision, this same auditing function will be performed soon after the transaction is processed by the NICS. This change, from the current review process (which in some instances may be performed as late as 75 days after an initial decision was made) to a process where reviews are performed within 24 hours after an FFL is advised of a "proceed" response ("real time" audits), can be done without any change in the number of transactions audited and the level of confidence underlying the audits. The FBI has determined that, after the proposed change, it can audit the same percentage of employee "proceed" decisions and Call Center entries as it currently reviews. Furthermore, the FBI has determined that, under the new audit procedures, it can attain the same confidence level in the audit results that is achieved under the current post-decision review of proceed records retained for 90 calendar days. The FBI will perform these reviews to accommodate all hours and days of operation. These reviews will include audits of the procedures through which the NICS ensures that aliens who are illegally or unlawfully in the United States or who are non-immigrant aliens do not receive firearms as prohibited by the Gun Control Act. *See* 18 U.S.C. 922(g)(5). The Department is working toward providing the necessary staffing resources for these "real time" reviews and will coordinate with the FBI to ensure adequate resources for this function.

The Department believes that these "real time" quality assurance audits, performed either before or within a few hours (less than 24 hours, at the outermost) after eligibility decisions are communicated to the FFL, will ensure that the reliability and accuracy of the NICS is maintained. Contemporaneous reviews may prevent a firearm from being erroneously transferred to a prohibited individual. Reviews performed within 24 hours of advising an FFL of a proceed response will, in cases of erroneous proceed decisions discovered by the audit, permit immediate referral of any firearm retrievals to ATF. In addition, the institution of any corrective training promptly after the error will prevent the repetition of errors that might occur where reviews are conducted much later, as they are under the current 90-day retention policy.

One comment observed that because the NICS has cases in which it cannot make a determination within three business days as to whether a potential transferee is disqualified, it cannot both make a determination and evaluate the accuracy of the determination within one business day. These cases, however, are not covered by the Omnibus 24-hour destruction provision. The NICS cannot in some cases reach a final determination within three business days because relevant information is missing from the automated record system and must be obtained from other sources. As discussed below, the final rule defines these cases as "open" responses and allows the NICS to retain information about them until a "proceed" determination is reached or for not more than 90 days, so that if records are returned to the NICS within that time showing that the transfer should have been denied, the case can be referred for a firearm retrieval. When there are no missing records, employees are able to make their determinations quite quickly, usually within a matter of minutes. Reviewing these determinations within 24 hours after they are made is both feasible and preferable to the current system of review.

The FBI also uses information on approved transactions to audit the data processing algorithm that matches system records to the transferee information submitted for the NICS check. These audits will be unaffected by the Omnibus provision because, in 2001, the FBI began performing the algorithm audits daily.

Some commenters contended that the new proposed retention period is inconsistent with the Department's earlier comment that 90 days was "the shortest practicable period of time for retaining records of allowed transfers that would permit the performance of basic security audits of the NICS." 64 FR 10264. That statement, however, pertains to the process of post-decision reviews currently in effect and not the real-time auditing process that will be implemented under the Omnibus provision.

The current NICS audit process, based on post-decision reviews, is similar to

the FBI's audit procedures for its National Crime Information Center ("NCIC"). In auditing the NCIC, the FBI reviews historical data periodically to ensure that law enforcement agencies are accessing the NCIC only for authorized purposes. NCIC users are typically subject to such audits once every three years. There is greater need to audit the NICS promptly, however, because NICS employees are constantly interpreting records, applying state and federal law, and deciding whether persons are eligible to possess or receive a firearm. Five years of operating the NICS have given the FBI sufficient experience in managing the system to implement the real-time quality reviews that will begin once the Omnibus 24-hour destruction requirement becomes effective.

One comment suggested that the new retention period will hamper the ability of the NICS to develop and analyze statistical information about the system's use and performance. The FBI has determined that, although under the new period it may not have as much flexibility in doing so, it will be able to continue to develop needed statistical data about the system's performance under the new retention period by making statistical data runs on a daily basis (before the beginning of the next day of NICS operations) instead of doing so on a weekly or monthly basis.

Another comment questioned the FBI's legal authority to retain more complex statistical data. The Department interprets the provision of the Brady Act requiring the destruction of "all records of the system relating to the person or the transfer," 18 U.S.C. 922(t)(2)(C), as referring only to records that contain specific information about individual transfers. In addition, as discussed below, the Omnibus provision requires the destruction of "any identifying information submitted by or on behalf of" an approved purchaser. The Department believes, therefore, that the NICS may develop and retain information about the system's performance that does not contain such identifying information. Examples include but are not limited to the gross number of checks processed, the numbers of checks performed for handgun and long gun transfers, and the numbers for the different types of system responses given to FFLs (in the aggregate and by individual FFLs).

The Department interprets section 617 of the Omnibus bill as being consistent with this reading of the Brady Act. Therefore, when the provision becomes effective, the FBI will continue to retain for not more than 90 days non-identifying data associated with transactions such as the FFL number, as well as the NTN and date (which are retained indefinitely), for all transactions in the NICS Audit Log. In addition, when asking an agency for information in connection with a NICS check, the NICS will provide the NTN, which the agency can reference in any response to the NICS. By retaining the FFL and NTN numbers for up to 90 days, the FBI will be able to trace the transaction back to the FFL if prohibiting information is provided by an agency more than 24 hours after the NICS issued a Aproceed@ response. FFLs are required to record the NTN on the Firearms Transaction Record (ATF Form 4473) and must keep those forms for 20 years if the firearm is transferred. 27 CFR 478.129(b). As a result, the FBI will retain the ability to refer the case to ATF for the retrieval of the erroneously transferred firearm and any other firearms illegally possessed by the prohibited person. This practice will ensure that firearm retrievals can continue under the language in the Omnibus bill.

This continued retention of the FFL number is possible because the Department believes that the text of the Omnibus provision only requires the destruction within 24 hours of "identifying information submitted by or on behalf of" the approved purchaser. The statute is most naturally read to equate "identifying information" with information identifying the prospective transferee, rather than information that identifies anyone or anything. The FFL number does not identify the prospective transferee. Additionally, the phrase "identifying information submitted by or on behalf of" a transferee is best read to encompass information in the NICS records provided by the transferee—either directly ("submitted by [the transferee]"), or indirectly through a surrogate, such as the FFL ("submitted on behalf of [the transferee]"). Even though an FFL must submit its FFL number to the NICS before any firearm transfer may be authorized, this number is most naturally characterized not to constitute information "submitted by or on behalf of" a transferee because the transferee plays no role in providing it to the NICS.

To be clear, the Omnibus provision's 24-hour record destruction requirement applies only to transactions in which the NICS has affirmatively determined that possession or receipt of a firearm by the purchaser would not violate 18 U.S.C. 922(g) or (n) or state law and has so "advised" the FFL, *i.e.* has provided the FFL with a "proceed" response. Section 617 is not applicable to "denied" or "open" transactions. In the case of denied transactions, records are retained indefinitely. Furthermore, as discussed below, the FBI will also continue to be able to retain for up to not more than 90 days (as it does under current law) information on "open" transactions—*i.e.*, where the NICS has not yet provided a "proceed" or "deny" response because it has not received definitive information about the status of a prospective gun buyer's record (*e.g.*, a missing arrest disposition). If prohibiting information is received within 90 days, continued retention of such records will allow the FBI to change an open transaction to a "denied" response and refer the case to ATF for a firearm retrieval if the firearm has been transferred by the FFL (as allowed under the Brady Act when the FFL has not received within three business days a response on whether the transfer is lawful).

Some commenters were concerned that the proposed rule could interfere with the retention of information about proceed transactions by Point of Contact states ("POCs"). Under the existing NICS regulations, 28 CFR 25.9(d), POCs are required to destroy information about allowed transfers that are not part of "a record system created and maintained pursuant to independent state law regarding firearm transactions." *See also* 63 FR 58311. The FBI has advised POCs that if they do not have such state authority they must observe the same retention period for allowed transfers as the FBI under § 25.9(b). Thus, POCs that do not have the specified state authority will be required to reduce their retention period to conform to the new period that the FBI will observe, pursuant to the Omnibus provision, upon the effective date of this rule. However, POCs that have state authority to retain this information may continue to do so, and such authority is not affected by this regulatory change.

Some commenters suggested that reducing the retention period to less than 24 hours will prevent the identification of unlawful firearm transactions involving straw purchases or the use of false identification. A "straw purchase" occurs when the actual purchaser of a firearm uses another person, the "straw purchaser," to execute the paperwork necessary to purchase a firearm from an FFL. The straw purchaser violates the law by making a false statement with respect to information required to be kept in the FFL's records. Straw purchases are most often detected by the NICS when an FFL informs a NICS examiner that one person is buying a firearm for another

person, such as a friend or family member who recently has been denied. The transactions usually occur on the same operational day and frequently only minutes apart. Under the current regulation (§ 25.9(b)(2)), when such transactions are identified, the proceed information is maintained by the NICS and referred to ATF for investigation where doing so is necessary to pursue an identified case of "misuse of the system."

The requirement to destroy information about allowed transfers within 24 hours after the FFL has been notified of the approval will not interfere with these cases continuing to come to the attention of the NICS. To conform to the requirement of section 617 of the Omnibus, however, § 25.9(b)(2) has been revised in the final rule to provide that information in the NICS Audit Log, including information not yet destroyed under the 24-hour destruction requirement, that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation may be shared by the FBI with appropriate authorities responsible for investigating, prosecuting, or enforcing such law or regulation. This change is consistent with Routine Use C in the NICS Privacy Act Notice, which provides that: If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR, part 25, subpart A), any record is found by the system which indicates, either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, joint, or tribal) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law or regulation * * * 63 FR 65226–27 (Nov. 25, 1998). This provision in the final rule will continue to allow the FBI and ATF to pursue cases of suspected straw purchases, as well as other potential violations of law or regulation, that come to the FBI's attention while operating the system. Where a potential straw purchase comes to the attention of the FBI while processing a NICS check within 24 hours after a dealer is advised of a proceed determination, this provision in the regulation will authorize the FBI to provide records of the approved transfer to ATF before the identifying information in records in the NICS Audit Log must be destroyed as required by the Omnibus provision.

In addition, the NICS does not destroy records of denials. A NICS employee verifies the potential straw purchase case by referring back to an earlier "denied" response, not an earlier "proceed" response. For that reason, information about allowed transfers in the Audit Log is not used to track lawful transferees to see whether they might be engaged in a straw purchase. Straw purchases by persons with last names different from the ones of persons that later receive the firearm would not be detectable by a review of the Audit Log, regardless of whether the information contained therein is kept for one day or 90 days.

The change required by the Omnibus provision does not affect the ability of law enforcement to detect or prosecute the use of false identification by prospective firearm purchasers. The NICS runs the name and identifying information that the FFL sends to the system based on the identification documents presented by the buyer. The FFL is responsible for examining the identification documents, and the NICS has no means by which it can validate the identification presented. Thus, the change in the retention period of information about allowed transfers has no relevance to the system's ability (or inability) to validate a buyer's identification. One comment suggested that a purchaser using a false identity could be detected by reviewing the Audit Log for a pattern of purchases that could trigger an investigation to uncover possible gun trafficking. The Department's position since the NICS began operating is that such use of the Audit Log is not authorized by the Brady Act and the NICS regulations, both of which prohibit the use of the NICS to establish a system of firearm registration relating to lawful gun purchases; the Audit Log, therefore, is not used to track purchases by lawful gun buyers, even though doing so could potentially identify purchase patterns suggesting possible cases of gun trafficking.

One comment observed that the proposed change would prevent the NICS from referring a "proceed" transaction for a firearm retrieval when a disqualifying record is subsequently entered into the system. The comment indicated that this would allow a prohibited buyer to "beat the clock" and buy a firearm after he or she becomes disqualified but before his or her disqualifying record is entered into the system. The NICS, however, does not currently have a process for automatically comparing new criminal history or other disqualifying information received by the FBI against proceed transactions in the Audit Log. As noted above, under the final rule the system will list as "open" the cases in which the system has hit on a potentially disqualifying record but has not obtained definitive information on whether the person is disqualified. Examples of such cases include transactions where a record is found of an arrest for a disqualifying offense without information about the final disposition or where a record is found of a conviction of a violent misdemeanor without information on whether there is a domestic relationship that would make the offense a disqualifying misdemeanor crime of domestic violence. Records on these open transactions will be kept for not more than 90 days to allow for referral of the case for firearm retrieval in the event disqualifying information is received within that time.

Many commenters argued that the Brady Act and the Firearms Owners' Protection Act require immediate destruction of NICS records upon communicating the proceed decision to the FFL, and that any retention of information on approved transfers violates the provisions of federal law prohibiting the establishment of a federal firearms registry. The United States Court of Appeals for the District of Columbia Circuit rejected this argument in *National Rifle Ass'n of America, Inc.* v. *Reno*, 216 F.3d 122 (D.C. Cir. 2000), *cert. denied sub nom. National Rifle Ass'n of America, Inc.* v. *Ashcroft*, 533 U.S. 928 (2001). That decision affirmed the Attorney General's discretion to allow the NICS to keep information about allowed firearm transfers for a limited period of time for the limited purpose of conducting audits of the use and performance of the system. *See National Rifle Ass'n of America, Inc.* v. *Reno*, 216 F.3d at 137–38, *quoting* 66 FR 58304 (Oct. 30, 1998). Such discretion perforce extends to the changes effected by this rule, which requires much more prompt destruction of the information than do the regulations it amends. Moreover, by specifying in section 617 of the Omnibus bill the requirement for destroying certain information in records of allowed transfers not more than 24 hours after an FFL is advised of the determination, Congress has specifically authorized retaining these records for up to 24 hours.

Several comments questioned whether records of allowed transfers would be kept beyond the beginning of the next day of NICS operations in computer system backup tapes. The

NICS currently maintains complete backups of the last ten calendar days of all data. The Omnibus provision provides no exception to the requirement for the destruction of the identifying information about allowed transactions within 24 hours of advising the FFL of the "proceed" response. The FBI will therefore revise its backup procedures for NICS data to ensure that the relevant data is destroyed within the 24-hour time frame.

Finally, the Department has determined that the regulations should more clearly distinguish between the final rule's use of the term "NICS business day" and the term "business day" as used elsewhere in the regulations. The term "business day" is defined as "a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place." Ordinarily, this excludes weekends and all holidays on which state offices are closed. In contrast, the FBI NICS Section operates every day of the year during the hours of 8 a.m. to 1 a.m. eastern time, with the exception of Christmas Day. Therefore, in § 25.9(b)(1)(iii), the final rule substitutes the term "NICS operational day" for the term "NICS business day." "NICS operational day" is defined to mean "the period during which the FBI NICS Operations Center has its daily regular business hours." In conjunction with this change, the term "NICS Operations Center regular business hours" has been removed from the regulations. This term was defined as 9 a.m. to 2 a.m. eastern time. Shortly after the FBI NICS Operations Center began operating, however, it established business hours of 8 a.m. to 1 a.m. eastern time. The definition of "NICS Operations Center regular business hours" is being removed so that an amendment to the rule is not required in the event of future changes in those hours. The FBI NICS Section will keep POCS and FFLs informed of any changes in its daily regular business hours.

2. Proposal #2: Individual FFL Audit Logs (§ 25.9(b)(4))

The Department proposed to create Individual FFL Audit Logs upon prior written request from ATF for use in connection with ATF's inspections of FFL records. With the exception of denied transactions, the Individual FFL Audit Logs may contain only non-identifying information for each transaction. All information concerning denied transactions may be included in the Individual FFL Audit Logs. The FBI will create Individual FFL Audit Logs for the transactions processed by the FBI's NICS Operations Center. The Department expects the POC states to work with the FBI and ATF to ensure that such Logs will also be available to ATF for use in its inspections of FFLs in the POC states. The final rule provides: "The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such Logs to ATF."

In the final rule, the Department has dropped the requirement that ATF destroy all records of allowed transfers and open transactions within 90 days of the date on which the Individual FFL Audit Log was created. The Department concluded that the proposed rule's requirement that ATF destroy this information and certify its destruction is not required by law and would create an unnecessary administrative burden. In addition, to give ATF the flexibility to obtain information covering a longer period of transactions for use in its inspections of FFLs, the final rule allows the Individual FFL Audit Logs to contain up to 60 days, as opposed to the proposed 30 days, worth of allowed and open transfer records originating from the inspected FFL.

Several comments on this proposal suggested that giving ATF only the NTN and date of inquiry on allowed transfers limits the utility of these logs in ATF inspections of FFLs. The Department notes that the Individual FFL Audit Logs will allow ATF to review dealer records in several ways that will deter FFL misuse of the NICS. First, by comparing the NTN issued by the NICS to the NTN recorded on the ATF Form 4473, ATF can deter FFLs from falsifying NTNs to conceal the fact that they did not request a NICS check on a transfer and detect any FFLs who have made such falsifications. Second, by comparing the number of NICS checks requested by an FFL during the 60-day period to the number of Forms 4473 that the FFL has for the same period, ATF will be able to ensure that for every NICS check there is a corresponding Form 4473. When there are more NICS checks than there are Forms 4473, ATF will determine whether the FFL was running unauthorized NICS checks unrelated to firearm transfers. When there are fewer NICS checks than there are Forms 4473, ATF can investigate whether the FFL was transferring firearms without the required NICS check. In addition to using the 60 days of data in the Individual FFL Audit logs to detect these discrepancies, ATF can use statistical data that the FBI develops covering a longer period of time on the gross number of checks by the FFL and the gross number of responses by type given by the system ("proceed," "denied," or "open"). Since all checks must have a corresponding Form 4473, if such forms are missing, then possible NICS checks for improper purposes may be detected. These reviews by ATF will deter dealers from avoiding NICS checks or running unauthorized NICS checks and violating the right to privacy of persons subject to such checks.

Other comments indicated that limiting the information about allowed transfers in the Individual FFL Audit Logs will prevent ATF from discovering certain types of dealer misuse of the NICS. As noted above, this information will continue to allow ATF to check for fictitious NTNs and discrepancies between the number of checks and the number of Forms 4473. It is true, however, that when the 24-hour destruction requirement in the Omnibus bill is implemented, ATF inspectors will no longer be able to compare the information on the 4473 on proceeded firearm transactions with the information sent to the NICS to determine if an FFL sent the system different information to avoid the background check on the actual buyer. To date, however, ATF has not found such activity to be a problem. ATF believes that, in any event, it will be able to deter FFLs from deliberately sending the NICS information different from what is on the Form 4473 by conducting, as part of its inspections, NICS rechecks on a sample of proceeded transactions to see if the NICS would give the same "proceed" response as of the date of the original transaction. The FBI has also developed a new tool, the NTN validator, which ATF will use to detect fabricated NTNs.

To be sure, the fact that the FBI and ATF were able to conduct comparisons of identifying information from the Form 4473 that was submitted to the NICS may have had some deterrent effect on dealers who would consider abusing the system. The FBI and ATF, however, will create a similar deterrent. As mentioned above, ATF has the authority to run NICS rechecks to see if the NICS returns a "denied" response on a transfer the Form 4473 shows as being allowed. The recheck determines whether the person was prohibited based on records showing the person's status at the time of the original check. The NICS regulations grant ATF authority to conduct NICS rechecks as part of its inspection process under 28 CFR 25.6(j)(2), which permits ATF

access to the NICS Index for civil and criminal law enforcement purposes under the Gun Control Act. ATF is also authorized to receive information from other databases checked by the NICS, including the NCIC, the Interstate Identification Index ("III"), and Bureau of Immigration and Customs Enforcement, Department of Homeland Security, databases. Any inconsistency between a proceed on a Form 4473 and a denied response on a recheck would suggest that the dealer had sent the NICS identifying information that differs from that which appears on the Form 4473. Upon the discovery of such a discrepancy, ATF can do a larger sample of rechecks to ascertain if there is a pattern of abuse or initiate an investigation of the FFL if warranted by the facts. Moreover, the rechecks can be done over a much longer period of time than the 60 days of transactions it was anticipated that ATF would review using the information saved and shared under the 90-day retention rule. Using the recheck approach to auditing FFL records of NICS checks increases the probability of irregularities being discovered because ATF can go back a year or more in its recheck sample. The Department has concluded that this recheck process will provide a deterrent to dealers who might consider submitting false information to the NICS, because sanctions for such misuse include suspension of NICS privileges and criminal prosecutions. In addition, under the new rule, the FBI will continue to be able to identify cases in which FFLs, after receiving a denial on a particular purchaser's identifying information, initiate one or more subsequent checks with slight variations of a name, date of birth, or social security number. These cases usually occur shortly after the initial denial or delay and are verified by referring back to the initial denied or open transaction. Finally, traditional law enforcement methods, such as undercover investigations finding cases of dealers submitting false information to the NICS, can lead to prosecutions or license revocations that will deter dealers from engaging in such illegal conduct.

Other comments argued that the Brady Act does not allow the FBI to retain information about the FFL identification number ("FFL identifier") or to transfer any information on allowed transfers or open transactions to ATF. The comments asserted that the FBI can only keep the NTN and date (without the associated FFL identifier) and may only share that information with ATF when there is a bona fide criminal investigation. As noted above, the Department's authority to retain information on allowed transfers, including the FFL identifier number, in the Audit Log for a limited time was upheld in *National Rifle Ass'n of America, Inc.* v. *Reno*, 216 F.3d 122 (D.C. Cir. 2000), *cert. denied sub nom. National Rifle Ass'n of America, Inc.* v. *Ashcroft*, 533 U.S. 928 (2001). Also, for the reasons specified above, the Department believes that the record-destruction requirement in the Omnibus bill only applies to the identifying information submitted by or on behalf of the prospective purchaser. Sharing FFL identifiers with ATF in connection with its inspections of FFLs facilitates authorized audits of FFLs' use of the NICS.

3. Proposal #3: New Definition of "Open" Transaction (§ 25.2)

Initially, the purpose of this proposal was to create a separate category of transactions called "unresolved." In the final rule, however, the name of the category is changed from "unresolved" to "open." "Open" transactions are those non-canceled transactions where the FFL has not yet been notified of the final determination. In such cases, additional information is needed before the NICS examiner can verify whether a "hit" in the database demonstrates that the prospective purchaser is disqualified from receiving a firearm under state or federal law. Under the final rule, the NICS will be able to maintain records of open transactions until either (1) a final determination on the transaction is reached and has been communicated to the FFL resulting in the transaction status being changed to a "proceed" (24-hour destruction) or a "denied" (indefinite retention) status, or (2) 90 days elapse from the date of inquiry.

Currently, approximately 74 percent of all transactions are completed immediately and approximately 92 percent are completed while the FFL is still on the telephone with the FBI NICS Section. Therefore, open transactions represent a very small percentage of all calls to the NICS. Creating an "open" category clarifies that the NICS can retain, as discussed above, the identifying information on such transactions beyond the 24-hour retention period for "proceed" transactions so that employees can complete research and analysis necessary to achieve an accurate determination. If the transaction's status is changed to "denied" within 90 days, the NICS would be able to refer the matter to ATF for a possible firearm retrieval and retain the transaction information indefinitely.

Several commenters raised the concern that the creation of a new "open" category would change the statutory mandate in the Brady Act that allows an FFL to transfer a firearm if the NICS has not determined, within three business days, that the transaction is prohibited by law. However, the new category of "open" would not affect an FFL's ability to transfer or withhold a firearm after three business days, but would simply allow the NICS to keep accurate records of the precise status of NICS transactions. With this new category of "open" transactions, the NICS will more accurately reflect the status of all transactions in the system, track changes in their status, and update its records accordingly.

The definition of "Delay" has been amended to clarify that it means the response given to the FFL indicating that the transaction is in an "Open" status and that more research is required prior to a NICS "Proceed" or "Denied" response.

Finally, several comments stated that the open category would be unnecessary if the record systems checked by the NICS had complete information. The Department agrees that all levels of government must continue to improve the completeness of disposition information in the criminal history record system so that such information can be available to the NICS without the need for further research. As record completeness improves, the number of open transactions should decrease. The Department is addressing the problem of missing dispositions by making the closing of such gaps a priority use of the funding available to the states under the National Criminal History Improvement Program ("NCHIP"). It is expected, however, that achieving improved completeness will take additional time, and that there will continue to be a need for the NICS to have an "open" category for the foreseeable future.

4. Proposal #4: Require POC States to Transmit State Determinations to the NICS (§ 25.6(h))

Under current § 25.6(h), POC states are encouraged, but not required, to transmit to the FBI determinations that a background check indicates a firearm transfer is denied. Unfortunately, most POC states currently do not transmit this information to the NICS. In order to provide the NICS with complete information about POC transactions, the Notice of Proposed Rulemaking contemplated that POC states would be required to transmit all determination information on all POC

determinations—approved, open, and denied—as soon as it is available.

A number of POC states and interest groups commented that a requirement to transmit information about all determinations would overly and unduly burden the POC states and the NICS. In addition, they stated that POC denial information is the most valuable and necessary for the NICS to collect. The 24-hour destruction requirement in the Omnibus, however, makes it just as important that the NICS have notice of when a POC transaction is open, because otherwise it will have to assume the transaction has been approved and destroy the transaction information within 24 hours of the initial check. This result will mean that the NICS may not have information about the transaction even though the POC has not finished its review of or made a final determination concerning the open transaction. In turn, this would cause certain inefficiencies in the completion of POC checks, in some cases requiring the POC to run an open transaction a second time where the information about the initial check has been destroyed because the FBI is forced to assume the transaction has been proceeded.

In light of these comments and the requirement of the Omnibus provision, the Department has changed the final rule to provide that POC states must transmit electronic NICS transaction determination messages to the FBI for the following transactions: (1) Open transactions that are not resolved before the end of the operational day on which the check is requested; (2) denied transactions; (3) transactions reported to NICS as open and later changed to proceed; and (4) denied transactions that have been overturned. The FBI will provide POCs with an electronic message capability to transmit this information.

These electronic messages shall be provided to the NICS immediately upon communication of the POC determination to the FFL. For open transactions, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. The FBI will assume that POC transactions that are not identified as denied or open have received a proceed response and will accordingly destroy certain information from those NICS records within 24 hours.

The FBI has already provided and will continue to provide the POCs guidance and support on the system requirements for providing the NICS the required information about transaction status. In addition, the 2004 Program Announcement for the National Criminal History Improvement Program (NCHIP), available on the website of the Bureau of Justice Statistics, provides that NCHIP funds are available to POC states "to implement programming or operational changes in records management necessary to comply" with new NICS requirements for POC participation resulting from the Omnibus bill.

Receiving information about POC denials will enable the FBI to refer all denials, not just those made by the FBI NICS Operations Center, to ATF for investigation. Receiving notification of open POC transactions will allow the FBI to retain information about the POC transaction for up to 90 days, or until the transaction's status is changed to proceed before the expiration of 90 days, in the same way the FBI will retain information about open transactions handled by the FBI NICS Section.

Several commenters were concerned that the new POC requirement might interfere with state record-retention rules. These issues are addressed by the current requirement in the NICS regulations regarding record retention by POC states. Specifically, 28 CFR 25.9(d) states:

(d) The following records of state and local law enforcement units serving as POCs will be subject to the Brady Act's requirements for destruction:

(1) All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions; and

(2) All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.

The Department gave the following explanation of this section in the **Federal Register** when the initial NICS regulations were published on October 30, 1998: "Sections 25.9(d)(1) and (2) of the final rule were revised to make it clear that the referenced state records of allowed transfers would not be subject to the Brady Act record destruction requirement if they are part of a record system created and maintained pursuant to independent state law regarding firearms transfers. The reason for this clarification is to avoid interfering with state regulation of firearms. If a state is performing a gun eligibility check under state law, and state law requires or allows the retention of the records of those checks, the state's retention of records of the concurrent performance of a NICS check would not add any more information about gun ownership than the state already retains under its own law." 63 FR 58304. The Department does not believe that the Omnibus 24-hour record destruction provision affects this part of the NICS regulation. The Omnibus provision simply reduces the record retention time for records subject to the Brady Act's record destruction requirement; it does not expand the records that are subject to the destruction requirement.

As noted above, however, POC states that do not have a state law regarding firearms transactions that requires or allows the retention of the records of gun eligibility checks must comply with the same record destruction schedule observed by the FBI. Therefore, to ensure that the Department observes the requirements of the Omnibus bill, beginning July 21, 2004, such POC states must destroy records relating to allowed transfers, in accordance with 28 CFR 25.9(d), no more than 24 hours after advising FFLs of proceed determinations. Otherwise, NICS transactions in those states will have to be processed by the FBI to ensure compliance with the Omnibus provision.

5. Proposal #5: Voluntary Appeal File (§ 25.10(g))

The final rule would permit lawful transferees to request that the NICS maintain information about themselves in a Voluntary Appeal File, a separate computer file that will be checked by the NICS, so that the NICS will not erroneously deny a firearm transfer in the future. Persons who may request that the NICS maintain information about them to facilitate future firearms transactions include lawful purchasers who have been delayed or denied a firearm transfer because they have a name and date of birth similar to that of a prohibited person. The NICS has the authority to maintain such information in order to reduce the number of requests it receives for the reasons underlying a delay or denial of a firearm transfer and the number of unnecessary appeals. Doing so will enhance the service that NICS provides to FFLs and lawful firearm transferees and help fulfill the Brady Act's goal of providing an "instant" background check where possible.

This provision would also avoid erroneous denials or extended delays on NICS checks of persons who were convicted but have had their rights restored or have obtained from ATF relief from the firearm disability. Some

commenters noted that some states provide that the firearm privileges of certain convicted persons are automatically restored after the passage of a set period of time. The commenters asserted that use of the Voluntary Appeal File should not be available to persons receiving the restoration of their rights because possession of a firearm by such persons presents a threat to public safety. Under certain conditions, however, the Gun Control Act allows individuals with otherwise disqualifying convictions to possess and receive firearms if their civil rights have been restored. *See* 18 U.S.C. 921(a)(20) and 921(a)(33)(B)(ii). The NICS is required by law to recognize such restorations of rights when determining a person's eligibility to obtain a firearm. The Department, therefore, declines to impose the suggested limitation on the use of the Voluntary Appeal File.

At the suggestion of the FBI, the Department amends this provision to clarify that the FBI may remove a person from the Voluntary Appeal File when the FBI finds that a disqualifying record has been created after the date of the person's entry into the file. Thus, the following sentence is added to the end of the new § 25.10(g): "If the FBI finds a disqualifying record on the individual after his or her entry into the Voluntary Appeal File, the FBI may remove the individual's information from the file." The Department is also correcting an error in the last sentence of this section of the proposed rule, which used the term "Voluntary Audit Log" instead of "Voluntary Appeal File." That sentence in the final rule reads: "However, the FBI shall not be prohibited from retaining such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system."

6. Other Comments on the Proposed Rule

One comment raised procedural objections concerning the delays in the effective date of the 90-day retention rule published in January 2001. The Department provided explanations for the postponement of the effective date when those actions were taken. *See* 66 FR 12854 (Mar. 1, 2001); 66 FR 22898 (May 3, 2001). Criticisms of those delays are irrelevant to the lawfulness of the process by which the current rule is being promulgated.

7. Effective Dates

For the reasons specified below, the effective date for this rule is July 20, 2004, the date of its signature. No later than July 21, 2004, the FBI will implement the 24-hour destruction requirement in the Omnibus provision, together with the associated changes to the NICS quality review process, and the creation of the "open" category under proposal #3.

While the authority to provide ATF with Individual FFL Audit Logs under proposal #2 and to establish a Voluntary Appeals File under proposal #5 is effective as of July 20, 2004, the FBI will not be able to implement those system enhancements immediately. The FBI will implement those enhancements as soon after the effective date as practicable.

No later than July 21, 2004, the FBI will establish the capacity for POCs to send to the NICS an electronic message on the status of the specified transactions as provided in proposal # 4. Due to programming and other changes that have to be made for certain states to send the POC determination messages, some POCs will not be able to take advantage of this capacity on July 21, 2004. All POCs must, however, continue to work with the FBI to satisfy the final rule's POC determination message requirement.

Applicable Administrative Procedures and Executive Orders

Administrative Procedure Act

The Department finds "good cause" for exempting this rule from the provision of the Administrative Procedure Act providing for a delayed effective date. 5 U.S.C. 553(d). Consistent with section 617 of the Omnibus bill, this rule must be in place by July 21, 2004 to ensure continued funding for the NICS system. Because it would be contrary to the public interest to have any interruption in this program, which protects the public by making it unlawful for felons and other prohibited persons from receiving or possessing firearms, this rule took effect July 20, 2004, upon signature.

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although many FFLs are small businesses, they are not subject to any additional burdens under the plan adopted to audit their use of the NICS. In addition, the rule will not have any impact on an FFL's ability to contact the NICS, nor will it result in any delay in receiving responses from the NICS.

Executive Order 12866

The Department of Justice has drafted this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly it has been reviewed by the Office of Management and Budget ("OMB").

Executive Order 13132

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The states are not required to act as POCs for the NICS, but do so voluntarily. The FBI consults with the state POCs on a regular basis about NICS operational issues and has held annual User conferences where POC questions and concerns are addressed. In addition, several POCs made comments on the current proposed rule and the rule has been modified to be more flexible in light of the concerns expressed by the POCs. For these reasons, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

Information collection associated with this regulation will be submitted to the

Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995. The OMB control number for this collection is 1110–0035.

The proposed rule would have made a condition of state participation in the system as a POC the requirement to transmit all determination information to the NICS as soon as it is available to the state, including determinations that a firearm transfer may proceed, is denied, or the check is open. While the Department did not receive any comments specifically addressing the Paperwork Reduction Act, the FBI did receive comments from POC states addressing the burden and utility of the proposed information collection. As noted above, as a result of these comments, the final rule eliminates the requirement that POCs provide transaction status information to the FBI on approximately 74 percent of the transactions, *i.e.* no information need be submitted for transactions in which POCs provide a "proceed" response to an FFL during the operational day on which the check was requested. The rule does require POCs to submit transaction status information on: (1) Open transactions that are not resolved before the end of the operational day the check is requested; (2) denied transactions; (3) transactions reported to NICS as open and later changed to proceed; and (4) denied transactions that have been overturned. As a result of this change in the final rule, POCs will only be required to submit information on approximately twenty-six percent of determinations.

The number of respondents that will be affected by this information collection will be 18, the number of states that act as POCs for the NICS (states that do NICS checks only in connection with the issuance of firearm permits are not considered POCs for these purposes). The FBI estimates that it will require one minute for each POC state to send to the NICS the required information in each POC determination message. Collectively, the POCs conduct approximately 4 million NICS checks per year. Assuming a 74 percent immediate proceed rate, the POCs will have to send electronic messages with the details of the transaction in only 26 percent of their determinations. Thus, it is estimated that the total public burden (in hours) associated with this collection from the estimated 19 respondents is 17,333 hours in the first year.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures, Telecommunications.

■ Accordingly, part 25 of title 28 of the Code of Federal Regulations is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for Part 25 continues to read as follows:

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.2 [Amended]

■ 2. Section 25.2 is amended:

■ a. By revising the definition of "Delayed" to read as follows:

* * * * *

Delayed means the response given to the FFL indicating that the transaction is in an "Open" status and that more research is required prior to a NICS "Proceed" or "Denied" response. A "Delayed" response to the FFL indicates that it would be unlawful to transfer the firearm until receipt of a follow-up "Proceed" response from the NICS or the expiration of three business days, whichever occurs first.

* * * * *

■ b. By adding the following definitions:

* * * * *

NICS operational day means the period during which the NICS Operations Center has its daily regular business hours.

* * * * *

Open means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of "open" responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An "open" response does not prohibit an FFL from transferring a firearm after three business days have elapsed since the FFL provided to the system the identifying information about the prospective transferee.

* * * * *

■ c. By removing the following definition:

* * * * *

NICS Operations Center's regular business hours means the hours of 9:00 a.m. to 2:00 a.m., Eastern Time, seven days a week.

* * * * *

§ 25.6 [Amended]

■ 3. In § 25.6, paragraph (h) is revised to read as follows:

* * * * *

(h) *POC Determination Messages.* POCs shall transmit electronic NICS transaction determination messages to the FBI for the following transactions: open transactions that are not resolved before the end of the operational day on which the check is requested; denied transactions; transactions reported to the NICS as open and later changed to proceed; and denied transactions that have been overturned. The FBI shall provide POCs with an electronic capability to transmit this information. These electronic messages shall be provided to the NICS immediately upon communicating the POC determination to the FFL. For transactions where a determination has not been communicated to the FFL, the electronic messages shall be communicated no later than the end of the operational day on which the check was initiated. With the exception of permit checks, newly created POC NICS transactions that are not followed by a determination message (deny or open) before the end of the operational day on which they were initiated will be assumed to have resulted in a proceed notification to the FFL. The information provided in the POC determination messages will be maintained in the NICS Audit Log described in § 25.9(b). The NICS will destroy its records regarding POC determinations in accordance with the procedures detailed in § 25.9(b).

* * * * *

§ 25.9 [Amended]

■ 4. Section 25.9 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) *Contents.* The NICS Audit Log will record the following information: Type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI or FFL identifier, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN).

(i) NICS Audit Log records relating to denied transactions will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage;

(ii) NICS Audit Log records relating to transactions in an open status, except the NTN and date, will be destroyed

after not more than 90 days from the date of inquiry; and

(iii) In cases of NICS Audit Log records relating to allowed transactions, all identifying information submitted by or on behalf of the transferee will be destroyed within 24 hours after the FFL receives communication of the determination that the transfer may proceed. All other information, except the NTN and date, will be destroyed after not more than 90 days from the date of inquiry.

(2) *Use of information in the NICS Audit Log.* The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use and performance of the system. Searches may be conducted on the Audit Log by time frame, *i.e.*, by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transactions may be accessed directly only by the FBI and only for the purpose of conducting audits of the use and performance of the NICS, except that:

(i) Information in the NICS Audit Log, including information not yet destroyed under § 5.9(b)(1)(iii), that indicates, either on its face or in conjunction with other information, a violation or potential violation of law or regulation, may be shared with appropriate authorities responsible for investigating, prosecuting, and/or enforcing such law or regulation; and

(ii) The NTNs and dates for allowed transactions may be shared with ATF in Individual FFL Audit Logs as specified in § 25.9(b)(4).

(3) *Limitation on use.* The NICS, including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922(g) or (n) or by state law. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of NICS data.

(4) *Creation and Use of Individual FFL Audit Logs.* Upon written request from ATF containing the name and license number of the FFL and the proposed date of inspection of the named FFL by ATF, the FBI may extract information from the NICS Audit Log and create an Individual FFL Audit Log for transactions originating at the named FFL for a limited period of time. An Individual FFL Audit Log shall contain all information on denied transactions, and, with respect to all other transactions, only non-identifying information from the transaction. In no instance shall an Individual FFL Audit Log contain more than 60 days worth of allowed or open transaction records originating at the FFL. The FBI will provide POC states the means to provide to the FBI information that will allow the FBI to generate Individual FFL Audit Logs in connection with ATF inspections of FFLs in POC states. POC states that elect not to have the FBI generate Individual FFL Audit Logs for FFLs in their states must develop a means by which the POC will provide such Logs to ATF.

* * * * *

§ 25.10 [Amended]

■ 5. In § 25.10, a new paragraph (g) is added to read as follows:

* * * * *

(g) An individual may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File to be established by the FBI and checked by the NICS for the purpose of preventing the future erroneous denial or extended delay by the NICS of a firearm transfer. Such file shall be used only by the NICS for this purpose. The FBI shall remove all information in the Voluntary Appeal File pertaining to an individual upon receipt of a written request by that individual. However, the FBI may retain such information contained in the Voluntary Appeal File as long as needed to pursue cases of identified misuse of the system. If the FBI finds a disqualifying record on the individual after his or her entry into the Voluntary Appeal File, the FBI may remove the individual's information from the file.

Dated: July 20, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–16817 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–030]

RIN 1625–AA09

Drawbridge Operation Regulations: Mystic River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the S99 (Alford Street) Bridge, at mile 1.4, across the Mystic River, Massachusetts. Under this temporary final rule, effective from 7 a.m. on July 26, 2004 through 7 a.m. on July 30, 2004, the S99 (Alford Street) Bridge shall open on signal only between 4 a.m. and 5 a.m., daily. Vessels that can pass under the draw without a bridge opening may do so at all times. This action is necessary in the interest of public safety to facilitate vehicular traffic during the Democratic National Convention.

DATES: This rule is effective from July 26, 2004 through July 30, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–030) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 18, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Mystic River, Massachusetts, in the **Federal Register** (69 FR 34099). The Coast Guard provided a 20-day comment period to the public to comment on the proposed rule. We received one comment letter in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because this final rule needs to be in effect on July 26, 2004, in order to provide the necessary safeguards in the interest of national security and public safety during the week the Democratic National Convention (DNC) will be convened in Boston, Massachusetts.

Background and Purpose

The S99 (Alford Street) Bridge, mile 1.4, across The Mystic River has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.609.

The bridge owner, the City of Boston, requested that the S99 (Alford Street) Bridge remain closed to vessel traffic during the Democratic National Convention (DNC) from 7 a.m. on July 26, 2004 through 7 a.m. on July 30, 2004. Vessels that can pass under the draw without a bridge opening may do so at all times.

During the DNC several primary vehicular traffic routes, including I–93, and the North Station commuter rail station will be closed for security purposes.

Route 99 has been designated as the alternate detour route to accommodate much of the detoured vehicular traffic and buses transporting commuter rail passengers into and through Boston during the week the DNC is underway. Rail commuters that normally transit to North Station will be bussed into Boston utilizing Route 99 as a detour route.

The bridge owner requested that the S99 (Alford Street) Bridge remain closed to help facilitate the expected heavy vehicular traffic in the interest of public safety.

Discussion of Proposal

This proposed change temporarily amends 33 CFR 117.609 by suspending paragraph (a) and adding a new temporary paragraph (c) effective from July 26, 2004 through July 30, 2004.

Under this temporary final rule, effective from 7 a.m. on July 26, 2004 through 7 a.m. on July 30, 2004, the S99 (Alford Street) Bridge shall open on signal only between 4 a.m. and 5 a.m., daily.

Discussion of Comments and Changes

The Coast Guard received one comment letter in response to the notice of proposed rulemaking.

The comment letter was from the Mystic Wellington Yacht Club, which is located upstream from the S99 (Alford Street) Bridge. The yacht club's letter stated that the members of the yacht club did not pose a threat to the public and that it would impose a hardship because members would not be able to pass through the bridge.

The bridge is not being closed due to waterborne threats. The bridge is being closed to facilitate the anticipated heavy vehicular traffic during the week of the DNC. Route 99 has been designated as a detour route for the displaced vehicular traffic and buses ferrying commuter rail passengers to Boston. The closure of the S99 (Alford Street) Bridge will help facilitate the movement of detoured vehicular traffic traveling Route 99 as a result of the closure of the Amtrak commuter rail station in Boston and the closure of the I–93 highway during the week the DNC will hold it's convention.

The Coast Guard determined, as a result of the comment received, to allow the S99 (Alford Street) Bridge to open on signal each day between 4 a.m. and 5 a.m. to facilitate marine traffic that can't pass under the draw in the closed position.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that most vessel traffic on the Mystic River can pass under the bridge without a bridge opening at various stages of the tide the bridge shall open on signal between 4 a.m. and 5 a.m., daily during the effective period, for vessels that cannot transit underneath.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that most vessel traffic on the Mystic River can pass under the bridge without a bridge opening at various stages of the tide the bridge shall open on signal between 4 a.m. and 5 a.m., daily during the effective period, for vessels that cannot transit underneath.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.609, from July 26, 2004 through July 30, 2004, paragraph (a) is temporarily suspended and a new temporary paragraph (c) is added to read as follows:

§ 117.609 Mystic River.

* * * * *

(c) The draw of the S99 (Alford Street) Bridge shall open on signal only between 4 a.m. and 5 a.m. each day from 7 a.m. on July 26, 2004 through 7 a.m. on July 30, 2004.

Dated: July 14, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–16839 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–080]

Drawbridge Operation Regulations: Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Marine Parkway Bridge across Jamaica Bay, mile 3.0, between Brooklyn and Queens, New York. This temporary deviation will allow the bridge to open (50) fifty feet less than the normal opening vertical clearance from August 16, 2004, through October 10, 2004. This temporary deviation is necessary to facilitate maintenance repairs at the bridge.

DATES: This deviation is effective from August 16, 2004, through October 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

The normal vertical clearance under the Marine Parkway Bridge in the full open position is 152 feet at mean high water and 156 feet at mean low water. The existing regulations are listed at 33 CFR 117.795(a).

The bridge owner, MTA Bridges and Tunnels Authority, requested a temporary deviation from the Drawbridge Operation Regulations to facilitate necessary maintenance repairs at the bridge.

During the bridge repairs safety netting will be suspended under the bridge towers preventing the bridge from fully opening and therefore reducing the vertical clearance during bridge openings by (50) fifty feet.

The normal maximum vertical clearance under the bridge in the full open position is 156 feet at mean low water and 152 feet at mean high water. A review of the bridge opening logs and opening requests revealed that the bridge normally does not open more than (90) ninety feet for the passage of vessel traffic. As a result none of the normal waterway users should be affected by this vertical clearance reduction.

Under this temporary deviation the Marine Parkway Bridge, mile 3.0, across Jamaica Bay, shall open for vessel traffic only up to a maximum of 106 feet at mean low water and 102 feet at mean high water from August 16, 2004, through October 10, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 14, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–16838 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–091]

Drawbridge Operation Regulations: Raritan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the New Jersey Transit Rail Operations (NJTRO) Bridge, at mile 0.5, across the Raritan River, at Perth Amboy, New Jersey. Under this temporary deviation the bridge may remain in the closed position from 10 p.m. on July 30, 2004, through 10 a.m. on July 31, 2004, in order to perform scheduled bridge maintenance. An alternate date, in case of inclement weather, shall be from 10 p.m. on August 6, 2004, through 10 a.m. on August 7, 2004.

DATES: This deviation is effective from July 30, 2004, through August 7, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

The NJTRO Bridge has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.747.

The bridge owner, New Jersey Transit Rail Operations (NJTRO), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary scheduled bridge maintenance. The bridge must remain in the closed position during the performance of these repairs.

Therefore, under this temporary deviation the NJTRO Bridge may remain in the closed position from 10 p.m. on July 30, 2004, through 10 a.m. on July 31, 2004.

An alternate date, in case of inclement weather, shall be from 10 p.m. on August 6, 2004, through 10 a.m. on August 7, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 14, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–16837 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–046]

RIN 1625–AA00

Safety Zone; Democratic Governors Association Fireworks Display—Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Democratic Governors Association Fireworks Display on July 26, 2004 in Boston, MA, temporarily closing all waters of Boston Inner Harbor within a 400 yard radius of the fireworks barge. This action is necessary to protect the public from hazards posed by a fireworks display. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure period.

DATES: This rule is effective from 10 p.m. until 11 p.m. e.d.t. on July 26, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–046 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information on the fireworks display was not supplied to the Coast Guard in sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Boston Harbor, Massachusetts during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone will have a negligible impact on vessel transits due to the fact that vessels will be limited from the area for only one hour, and vessels can still transit in other areas in the majority of Boston Harbor during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Boston Harbor, Massachusetts during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone should have a negligible impact on vessel transits due to the fact that vessels will be limited from the area for only one hour, and vessels can still transit in other areas in the majority of Boston Harbor during the event.

Background and Purpose

This regulation establishes a safety zone in Boston Inner Harbor within a 400-yard radius of the fireworks barge located at position 42°22.263″ N, 071°02.956″ W. The safety zone is in effect from 10 p.m. until 11 p.m. on July 26, 2004.

The zone restricts movement within this portion of Boston Inner Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Democratic Governors Association Fireworks Display on July 26, 2004 in Boston, MA, temporarily closing all waters of Boston Inner Harbor within a 400-yard radius of the fireworks barge located at approximate position 42°22.263″ N, 071°02.956″ W. This action is necessary to protect the public from hazards posed by a fireworks display. The safety zone prohibits entry into or movement within this portion of

Boston Inner Harbor during the closure period.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of Boston Inner Harbor during the effective period, the affects of this regulation will not be significant for several reasons: that vessels will be restricted from the area for only a minimal time period, vessels may safely transit outside of the safety zone, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Inner Harbor on July 26, 2004. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective period, the period is limited in duration, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Assistance for Small Entities

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Execute Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under

ADDRESSES. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporarily add § 165.T01–046 to read as follows:

§ 165.T01–046 Safety Zone: Democratic Governors Association Fireworks Display—Boston, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of Boston Inner Harbor within a 400-yard radius of the fireworks barge located at position 42°22.263″ N, 071°02.956″ W.

(b) *Effective date.* This section is effective from 10 p.m. until 11 p.m. on July 26, 2004.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston (COTP).

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene US Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

Dated: July 15, 2004.

Brian M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 04–16831 Filed 7–20–04; 2:56 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–081]

RIN 1625–AA00

Safety Zone: Time Warner Cable Fireworks—Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Time Warner Cable Fireworks in Boston, MA, temporarily closing all waters of Boston Inner Harbor within a 400 yard radius of the fireworks barge. This action is necessary to protect the public from hazards posed by a fireworks display. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure period.

DATES: This rule is effective from 10:30 p.m. on July 25, 2004, until 12 a.m. on July 26, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–081 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information on the fireworks display was not supplied to the Coast Guard in sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Boston Harbor, Massachusetts during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone will have a negligible impact on vessel transits due to the fact that vessels will only be limited from the area for 1.5 hours, and vessels can still transit in other areas in the majority of Boston Harbor during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Boston Harbor, Massachusetts during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone should have a negligible impact on vessel transits due to the fact that vessels will only be limited from the area for 1.5 hours, and vessels can still transit in other areas in the majority of Boston Harbor during the event.

Background and Purpose

This regulation establishes a safety zone in Boston Inner Harbor within a 400-yard radius of the fireworks barge located at position 42°21.616 N, 071°02.717 W. The safety zone will be in effect from 10:30 p.m. on July 25, 2004, until 12 a.m. on July 26, 2004.

The zone restricts movement within this portion of Boston Inner Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic can transit safely outside of the safety zone during the effective period. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Time Warner Cable Fireworks Display on July 25, 2004 in Boston, MA, temporarily closing all waters of Boston Inner Harbor within a 400 yard radius of the fireworks barge located at approximate position 42°21.616 N, 071°02.717 W. This action is necessary to protect the public from hazards posed by a fireworks display. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure period.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the

regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of Boston Inner Harbor during the effective period, the affects of this regulation will not be significant for several reasons: that vessels will be restricted from the area for a minimal time period; vessels may safely transit outside of the safety zone; and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Inner Harbor on July 25, 2004. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective period, the period is limited in duration, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporarily add § 165.T01–081 to read as follows:

§ 165.T01–081 Safety Zone: Time Warner Cable Fireworks—Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Boston Inner Harbor within a 400-yard radius of the fireworks barge located at position 42°21.616 N, 071°02.717 W.

(b) *Effective date.* This section is effective from 10:30 p.m. on July 25, 2004, until 12 a.m. on July 26, 2004.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

Dated: July 15, 2004.

Brian M. Salerno,

Captain, U.S. Coast Guard. Captain of the Port, Boston, Massachusetts.

[FR Doc. 04–16830 Filed 7–20–04; 2:56 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–002]

RIN 1625–AA87 (Formerly RIN 1625–AA00)

Security Zones; Democratic National Convention, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a series of temporary security zones on the Charles River in the vicinity of the FleetCenter/North Station, throughout a portion of Boston Inner Harbor in the vicinity of Logan International Airport and surrounding Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone. These temporary zones are needed to safeguard protectees, the public, designated VIP vessels and crews, other vessels and crews, and the infrastructure within the COTP Boston, Massachusetts zone from terrorist or subversive acts during the Democratic National Convention (DNC): a National Special Security Event (NSSE), being held from July 26, 2004, to July 29, 2004, at the Fleet Center/North Station Facilities, in Boston, Massachusetts. These security zones will prohibit entry into or movement within certain portions of the Charles River in the vicinity of the FleetCenter/North Station, Boston Inner Harbor in the vicinity of Logan International Airport, and 50 yards surrounding designated VIP vessels in the COTP Boston, Massachusetts zone, during the specified closure periods within the July 24, 2004, to July 31, 2004, timeframe.

DATES: This rule is effective from 8 a.m. e.d.t. on July 24, 2004, through 10 p.m. e.d.t. on July 31, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–002) and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Waterways Safety and Response Division, Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 21, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Democratic National Convention, Boston, MA" in the **Federal Register** (69 FR 29246). We received one electronically submitted comment regarding the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is needed to protect former presidents and their spouses, the Democratic nominee for president and vice president, their spouses, and particular U.S. Congressmen from potential acts of terrorism or subversive acts during the Democratic National Convention (DNC). Any delay encountered in this rule's effective date would be contrary to public interest and public safety.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, and the continuing concern for future terrorist and or subversive acts against the United States, especially at events where a large number of persons are likely to congregate, the Coast Guard is establishing temporary security zones in certain waters of the Charles River in the vicinity of the FleetCenter/North Station, certain waters of Boston Inner Harbor in the vicinity of Logan International Airport, and surrounding VIP designated vessels identified by the COTP Boston, Massachusetts during the DNC. The DNC has been designated a National Special Security Event (NSSE) and will occur between July 26, 2004, and July 29, 2004, at the FleetCenter/North Station facilities, in Boston, Massachusetts. Security measures for this event, including security zones proposed herein, are necessary from July 24,2004 to July 31, 2004, and are needed to safeguard maritime transportation infrastructure, the public, and designated protectees, and to safeguard designated VIP vessels carrying protectees, from potential acts of violence or terrorism during DNC activities. The planning for these security zones has been conducted in conjunction with, and as a result of requests from, the United States Secret Service (USSS), the lead federal agency for the DNC, and the Capitol Police. This rule will temporarily close sections of the Charles River in the vicinity of the FleetCenter/North Station, certain Boston Inner Harbor water areas along the perimeter of Logan International Airport, and surrounding designated VIP vessels identified by the COTP Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone, at specified times from July 24, 2004, to July 31, 2004.

For purposes of this rulemaking, designated VIP vessels include any vessels designated by the Coast Guard COTP Boston, Massachusetts to be in need of Coast Guard escort in the COTP Boston, Massachusetts zone, based on a request from the USSS or the Capitol Police. Any VIP designated vessel may contain protectees. "Protectees" for the purposes of the USSS include the President of the United States and

former presidents and their spouses, the Democratic nominee for president, and the Democratic nominee for vice president and their spouses. "Protectees" for the purposes of the Capitol Police include particular U.S. Congressmen. One or more Coast Guard Cutters or small boats will escort designated VIP vessels deemed in need of escort protection.

The Captain of the Port Boston, Massachusetts will notify the maritime community of the periods during which the security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones.

No person or vessel may enter or remain in the prescribed security zones at any time without permission of the Captain of the Port. Each person or vessel in a security zone must obey any direction or order of the COTP, or the designated Coast Guard on-scene representative. The COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine for not more than $250,000 for an individual and $500,000 for an organization), *in rem* liability against the offending vessel and license sanctions. This rule is established under the authority contained in 50 U.S.C. 191, and 33 U.S.C. 1226 and 1231.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*)(the "Magnuson Act") and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

Discussion of Comments and Changes

One electronically filed comment was received regarding the proposed regulation. The content of the comment was three-fold. It recognized the need to establish restrictions during the DNC period based on the significance of the event and the current threat environment, and commended the proposed rule for appropriately balancing security needs with waterway use. It recommended further outreach efforts, and lastly suggested the rule could be improved by providing additional clarification to waterway users regarding application of the restrictions. The specific questions posed and responses follow:

To address outreach, both the Coast Guard and the USSS have undergone extensive outreach efforts to ensure affected waterway users would be informed of DNC related waterway restrictions. Information on proposed restrictions was provided at Boston Port Operators Group meetings on February 18, March 17, and April 21, at two specific industry stakeholder meetings on March 30 and 31, and at a harbormasters and salvors meeting on May 27, 2004.

Meetings were also held at the Watertown Yacht Club and the Jubilee Yacht Club, which included representatives from numerous clubs in the Boston and surrounding areas. Further, an informational brochure outlining the proposed security zones was distributed at these meetings, to other local boating and yacht clubs, to the Massachusetts Bay Yacht Association, and at local boat shows by the Coast Guard Auxiliary. The informational brochure is also posted on the Marine Safety Office Boston internet Web site found at *http://uscg.mil/d1/units/msobos/*.

The Coast Guard and the USSS will continue notifications by distribution of the final rule (once published) to maritime stakeholders and by marine information broadcasts. Below are the seven specific questions posed in the comment:

(1) How far in advance of transit during the week of the Convention must commercial, regular users of the security zone seek pre-approval of such transit?

Pre-approval is defined as permission given prior to the start of DNC security operations by the Captain of the Port Boston to transit through a security zone. The process by which commercial entities could gain pre-approval to transit DNC security zones began in September of 2003 when the USSS identified affected commercial operators and began negotiations regarding potential waterway restrictions. Shortly thereafter the Coast Guard Captain of the Port Boston joined in the outreach effort and assisted the USSS in further identification of affected commercial operators as the actual parameters of the proposed security zones took shape. Information on proposed restrictions and requests for affected commercial entities were provided at Boston Port Operators Group meetings on February 18, March 17, and April 21, at two specific industry stakeholder meetings on March 30 and 31, and a harbormasters and salvors meeting on May 27, 2004. At this point, the Coast Guard expects that any pre-approval requests should have already been submitted to the USSS or the Coast Guard. Once the security zones go into effect, only pre-approved transits and those requested due to emergency situations will be allowed. We have revised the text of paragraph (b)(2) or the regulation to clarify this point.

(2) How extensive will the pre-transit sweep by law enforcement be?

The pre-transit sweep will be as extensive as deemed necessary by law enforcement presence for the safety and security of the port during the Democratic National Convention.

(3) What is a "commercial vessel" for purposes of the regulation?

A commercial vessel is considered any vessel engaged in "commercial service". Commercial service includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel as stated in 46 U.S.C. 2101(5).

(4) What pattern of use constitutes a "regular route" for purposes of the regulation?

A "regular route" for the purposes of this regulation means transits that are based on a pre-set schedule which has been established ahead of time, and where such transits have been occurring in the specified areas as part of an ongoing business over the past several months or years.

(5) What are the purposes of the pre-transit sweep?

The purpose of the pre-transit sweep is to ensure the safety and security of the persons on board the vessel, law enforcement personnel, and for the safety and security of the port.

(6) Upon what grounds, if any, could on-scene Coast Guard personnel refuse passage rights to commercial users whose route was pre-approved by the COTP?

Any act, behavior, or situation deemed unsafe or a threat to security by on-scene law enforcement personnel who are authorized by the COTP to enforce the safety and security zones could result in refusal of passage.

(7) Is there any appeal procedure for those who apply in advance to the

COTP for permission to pass through a security zone, but are denied clearance?

Comments or correspondence may be directed to the office listed under **ADDRESSES** and will be reviewed. However, the COTP has final authority and the right to deny permission or revoke prior permission when deemed necessary for the safety and security of the public or the Boston COTP zone.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Although this proposed regulation will temporarily prevent traffic from transiting a portion of the Charles River, Boston Inner Harbor and surrounding certain VIP designated vessels during the specified effective periods, the effects of this regulation will be minimized based on several factors. Vessels that historically have conducted daily business in the area of the Charles River security zone will be allowed to transit, as long as transits have been prearranged as discussed, thereby preventing disruption to their normal business. The potential delays associated with vessels being swept and escorted through the zone will be minimal. The Logan Airport DNC security zone mirrors an existing state security zone, and therefore users of these waters will not encounter restrictions significantly different from those already in existence. The temporary security zones surrounding VIP designated vessels are included in this rule as a precautionary measure should they become necessary. At this time, no VIP designated vessel security zones are scheduled. If they are deemed necessary during the event and are subsequently enacted, these zones are limited in scope, enough so that vessels may transit safely outside of the zones and still make use of the waterway. Additionally, VIP designated vessels will be advised to operate in such a manner as to avoid restricting the main shipping channels from use by large commercial vessels that require the depth of water to operate safely. Lastly, advance notice to waterways users has been, and will continue to be, made via outreach meetings, informational brochures, safety marine information broadcasts, and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in these security zones during this event. However, this proposed rule will not have a significant economic impact on a substantial number of small entities due to: transit accommodations that are being made for regular commercial operators within the Charles River and Logan Airport DNC zones; the minimal time that vessels will be restricted from the area of the zones; vessels being able to pass safely around the zones; vessels having to wait only a short time for the VIP designated vessels to pass if they cannot safely pass outside the zones; and the advance notifications which will be made to the local maritime community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery Waterways Safety and Response. Marine Safety Office Boston, (617) 223–3000.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–002 to read as follows:

§ 165.T01–002 Security Zones; Democratic National Convention, Boston, MA.

(a) *Location.* The following areas are security zones:

(1) All navigable waters of the Charles River from the westernmost portion of the Monsignor O'Brien Highway Bridge/Museum of Science structure as the western boundary, to a line drawn across the Charles River, 50 yards east and parallel to, the Charlestown Bridge, as the eastern boundary.

(2) All waters between the mean high water line around the perimeter of Logan International Airport and a line measured 250-feet seaward of and parallel to the mean high water line.

(3) All navigable waters 50 yards around any designated Very Important Person vessel carrying specified protectees during Democratic National Convention activities, in the Captain of the Port Boston, Massachusetts zone.

(b) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Boston.

(2) Persons desiring to transit the area of the security zones may, prior to the event, contact the Captain of the Port at telephone number 617–223–3000/5750 to request pre-approval. Persons with pre-approval from the Captain of the Port should communicate with and verify on-scene approval from the authorized on-scene patrol representative on VHF channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) All persons and vessels must comply with the instructions of the Captain of the Port or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The Captain of the Port or his or her designated representative will notify the maritime community of periods during which these zones will be enforced. The Captain of the Port or his or her designated representative will identify designated Very Important Person vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement period.* This section will be enforced from:

(1) 12:01 a.m. e.d.t., on July 26, 2004, until 2 a.m. e.d.t., on July 30, 2004, with respect to the Charles River Zone described in paragraph (a)(1).

(2) 8 a.m. e.d.t., on July 24, 2004, until 10 p.m. e.d.t., on July 31, 2004, with respect to the Logan Airport Democratic National Convention Zone described in paragraph (a)(2).

(3) 8 a.m. e.d.t., on July 24, 2004, until 10 p.m. e.d.t., on July 31, 2004, with respect to the moving security zones described in paragraph (a)(3) around designated Very Important Person vessels carrying specified protectees, as deemed necessary by the United States Secret Service or U.S. Capitol Police, 15 minutes prior to and while they are onboard the vessel.

Dated: July 15, 2004.

Brian M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 04–16829 Filed 7–20–04; 2:56 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–087]

RIN 1625–AA00

Safety Zone; Bridge Demolition, Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a bridge demolition on the Raritan River. The safety zone is necessary to protect the life and property of the maritime public from the hazards posed by this bridge demolition. Entry into or movement within the safety zone during the enforcement period is prohibited unless authorized by the Captain of the Port (COTP), New York.

DATES: This rule is effective from 5 a.m. on, July 7, 2004, to 8 p.m. on September 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–087 and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the late notification of the dates of this bridge demolition using explosives, publishing an NPRM would be impracticable. Publishing an NPRM would be contrary to the public interest because immediate action is needed to protect mariners from the hazards associated with this bridge demolition. Publishing an NPRM would also be unnecessary since the Raritan River safety zone will have minimal impact on the waterway for the following reasons: the New Jersey Department of Transportation (NJDOT) has been in contact with facilities upstream from the bridge during the construction of the adjacent, new, Route 35 bridge, who are well aware of the construction project and the expected delays associated with demolition of the old Route 35 bridge, the zone is only expected to be enforced for 1 hour during the seven planned blasts. Additionally, vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone.

For the same reasons, the Coast Guard further finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Background and Purpose

This rule is necessary to protect the life and property of the maritime public from the hazards posed from the Route 35 bridge demolition using explosives. The safety zone will be enforced for 1 hour during seven planned blasts. However, vessels may be given permission to transit the zone once the blasting has been completed for the day. Additionally, vessels will not be precluded from mooring at or getting underway from recreational piers in the immediate area outside the zone.

Discussion of Rule

This rule establishes a temporary safety zone in all waters of the Raritan River within 500 yards of the old Route 35 Bridge. The safety zone will be enforced for 1 hour during seven separate blasts planned between July 7, and September 30, 2004. However, vessels may be given permission to transit the zone once the blasting has been completed for the day. The safety zone will prevent vessels from transiting this portion of the Raritan River and is needed to protect the maritime public from the hazards associated with this bridge demolition using explosives. Vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This finding is based on: the minimal time that vessels will be restricted from the zone; the NJDOT has been in contact with facilities upstream from the bridge during the construction of the adjacent, new Route 35 Bridge, who are aware of the construction project and the expected delays associated with demolition of the old Route 35 Bridge, the zone is only expected to be enforced for 1 hour during seven planned blasts. Additionally, vessels will not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone. Advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the affected waterway during the time this zone is enforced.

This safety zone will not have a significant economic impact on a substantial number of small entities for reasons enumerated under the "Regulatory Evaluation" section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes an emergency safety zone. A "Categorical Exclusion Determination" will be available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 5 a.m. on July 7, 2004, until 8 p.m. on September 30, 2004, add temporary § 165.T01–087 to read as follows:

§ 165.T01–087 Safety Zone; Bridge Demolition, Raritan River, Perth Amboy, NJ.

(a) *Regulated area.* The following area is a safety zone: All waters of the Raritan River within 500 yards of the old Route 35 Bridge (river mile 1.6).

(b) *Effective period.* This section is effective from 5 a.m. on July 7, until 8 p.m. on September 30, 2004.

(c) *Enforcement periods.* This section will be enforced while explosives are being detonated during the demolition of the bridge. The Captain of the Port will notify the maritime community of enforcement periods via Local Notice to Mariners and Marine Information Broadcasts.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 7, 2004.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 04–16842 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 04–015]

RIN 1625–AA87

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones extending 25 yards in and under the navigable waters around all piers,

abutments, fenders and pilings of the Coronado Bay Bridge. This action is required for national security reasons to protect the bridge from potential subversive actions. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within these security zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective August 23, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket SD 04–015 and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, Port Operations Department, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Todd Taylor, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 16, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone: Coronado Bay Bridge, San Diego, CA" in the **Federal Register** (69 FR 2554). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held. COTP San Diego issued a temporary final rule (TFR) for this security zone that was effective November 7, 2003, to May 1, 2004 (68 FR 67946, December 5, 2003). No comments or letters were received as a result of the TFR.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered as evidenced by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard proposes to establish security zones around the Coronado Bridge. These security zones would help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns and the catastrophic impact a terrorist attack on these bridges would have on the public transportation system and surrounding areas and communities, security zones are prudent for these structures.

U.S. Coast Guard personnel will enforce this security zone. The Coast Guard may be assisted by other Federal, State, county, municipal or private agencies, including the Coast Guard Auxiliary. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zones described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

This regulation is promulgated under the authority of 33 U.S.C. 1225 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Discussion of Comments and Changes

We received no comments on our proposed rule. Therefore, our final rule remains the same as our proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The anticipated economic impact of this rule is so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is deemed unnecessary. Although the rule restricts access to portions of the navigable waterways around the bridge, the effect of this regulation will not be significant because: (i) The zones would encompass only a small portion of the waterway; (ii) vessels would be able to pass safely around the zones; and (iii) vessels would be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the security zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, their crew and

passengers, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The security zones would not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic could pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing would have ample transit area outside of the security zones to engage in these activities. Small entities and the maritime public would be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation because we are establishing a security zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1110 to read as follows:

§ 165.1110 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All navigable waters of San Diego Bay, from the surface to the sea floor, within 25 yards of all piers, abutments, fenders and pilings of the Coronado Bay Bridge. These security zones will not restrict the main navigational channel nor will it restrict vessels from transiting through the channel.

(b) *Regulations.* (1) Under § 165.33, entry into, transit through, loitering, or anchoring within any of these security zones by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners seeking permission to transit through a security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast

Guard can be contacted on San Diego Bay via VHF-FM channel 16.

(2) Vessels may enter a security zone if it is necessary for safe navigation and circumstances do not allow sufficient time to obtain permission from the Captain of the Port.

Dated: July 9, 2004.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 04–16836 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0451a; FRL–7783–9]

Revisions to the California State Implementation Plan, Monterey Bay Unified and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that are administrative and address changes for clarity and consistency.

DATES: This rule is effective on September 21, 2004, without further notice, unless EPA receives adverse comments by August 23, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

Santa Barbara County Air Pollution Control District, 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110–1315.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MBUAPCD	101	Definitions	04/16/03	08/11/03
SBCAPCD	102	Definitions	06/19/03	08/11/03

On October 10, 2003, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: MBUAPCD Rule 101, May 16, 2000 and SBCAPCD Rule 102, October 7, 1999.

C. What Is the Purpose of the Submitted Rule Revisions?

Monterey Rule 101 is amended by adding two new definitions: "Emergency Generators and Water Pumps" and "Owner/Operator."

Santa Barbara Rule 102 is amended by adding a new definition for "common operations" to indicate that the emissions from all marine vessels and cargo carriers servicing or associated with a stationary source shall be considered emissions from the stationary source while operating within the air basin. The amended rule defines the geographic area to be California Coastal Waters adjacent to the APCD. This is consistent with the approach used by other coastal APCDs.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ("Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988) and the Little Bluebook ("Guidance Document for Correcting Common VOC

& Other Rule Deficiencies," EPA Region 9, August 21, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 23, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 21, 2004. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 15, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(320)(i)(A)(*4*) and (c)(320)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(320) * * *

(i) * * *

(A) * * *

(*4*) Rule 101, adopted on April 16, 2003.

* * * * *

(C) Santa Barbara County Air Pollution Control District.

(1) Rule 102, adopted on June 19, 2003.

* * * * *

[FR Doc. 04–16566 Filed 7–22–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0088; FRL–7358–6]

Bitertanol, Chlorpropham, Cloprop, Combustion Product Gas, Cyanazine, et al.; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes certain tolerances and tolerance exemptions for residues of the insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides 1,1,1-trichloroethane and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances are either no longer needed or are associated with food uses that are no longer current or registered in the United States. Also, EPA is modifying certain ethion tolerances before they expire. Due to comment, EPA is not revoking specific tolerances for the fungicide bitertanol or the fungicide-insecticide dinocap at this time. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 58 tolerances and tolerance exemptions. Because one tolerance was previously reassessed, 57 tolerances/exemptions are counted as reassessed toward the August 2006 review deadline.

DATES: This regulation is effective October 21, 2004; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before September 21, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket ID number OPP–2004–0088. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hardcopy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are notlimited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., ranchers and farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of December 10, 2003 (68 FR 68806) (FRL–7330–8), EPA issued a proposed rule to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol. Also, the December 10 2003 proposal provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

This final rule revokes certain tolerances and tolerance exemptions for residues of insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides 1,1,1-trichloroethane and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients

on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Concerning the Reregistration Eligibility Decisions (REDs) for chlorpropham and ethion and the Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for chlorpropham mentioned in this rule, printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet address: *http://www.epa.gov/ncepihom/*, and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or 703–605–6000; Internet address: *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of these conditions applies, as follows:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of December 10, 2003 (68 FR 68806), EPA received comments as follows:

Comments. A private citizen from New Jersey expressed concern with pesticide use in general and the public's exposure in their daily lives. On December 10, 2003, the individual stated that there should be zero tolerance for all the chemicals mentioned in 40 CFR part 180.

Agency response. The private citizens's comment did not take issue with the Agency's conclusion that certain tolerances which were no longer needed should be revoked. It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

1. *Bitertanol.* EPA received a comment from Bayer CropScience, who requested on January 15, 2004, that EPA not revoke the tolerance for bitertanol on bananas. Bayer acknowledged that while some previously submitted data may not meet current guideline requirements, it would support the tolerance on banana for import purposes with data.

Agency response. Because in a comment to the proposed rule, Bayer CropScience expressed a need for the retention of the banana tolerance for import purposes and intent to support the tolerance with data, EPA will not revoke the tolerance in 40 CFR 180.457 for residues of beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, also called bitertanol, in or on banana (whole) at this time. EPA published a guidance on pesticide import tolerances and residue data for imported food in the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–3). When the submitted data have been reviewed, EPA will re-evaluate that tolerance under FFDCA. If data adequate to support a safety finding are lacking, EPA intends to revoke the tolerance on banana in 40 CFR 180.457.

2. *Cloprop.* EPA received a comment from the Pineapple Growers Association of Hawaii (PGAH) who requested on January 9, 2004, and again on January 23, 2004, that the tolerance for the use of cloprop on pineapples not be revoked for 3 years in order to allow for the exhaustion of existing stocks of cloprop.

Agency response. On September 21, 2001, EPA amended its authorization of a specific emergency exemption under section 18 of FIFRA for application of cloprop on pineapple in Hawaii until August 2, 2002. There are no active registrations for use of cloprop on pineapples and therefore, the pineapple tolerance is no longer needed. However, due to PGAH's comment on existing stocks, EPA is changing the revocation date of the tolerance in 40 CFR 180.325 for residues of 2-(m-chlorophenoxy) propionic acid, called cloprop, from application of the acid or of 2-(m-chlorophenoxy) propionamide in or on pineapple to February 1, 2007, which EPA believes allows sufficient time for existing stocks to be used and cloprop-treated pineapples to clear the channels of trade.

3. *Dinocap.* EPA received a comment from Dow AgroSciences, who requested on February 2, 2004, that EPA not revoke the tolerances for dinocap on apple and grape because it would support the tolerances on apple and grape for import purposes. Also, Dow AgroSciences noted that it had previously indicated such an intention which EPA included in a notice regarding the availability of the RED for dinocap published in the **Federal Register** of September 17, 2003 (68 FR 54449) (FRL–7321–8). In addition, Dow AgroSciences stated it would work with EPA to achieve compliance with the Agency's guidance on import tolerances and its data requirements.

Agency response. Because in a comment to the proposed rule, Dow AgroSciences expressed a need for the retention of the apple and grape tolerances for import purposes and intent to support the tolerances with data, EPA will not revoke the tolerances in 40 CFR 180.341 for combined residues that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate, called dinocap, in or on apple and grape at this time. EPA published a guidance on pesticide import tolerances and residue data for imported food in the **Federal Register** of June 1, 2000 (65 FR 35069). When the submitted data have been reviewed, EPA will re-evaluate the tolerances under FFDCA. If data adequate to support a safety finding are lacking, EPA intends to revoke the tolerances on apple and grape in 40 CFR 180.341. In this final rule, the Agency will revise the text for tolerances in 40 CFR 180.341 paragraph (a) into tabular form.

No comments were received by the Agency concerning the following.

4. *Chlorpropham.* In the 1996 RED for chlorpropham, EPA required environmental fate and ecological effects data to maintain the spinach registration, which was registered as a Special Local Need under FIFRA 24(c) and was not being supported by the primary registrants of technical

chlorpropham. In February 2002, EPA canceled the last Special Local Need registration, but allowed use until December 31, 2002. On July 19, 2002, EPA reassessed the spinach tolerance in a TRED for chlorpropham. That reassessment decision was a recommendation to revoke the spinach tolerance because there are no active registrations and therefore, the tolerance is no longer needed. The Agency believes that there has been sufficient time for chlorpropham-treated spinach to clear the channels of trade. Therefore, EPA is revoking the interim tolerance in 40 CFR 180.319 regarding isopropyl m-chlorocarbanilate (CIPC), called chlorpropham, for residues in or on spinach.

5. *Combustion product gas.* EPA is revoking the tolerance exemption in 40 CFR 180.1051 for residues of the gas produced by the controlled combustion in air of butane, propane, or natural gas in or on all food commodities (except fresh meat) when used after harvest in modified atmospheres for stored product with prescribed conditions. The Agency is revoking the tolerance exemption because no active U.S. registrations have existed since 1993 and therefore, the tolerance exemption is no longer needed.

6. *Cyanazine.* In November 1994, EPA initiated a Special Review of cyanazine based on concerns that cyanazine may pose a risk of inducing cancer in humans from dietary, occupational, and residential exposure. In the **Federal Register** of July 25, 1996 (61 FR 39023) (FRL–5385–7), EPA announced a final determination to terminate the cyanazine Special Review. In the same notice, EPA accepted requests for the voluntary cancellation of cyanazine registrations effective December 31, 1999, and ordered the cancellations to take effect on January 1 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels through September 30, 2002, and prohibited the use of cyanazine products after December 31, 2002. EPA issued an order confirming the cyanazine cancellation on January 6, 2000 (65 FR 771) (FRL–6486–7).

EPA proposed to revoke the tolerances for cyanazine on April 23, 1999 (64 FR 19961) (FRL–6076–4). Only one significant comment was received in response to that document. Griffin L.L.C. requested that EPA not revoke the tolerances for cyanazine and due to Griffin's interest in maintaining those tolerances as import tolerances, the Agency did not take action on cyanazine at that time (July 21, 1999, 64 FR 39078) (FRL–6093–9). However, in a letter to the Agency dated August 24, 1999, Griffin L.L.C. stated that it no longer needs EPA to maintain import tolerances for cyanazine. The Agency believes that there has been sufficient time for cyanazine-treated commodities to clear the channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.307 for residues of the herbicide 2-[[4-chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile, called cyanazine, in or on corn, forage; corn, fresh, kernel plus cob with husks removed; corn, grain; corn, stover; cotton, undelinted seed; sorghum, forage; sorghum, grain; sorghum, grain, stover; wheat, forage; wheat, grain; and wheat, straw.

7. *4,6-Dinitro-o-cresol.* EPA is revoking the tolerance in 40 CFR 180.344 for residues 4,6-dinitro-o-cresol (DNOC) and its sodium salt in or on apple from application to apple trees at the blossom stage because no active U.S. registrations have existed for its associated commodity use since 1993 and therefore, the tolerance is no longer needed.

8. *Ethion.* On July 31, 2002 (67 FR 49606) (FRL–7191–4), EPA published a final rule in the **Federal Register** which revoked ethion tolerances on citrus fruit, dried citrus pulp, and certain animal commodities with expiration/revocation dates of October 1, 2008. The Agency acknowledged that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade from ethion's last legal use date of December 31, 2004.

In the July 2002 final rule, EPA did not act on the cattle and milk fat tolerances for ethion because of an existing cattle ear tag product. On October 16, 2002 (67 FR 63909) (FRL–7276–6), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last cattle ear tag product for ethion. EPA approved the registrant's request for voluntary cancellation and on June 4 2003, issued a cancellation order with an effective date of May 31, 2003, i.e., the order allowed the basic registrant to distribute and sell existing stocks of the canceled product until May 31, 2003. Therefore, EPA is revoking tolerances in 40 CFR 180.173 for residues of the insecticide ethion (O,O,O',O'-tetraethyl S,S'-methylene bisphosphorodithioate) including its oxygen analog (S-[[(diethoxyphosphinothioyl) thio]methyl] O,O-diethyl phosphorothioate) in or on cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); and milk fat (reflecting (n) residues in milk), each with an expiration/revocation date of October 1, 2008. These dates are consistent with the expiration/revocation date concerning the ethion tolerance on dried citrus pulp, an animal feed. In addition and in accordance with the 2001 Registration Eligibility Decision (RED) for ethion, EPA is not only revoking the cattle tolerances, but also decreasing them based on an available ruminant feeding study to 0.2 parts per million (ppm) during the period before they expire on October 1, 2008. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. A copy of the ethion RED is available at *http://www.epa.gov/edocket/* by searching for docket ID number OPP–2003–0265 concerning the proposed rule of (December 10, 2003, 68 FR 68806) (FRL–7330–8). The ethion RED is also available at *http://www.epa.gov/pesticides/reregistration/status.htm/*. See the ethion RED Part IV(C)(1)(b): Tolerance Summary.

Also, in the 2001 RED for ethion, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (See the ethion RED Part IV(C)(1)(b): Tolerance Summary). Therefore, in 40 CFR 180.173, while the citrus, dried pulp and fruit, citrus tolerances will continue to expire on October 1, 2008, the Agency is increasing the tolerances for citrus, dried pulp (10 ppm) and fruit, citrus (2.0 ppm) during the period before they expire to 25.0 and 5.0 ppm, respectively.

In addition, to conform to current Agency practice, EPA is revising the commodity terminologies in 40 CFR 180.173 for "fruit, citrus" to "fruit, citrus, group 10"; and "milk fat (reflecting (n) residues in milk)" to "milk, fat, reflecting negligible residues in milk."

9. *Formetanate hydrochloride.* EPA had initiated negotiations with the registrant for formetanate hydrochloride due to Agency concerns. As one measure to reduce concerns, the registrant agreed to delete the product use on plums and prunes, which appear to benefit little from use of the product. Pursuant to section 6(f) of FIFRA, EPA received the request for voluntary amendments to delete the aforementioned uses from the registrations. On February 8, 2000, a

6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (65 FR 6208) (FRL–6489–6). EPA granted the registrant's request to waive the 180–day comment period, but the Agency provided a 30–day public comment period, and granted the requested amendments to delete those uses from registration labels on May 31, 2000. Except for the purpose of relabeling, the Agency had prohibited sale and distribution by the registrant after December 1, 1999, and by persons other than the registrant, including existing stocks, after June 1, 2000, of products labeled for use on plums and prunes.

Because there are no active registrations for use of formetanate hydrochloride on plums and prunes, the tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.276(a)(1) for residues of the insecticide formetanate hydrochloride in or on plum, prune, fresh and in 40 CFR 180.276(a)(2) for residues of the insecticide formetanate hydrochloride in or on dried prunes.

10. *Nicotine-containing compounds.* On December 6, 2002 (67 FR 72673) (FRL–7281–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a registration for a product whose active ingredient is a nicotine-containing compound and delete greenhouse food crops uses, including cucumber, lettuce, and tomato. (These were the last active food use registrations for nicotine-containing compounds). EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks until December 4, 2004. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by December 4, 2005. Therefore, EPA is revoking the tolerances in 40 CFR 180.167 for residues of nicotine-containing compounds in or on cucumber, lettuce, and tomato with expiration/revocation dates of December 4, 2005.

11. *Polyoxyethylene.* EPA is revoking the tolerance exemptions in 40 CFR 180.1078 for residues of poly(oxy-1,2-ethanediyl), alpha-isooctadyl-omega-hydroxy, also called polyoxyethylene, in or on fish, shellfish, irrigated crops, meat, milk, poultry, and eggs because no active U.S. registrations have existed since 1990 and therefore, the tolerance exemptions are no longer needed.

12. *Tartar emetic.* EPA is revoking the tolerances in 40 CFR 180.179 for residues, calculated as combined antimony trioxide, in or on fruit, citrus; grape, and onion because no active U.S. registrations have existed for their associated commodity uses since 1992.

13. *1,1,1-Trichloroethane.* EPA is revoking the tolerance exemption in 40 CFR 180.1012 for residues of 1,1,1-trichloroethane when used in the postharvest fumigation of citrus fruits because no active U.S. registrations have existed since 1989 and therefore, the tolerance exemption is no longer needed.

14. *Tridiphane.* On September 26, 2001 (66 FR 49184) (FRL–6802–1), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active tridiphane product registration. EPA approved the registrants' request for voluntary cancellation and issued a cancellation order with an effective date of April 5, 2002, which allowed the registrant to sell and distribute existing stocks of the canceled product until July 17, 2002. The Agency believes that there has been sufficient time for end users to exhaust those existing stocks and for treated commodities to clear the channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.424 for residues of 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane, called tridiphane, in or on corn, grain, field; corn, forage; and corn, stover.

15. *Triforine.* On December 24, 1997 (62 FR 67365) (FRL–5761–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a triforine product registration and delete certain triforine uses, including almonds, apples, apricots, asparagus, blueberries, cherries, cranberries, nectarines, plums, and prunes. EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks (until approximately the end of 1999). Also, on July 31, 1998 (63 FR 41145) (FRL–6015–8), EPA published a notice in the **Federal Register** which announced cancellation of a triforine registration for non-payment of 1998 maintenance fee and issuance of a cancellation order which permitted the registrant to sell and distribute existing stocks of the canceled product until January 15, 1999.

The Agency believes that end users had sufficient time to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.382(a) for residues of triforine in or on almond, hulls; almond; apple; apricot; bell pepper; blueberry; cantaloupe; cherry; cranberry; cucumber; eggplant; hop, dried cone; hop, spent; nectarine; peach; plum; prune, fresh; strawberry; and watermelon; and in 40 CFR 180.382(c) for residues of triforine in or on asparagus because no active U.S. registrations exist which cover those commodities and therefore, the tolerances are no longer needed.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

With the exception of certain tolerances for cloprop, ethion, and nicotine-containing compounds for which EPA is revoking tolerances/exemptions with specific expiration/revocation dates, the Agency is modifying certain ethion tolerances before they expire and revoking tolerances/exemptions, and revising commodity terminologies effective on October 21, 2004. EPA is delaying the effectiveness of these modifications and revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. For this final rule, tolerances that were revoked because registered uses did not exist concerned uses which have been canceled for more than a year. Therefore, commodities containing these pesticide residues should have cleared the channels of trade. EPA is revoking specific tolerances/exemptions with expiration/revocation dates of February 1, 2007 for cloprop, October 1, 2008 for ethion, and December 4, 2005 for nicotine-containing compounds.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance.

Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of July 14, 2004, EPA has reassessed over 6,670 tolerances. In this final rule, EPA is revoking a total of 58 tolerances and tolerance exemptions, one of which was previously counted as reassessed (1 via the chlorpropham TRED). Therefore, 57 tolerances/exemptions are counted as reassessed toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Levels (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000, 65 FR 35069) (FRL–6559–3), guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0088 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 21, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0088, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule modifies and revokes specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 8, 2004.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.167 is amended by revising the table in paragraph (a) to read as follows:

§ 180.167 Nicotine-containing compounds; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cucumber	2.0	12/4/05
Lettuce	2.0	12/4/05
Tomato	2.0	12/4/05

* * * * *

■ 3. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.2	10/1/08
Cattle, meat (fat basis)	0.2	10/1/08
Cattle, meat by-products	0.2	10/1/08
Citrus, dried pulp	25.0	10/1/08
Fruit, citrus, group 10	5.0	10/1/08
Goat, fat	0.2	10/1/08
Goat, meat	0.2	10/1/08
Goat, meat by-products	0.2	10/1/08
Hog, fat	0.2	10/1/08
Hog, meat	0.2	10/1/08
Hog, meat by-products	0.2	10/1/08
Horse, fat	0.2	10/1/08
Horse, meat	0.2	10/1/08
Horse, meat by-products	0.2	10/1/08
Milk, fat, reflecting negligible residues in milk	0.5	10/1/08
Sheep, fat	0.2	10/1/08
Sheep, meat	0.2	10/1/08
Sheep, meat by-products	0.2	10/1/08

* * * * *

§ 180.179 [Removed]

■ 4. Section 180.179 is removed.

■ 5. Section 180.276 is amended by revising paragraph (a) to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[(dimethylamino)methylene]amino] phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple	3.0
Grapefruit	4.0
Lemon	4.0
Lime	4.0
Nectarine	4.0
Orange, sweet	4.0
Peach	5.0
Pear	3.0
Tangerine	4.0

* * * * *

§ 180.307 [Removed]

■ 6. Section 180.307 is removed.

§ 180.319 [Amended]

■ 7. Section 180.319 is amended by removing from the table the first entry for Isopropyl m-chlorocarbanilate (CIPC) which is the entry for "spinach."

■ 8. Section 180.325 is revised to read as follows:

§ 180.325 2-(m-Chlorophenoxy) propionic acid; tolerances for residues.

(a) *General.* A tolerance is established for negligible residues of the plant regulator 2-(m-chlorophenoxy) propionic acid from application of the acid or of 2-(m-chlorophenoxy)propionamide in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration/ Revocation Date
Pineapple	0.3	2/1/07

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

■ 9. Section 180.341 is amended by revising paragraph (a) to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple[1]	0.1
Grape[1]	0.1

[1]There are no U.S. registrations on apple and grape as of October 24, 2002.

* * * * *

§ 180.344, 180.382, 180.424, 130.1012, 180.1051, and 180.1078 [Removed]

■ 10. Sections 180.344, 180.382, 180.424, 180.1012, 180.1051, and 180.1078 are removed.

[FR Doc. 04–16718 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS–2152–F2]

RIN 0938–AL42

Amendment to the Interim Final Regulation for Mental Health Parity

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Amendment to interim final regulation.

SUMMARY: This document contains an amendment to the interim final regulation that implements the Mental Health Parity Act (MHPA) to conform the sunset date of the regulation to the sunset date of the statute under legislation passed by the 108th Congress.

DATES: *Effective date:* The amendment to the regulation is effective August 23, 2004.

Applicability dates: Under the amendment, the requirements of the

MHPA interim final regulation apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan during the period commencing August 23, 2004, through December 30, 2004. Under the extended sunset date, MHPA requirements do not apply to benefits for services furnished on or after December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Dave Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at 1–877–267–2323, ext. 61565.

SUPPLEMENTARY INFORMATION:

I. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

The provisions of MHPA are set forth in Title XXVII of the PHS Act, Part 7 of Subtitle B of Title I of ERISA, and Chapter 100 of Subtitle K of the Code. The Secretaries of Health and Human Services, Labor, and the Treasury share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act for issuers. Only if a State does not substantially enforce the MHPA provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.
- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with those group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.
- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.

II. Overview of MHPA

The MHPA provisions are set forth in section 2705 of the PHS Act, section 712 of ERISA, and section 9812 of the Code. MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions would not apply to benefits for services furnished on or after September 30, 2001. On December 22, 1997, the Departments of Health and Human Services, Labor, and the Treasury issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education ("Appropriations Act"). (During the 107th Congress, legislation was passed by the Senate to amend and expand the substantive provisions of MHPA. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002, H.R. Rep. 107–342, at 170 (2001)). This legislation extended MHPA's original sunset date under the PHS Act, ERISA, and the Code, so that MHPA's provisions in all three statutes would not sunset until December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090 (Pub. L. 107–147), the Job Creation and Worker Assistance Act of 2002 ("Job Creation Act"). That legislation amended section 9812 of the Code (the mental health parity provisions), but did not amend the corresponding MHPA provisions in the PHS Act or ERISA. The Job Creation Act extended the sunset date under the Code to December 31, 2003.

On December 2, 2002, President Bush signed H.R. 5716 (Pub. L. 107–313), the Mental Health Parity Reauthorization Act of 2002. This legislation further extended MHPA's sunset date under the PHS Act and ERISA so that MHPA's provisions would apply to any services furnished before December 31, 2003.

As a result of those pieces of legislation, the Department published conforming changes to the interim final mental health parity regulations, conforming the regulatory sunset date to the new statutory sunset date. The Department also made conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date (68 FR 38206, June 27, 2003).

On December 19, 2003, President Bush signed S. 1929 (Pub. L. 108–197), the Mental Health Parity Reauthorization Act of 2003. That legislation further extends MHPA's sunset date under the PHS Act and ERISA so that MHPA's provisions apply to any services furnished before December 31, 2004. This statutory amendment has not altered MHPA's scope. It continues to apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. (The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.) As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department is publishing this amendment to the interim final regulations, conforming the regulatory sunset date to the new statutory sunset date. The Department is making the effective date of this amendment to the interim final regulations effective as of August 23, 2004. Since the extension of this sunset date is essentially self-implementing, this amendment to the MHPA regulations is published on an

interim final basis under section 2792 of the PHS Act.

This amendment to the interim final regulations is adopted under the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as added by HIPAA (Pub. L. 104–191), and amended by MHPA (Pub. L. 104–204, as amended by Pub. L. 107–116, Pub. L. 107–313, and Pub. L. 108–197).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). According to the terms of the Executive Order, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order. Rather, it is an amendment to the 1997 interim final regulations that makes no substantive changes to those regulations, and merely extends the regulatory sunset date to conform to the new statutory sunset date added by Public Law 108–197. Because it is not a major rule, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule and have determined that it will not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, the Contract with America Act, it is not a major rule.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 45 CFR part 146 as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for part 146 is revised to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as added by HIPAA (Pub. L. 104–191), and amended by MHPA (Pub. L. 104–204, as amended by Pub. L. 107–116, Pub. L. 107–313, and Pub. L. 108–197), NMHPA (Pub. L. 104–204), and WHCRA (Pub. L. 105–277), sec. 102(c) of HIPAA.

§ 146.136 [Amended]

■ 2. In § 146.136, the following amendments are made:

■ a. The last sentence of paragraph (f)(1) is amended by removing the date "December 31, 2003" and adding in its place the date "December 31, 2004."

■ b. Paragraph (g)(2) is amended by removing the date "December 31, 2003" and adding in its place the date "December 31, 2004."

■ c. Paragraph (i) is revised to read as follows:

§ 146.136 Parity in the application of certain limits to mental health benefits.

* * * * *

(i) *Sunset.* This section does not apply to benefits for services furnished on or after December 31, 2004.

Dated: April 2, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 20, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–16826 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS–2033–F]

RIN 0938–AK00

Requirements for the Group Health Insurance Market; Non-Federal Governmental Plans Exempt From HIPAA Title I Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This rule finalizes existing exemption election requirements that

apply to self-funded non-Federal governmental plans. In it, we clarify the conditions under which plan sponsors may exempt these plans from most of the requirements of title XXVII of the PHS Act, and provide guidance on the procedures, limitations, and documentation associated with exemption elections. Finally, we revise the requirements to reinforce beneficiary protections for exemption elections.

DATES: The regulations amending 45 CFR 146.180 became effective on September 24, 2002.

FOR FURTHER INFORMATION CONTACT: David Holstein (410) 786–1565.

SUPPLEMENTARY INFORMATION:

I. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new title XXVII to the Public Health Service (PHS) Act to establish various reforms to the group and individual health insurance markets. The group market reforms are contained under Part A of title XXVII, which includes, among other things, guaranteed availability of coverage to small group market employers and renewability of coverage in the small and large group markets; limitations on pre-existing condition exclusion periods; special enrollment periods under certain circumstances; and prohibition of discrimination against individual participants and beneficiaries based on health status.

Part A of title XXVII was amended by the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), the Mental Health Parity Act of 1996 (MHPA), and the Women's Health and Cancer Rights Act of 1998 (WHCRA), which added new sections 2704, 2705 and 2706 (subpart 2 of Part A of title XXVII), respectively. NMHPA provides protections for mothers and newborn children for hospital stays following childbirth. MHPA, which applies to group health plans sponsored by employers with more than 50 employees, provides for parity between annual and lifetime dollar limits applicable to mental health benefits, and annual and lifetime dollar limits applicable to medical and surgical benefits. Originally, the MHPA sunset date was September 30, 2001, but subsequent legislation (Pub. L. 107–116 and Pub. L. 107–313) respectively extended the sunset date to December 31, 2002, and December 31, 2003. WHCRA requires group health plans that provide medical and surgical benefits for mastectomies to cover, among other things, reconstructive surgery and prostheses following a mastectomy.

Section 2721(b)(2) of the PHS Act, as added by HIPAA and implemented at 45 CFR 146.180, permits non-Federal governmental employers to elect to exempt self-funded portions of their group health plans (that is, benefits not provided through health insurance coverage) from most of the requirements of title XXVII of the PHS Act. (This practice is sometimes referred to as "opting out of HIPAA.") However, health plans cannot be exempted from certification and disclosure of creditable coverage requirements under section 2701(e) of the PHS Act.

II. Summary of Provisions of the Interim Final Rule With Comment Period

On July 26, 2002, we published in the **Federal Register** (67 FR 48802) an interim final rule with comment period, "Technical Change to Requirements for the Group Health Insurance Market; Non-Federal Governmental Plans Exempt From HIPAA Title I Requirements" that amended existing exemption election requirements at § 146.180 that apply to self-funded non-Federal governmental plans. In the interim final rule with comment period, we clarified the conditions under which plan sponsors may exempt these plans from most of the requirements of title XXVII of the PHS Act, provided guidance on the procedures, limitations, and documentation associated with exemption elections, revised the exemption election requirements to reinforce beneficiary protections, and made a technical correction to § 146.150 "Guaranteed availability of coverage for employees in the small group market."

We refer the reader to the July 26, 2002, interim final rule with comment period for greater detail.

III. Analysis of and Responses to Public Comments

We received no public comments on the July 26, 2002, interim final rule.

IV. Provisions of the Final Regulations

The provisions of this final rule are identical to the provisions of the July 26, 2002, interim final rule with comment period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We received no comments.

The reporting and disclosure requirements referenced under § 146.180(b), (g), and (h) are currently approved under OMB number 0938–0702 (HIPAA Group Market Information Collection Requirements).

Under paragraph (e) of § 146.180, CMS may require that additional information be submitted after receiving an election to opt out. The burden of this requirement is the time it takes to gather and submit the additional information. This type of information collection is exempt from the requirements of the PRA under section 1320.4 as it is a collection of information during the conduct of an administrative action.

As required by section 3504(h) of the PRA, we have submitted a copy of this document to OMB for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

VI. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is not economically significant and is not a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. This final rule will have no significant impact on small businesses.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule does not impose unfunded mandates on State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have determined that this final rule does not significantly affect the rights, roles, and responsibilities of State or local governments.

The July 26, 2002, interim final rule with comment period was reviewed by the Office of Management and Budget (OMB) in accordance with provisions of Executive Order 12866.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements.

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ Accordingly, the interim final rule with comment period amending 45 CFR part 146, which was published on July 26, 2002, in the **Federal Register** at 67 FR 48802–48814 is adopted as a final rule without change.

(Catalog of Federal Domestic Assistance Program No. 93.773), (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 28, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–16792 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031104274–4011–02;I.D. 071604E]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Inseason Adjustment of the Quarter III Fishery for Loligo Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator) is decreasing the commercial Loligo squid quota for Quarter III in the Exclusive Economic Zone (EEZ). This inseason adjustment is necessary due to overages in the commercial quota landed in the Quarter 1.

DATES: Effective 0001 hours, July 20, 2004, through 2400 hours, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail *don.frei@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 648.21 (f)(2) requires the Regional Administrator to subtract any overages of *Loligo* squid commercial quota landed during Quarter I from the allocation for Quarter III. Accordingly, the Regional Administrator, based on dealer reports and other available information, has determined that there was a 5.6 percent overage in Quarter I *Loligo* squid directed fishery. Therefore, the quota for the directed fishery for *Loligo* squid in Quarter III is reduced from 6,435,130 lb (2,918.9 mt) to 5,733,152 lb (2,600.5 mt). The regulations governing the Atlantic mackerel, squid, and butterfish fisheries require notification to the public of this adjustment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–16835 Filed 7–20–04; 3:58 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 141
Friday, July 23, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375, and 385

[Docket No. RM01–5–000]

Electronic Tariff Filings

July 8, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking and technical conference.

SUMMARY: The Federal Energy Regulatory Commission is proposing to require that all tariffs and tariff revisions and rate change applications for the public utility, natural gas pipeline, and oil pipeline industries, be filed electronically via software provided by the Commission. Upon the effective date of a final rule in this proceeding, the Commission will no longer accept tariff filings submitted in paper format. This endeavor is intended to improve the administrative convenience for the regulated entities, facilitate public access to the tariffs, improve the overall tariff management processes, and facilitate the Commission's and the public's analysis of proposed tariff changes and tariff filings.

The Commission will make the proposed tariff filing software available on its Web site (*http://www.ferc.gov*) shortly after this Notice of Proposed Rulemaking (NOPR) is issued and is seeking participation from the industry in testing the software as well as comments on its operation. Commission staff will hold a technical conference with the industry and the public to assess the results of the testing.

DATES: Comments are due October 4, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8525, *Keith.Pierce@ferc.gov*.

Jamie Chabinsky (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6040, *Jamie.Chabinsky@ferc.gov*.

Bolton Pierce (Software Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8803, *Bolton.Pierce@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Tariff Filings; Notice of Proposed Rulemaking

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1. The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to mandate that utilities make their tariff and rate case filings electronically with the Commission, over the Internet, via computer software provided by the Commission. Electronically filed tariffs and tariff changes should improve the

efficiency and administrative convenience of the tariff and tariff change filing process, reduce the burden and expense associated with paper tariffs and paper tariff changes, facilitate public access to tariff information, improve the overall management of the tariff and tariff change processes, and facilitate the analysis of proposed tariff changes. In addition, electronically filed tariffs should improve access and research capabilities within and among applicants' tariffs. This feature should help facilitate the Commission's monitoring of energy markets, to the benefit of the customers and all involved. It also should enhance competition within industries by providing the customers and all involved with an electronic means of comparing the rates, terms and conditions, and other provisions applicable to the regulated entities.

2. After the issuance of this Notice of Proposed Rulemaking (NOPR), the Commission will be posting on its website instructions for downloading the proposed software that the utilities will use to make their tariff and rate case filings. The Commission encourages utilities to download the proposed software to see how the system will operate and to participate in the Commission's program for testing the software.

I. Background

3. The Federal government has set a goal to substitute electronic means of communication and information storage for paper. For example, the Government Paperwork Elimination Act directed agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical.[1] Similarly, the Office of Management and Budget (OMB) Circular A–130 required agencies to use electronic information collection techniques, where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.[2] This requirement applies to all filings, including tariff filings.

4. As part of its statutory responsibilities, the Commission requires regulated entities to file tariffs which include, among other things, their respective rates, and terms and conditions of service.[3] In addition, the Commission regulations require regulated entities that are amending tariffs to file material accompanying the proposed tariff changes. This material can range from a filing including a letter of transmittal, an explanation of the basis of the filing, and a form of notice to a full rate case filing, including required schedules detailing the derivation of the rates.

5. Currently, gas and electric tariffs are filed at the Commission in the form of numbered tariff sheets. When changes to the tariffs are necessary, the companies file substitute or revised tariff sheets, which supersede the effective tariff sheets on file.[4] The use of tariff sheets as the base unit for the tariff allows for changes to be submitted to the Commission without the necessity of refiling the entire tariff.

6. Oil pipeline tariffs do not use the tariff sheet format. The oil pipeline tariff format consists of parts identified by item numbers. Changes are filed either as complete tariffs [5] or tariff supplements.[6] The changes being made by the new filing are identified by the item number, and can be revisions, insertions, and cancellations.

7. The Commission has previously undertaken changes to provide for electronic submission of tariff filings and other material. In 1988, the Commission required natural gas pipelines to file formatted electronic versions of certain tariffs on diskette in addition to filing paper copies. These requirements retained the tariff page concept. Each pipeline files electronically only the tariff page or pages that are being revised. In Order No. 888, the Commission required that public utilities submit a complete electronic version of all open access transmission tariffs and service agreements in a word processor format, with the diskette labeled as to the format (including version) used, initially and each time changes are filed. The electronic filing requirements do not extend to oil pipelines, which, to this date, are required to file only paper copies of their tariffs.

8. With respect to electronic filings, the Commission, in Order No. 614, stated that it was initiating a process "necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all rate schedule sheets." [7] Order No. 614 required public utilities to refile their tariffs to comply with new formatting requirements, including removing superceded tariff language, extraneous provisions, and items that were not subject to Commission jurisdiction.[8] These refilings were to aid public utilities in preparing their tariffs for conversion to an electronic format. As another step in moving towards electronic filing, the Commission, in Order No. 2001,[9] eliminated the requirement to file paper copies of conforming service agreements, but required the filing of an electronic report that summarized the contractual terms and conditions in the service agreements.

9. At the same time, the Commission has been expanding the scope of electronic filing with respect to material filed with the Commission.[10] These regulations permit electronic filing of interventions, protests, rehearings, and other material. But, to date, they do not include materials filed to revise tariffs, and except as discussed above, have not provided for electronic filing of tariffs.

10. On March 14, 2001, the Commission issued a Notice of Inquiry and Informational Conference (NOI) in this proceeding. The NOI requested comments, from the electric, gas, oil, and other regulated industries that file tariffs, on several specific and general issues.[11] The NOI further provided for the establishment of a staff informational conference to discuss the electronic tariff filing initiative. The

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[1] *See* 44 U.S.C. 3504(a)(1)(B)(vi); 44 U.S.C. 3504 note, Pub. L. 105–277, § 1704 (October 21, 1998).

[2] Circular A–130, Para. 8.a.1(k).

[3] A tariff is the compilation of any rates, schedules, rate schedules, contracts, application, rule, or similar matter that clearly and specifically set forth all rates and charges for any services subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates and charges and all contracts which in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices.

[4] Such tariff pages are frequently identified using the following nomenclature, as an example, Third Revised Sheet No. 100, superseding Second Revised Sheet No. 100.

[5] For example, to indicate that a new tariff had been filed to supersede an existing tariff, the tariff would state: FERC No. 46 cancels FERC No. 45.

[6] For example, a supplement filed to amend a tariff could be identified as: Supplement No. 1 to FERC No. 46.

[7] Designation of Electric Rate Schedule Sheets, Order No. 614, 65 FR 18221, FERC Stats. & Regs., ¶ 31,096 at 31,501 (2000).

[8] *E.g.*, Boston Edison Company, 98 FERC ¶ 61,292 (2002).

[9] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, (May 8, 2002), FERC Stats. & Regs., ¶ 31,127 (2002).

[10] *See* Electronic Registration, Order No. 891, 67 FR 52406 (Aug. 12, 2002), FERC Stats. & Regs. ¶ 31,132 (2002); Electronic Filing of FERC Form 1, Order No. 626, 67 FR 36093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002); Electronic Service of Documents, 66 FR 50591 (Oct. 4, 2001), FERC Stats. & Regs. ¶ 35,539 (2001); Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); Electronic Filing of Documents, Order No. 619, 65 FR 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000); Electronic Notification of Commission Issuances, Notice of Proposed Rulemaking, 107 FERC ¶ 61,311 (2004).

[11] Electronic Tariff Filings, 66 FR 15673 (March 20, 2001), FERC Stats. & Regs. ¶ 35,538 at 35,789–91 (2001).

NOI requested comments on whether to move to a section-based tariff, whether to standardize tariffs, and the electronic format to be used in filing tariffs. The conference was held on April 24, 2001, with interested members of the public and industry in attendance.[12] Comments on the NOI were filed by the 16 parties listed in Appendix A. Most of the commenters responded to the issues in general, with the majority opposing any effort to standardize tariffs out of concern about unintended tariff changes that could result and the possibility that such reorganization could spawn burdensome proceedings to check and resolve potential discrepancies.

II. Discussion

11. This NOPR represents a continuation of the Commission's efforts to meet its responsibilities in implementing the goals of the legislative and executive branches of the Federal government with respect to substituting electronic means of communication and information storage for paper means. The benefits of this endeavor for all involved, including the regulated industries, the customers, state commissions, parties to the proceedings, the Commission and its staff, other persons impacted by the tariffs and tariff filings, and the general public, are extensive. Thus, the primary justifications for this NOPR are to reap the benefits of electronic filing and access and to implement the goals of the legislative and executive branches of the Federal government with respect to moving towards the electronic filing of documents.

12. The Commission is proposing in this rule to require regulated entities filing under parts 35, 154, 284, 300 and 341[13] to make all tariff and rate filings, as well as other material involved in these proceedings, electronically.[14] Requiring the provision of all tariff and related material electronically will provide easier access, including search and copy and paste functionality, to all such material. The Commission is developing its own software to accommodate the tariff filings. This software will be distributed via the Commission's Web site to all utilities needing to make the filings. In order to make their initial tariff compliance filing, regulated entities will have to electronically cut and paste their existing tariffs into the software in order to submit the material using the Internet. As discussed below, the Commission proposes some changes from current practice to facilitate electronic filing. The Commission is proposing to change from the tariff-sheet format to a section-based format, which is better suited to electronic filing.[15] Also, the Commission proposes to standardize the process for withdrawals of tariff filings and amendments to tariff filings.

13. The Commission will discuss below in greater detail the mechanism it is proposing.

A. Scope

14. The companies or entities covered by this NOPR are those that submit tariffs, rates, or contracts with the Commission pursuant to the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Federal Power Act (FPA), the Interstate Commerce Act (ICA), and any other relevant statutes. Included among the companies or entities proposed to be covered by requirement are: Regional transmission organizations (RTOs) and independent system operators (ISOs); power authorities and federal power marketing administrations which file rates, contracts, or tariffs at the Commission; intrastate natural gas pipelines that file rates and operating conditions pursuant to the NGPA; interstate natural gas pipelines subject to the NGA which serve only an industrial customer; and companies or entities that may make voluntary tariff filings, such as reciprocity filings pursuant to Order No. 888.

15. Further, to the extent that the Commission has granted waivers to regulated entities with respect to the requirements that they file tariffs, rates, rate schedules, and/or contracts in the format required by our regulations, the Commission is proposing to rescind such waivers with the effectiveness of a final rule in this proceeding. Those entities would therefore be required to refile their tariffs, rates, rate schedules, and/or contracts consistent with the electronic formatting requirements proposed in this NOPR. This includes, for example, part 284 negotiated rate contracts that have been filed in lieu of a tariff sheet under the Commission's negotiated rate policy,[16] and pipelines serving industrial customers that filed transportation contracts.[17] The Commission's objective is to have all tariffs for all companies and industries in the same format and available from the same location without the need to go to different places depending on the industry or company at issue.

B. Tariff Sections

16. In order to make the process of referencing and searching tariffs easier, the Commission is proposing to replace the traditional use of tariff sheets with tariff sections as the basis for making tariff revisions. Using the Commission's software, companies will be able to file tariff revisions by filing to revise specific tariff sections, or by adding or removing tariff sections. As a result companies will no longer file tariff supplements to reflect tariff revisions,[18] but instead will directly change the tariff sections.

17. The concept of the tariff sheet is a hold-over from a paper filing world in which revised tariff sheets were filed so that they could replace individual pages in a tariff book. In an electronic world, there is no longer a need to physically replace pages in a tariff book. Instead, electronic filing is much more conducive to replacing only the specific tariff section involved in the revision.

18. The use of tariff sheet filing has, in the past, caused certain difficulties in finding tariff provisions. Under the tariff sheet method, there are two references to each relevant tariff provision, the sheet number (which is the official reference) and the internal section number. In pleadings before the Commission, parties frequently refer only to the section that is being changed rather than to the official tariff sheet. For example, reference is frequently made to General Terms and Conditions,

[12] Notice of the conference was published in the **Federal Register**, 66 FR 17130 (March 29, 2001).

[13] At this time, the Commission is not proposing to include pro forma tariffs filed in certificate proceedings under § 7, or import/export permission under § 3, of the Natural Gas Act, although such filings could be included at a later date. Compliance tariff filings pursuant to findings made by the Commission pursuant to §§ 3 and 7 of the NGA are proposed to be subject to the electronic tariff requirements.

[14] These filings include, but are not limited to, tariffs, rate schedules, and contracts, or parts thereof, and material related thereto, cancellation, termination or adoption of tariffs, statements, workpapers, responses to data requests, compliance filings, and rehearings.

[15] Commenters to the NOI objected to requiring a reorganization of the tariff structure and the Commission is not proposing any reorganization in this NOPR.

[16] *See* Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 at P 31–34 (2003); East Tennessee Natural Gas Company, 107 FERC ¶ 61, 197 (2004). Service agreements, such as those discussed in ANR Pipeline Company, 106 FERC ¶ 61,313 (2004), Columbia Gulf Transmission Company, 96 FERC ¶ 61,242 and 61,243 (2001) will be required to be filed as part of the electronic tariff.

[17] *E.g.*, B-R Pipeline Co., 89 FERC ¶ 61,312 at 61,955–957 (1999); Valero Natural Gas Pipeline Co., 82 FERC ¶ 61,280 at 62,094 (1998).

[18] A tariff supplement is similar to an appendix or codicil that reflects revisions to be made to the tariff. Tariff supplements are used frequently in oil company tariff filings, and the Commission staff will work with individual oil companies to determine the easiest and most efficient means of transitioning from the use of supplements to the new electronic filing method.

section 12.1, rather than to the particular tariff sheet on which this section is located. Under a tariff sheet method, it can be difficult to determine which tariff sheet is being referenced, which in turn makes tariff research more difficult.

19. Another problem with the current system is that a company may make multiple filings to change different parts of its tariff language or rates on the same tariff page. While these proposed changes are pending Commission action, the tariff includes multiple versions of the same tariff page, some of which may be effective and others suspended and not yet effective. A further problem is that when a paragraph of text is added or deleted from one page of the tariff, there can be a domino effect on many of the subsequent pages. Unchanged tariff provisions are pushed forward or backward on the subsequent tariff pages. Thus, the company has to file changes to many subsequent tariff pages because their appearance changes even though there are no substantive changes on those sheets. This also makes it hard to do historical tariff research.

20. The current tariffs generally include a designation for each tariff sheet denoting where that sheet falls in the range of sheets that have been filed, *e.g.*, Second Revised Sheet No. 100 indicates that two other sheet 100s were filed before that one. The Commission is proposing to replace this numbering scheme by simply dating each tariff section as it is filed, and identifying which sections are effective, proposed, and suspended. Commenters should address whether using such date stamps will be sufficient to identify historic tariff provisions.

21. Tariffs of gas pipelines and public utilities currently employ an organizational structure, with a form of outline or section numbering, to a single tariff. This structure can be maintained in filing section based tariffs, although, as discussed below, the Commission requests comment on whether a uniform numbering system should be employed across all tariffs or tariffs within an industry. Oil pipelines currently file individual tariffs relating to a specific movement of oil between specified points, or to a series of related movements. The Commission here is proposing that these individual tariffs be structured as a single tariff, with sections that refer to the individual or related movements.

22. In comments on the NOI, the Interstate Natural Gas Association of America , Gulf South Pipeline Company, LP, Enron Interstate Pipelines and the William Companies, Inc. (collectively, INGAA) oppose a section-based electronic tariff. INGAA contends that the existing page-based system is easy to reference and print. It argues sections could easily span multiple printed pages, which is inefficient, and the printed tariff would no longer have a common format. INGAA states an electronic section-based system will not improve the overall process of referencing tariff sections, because paper copies of the tariff will still be necessary to maintain and reference, and number of pages in those paper versions will increase due to inefficient use of space. Further, INGAA maintains tariff sections do not eliminate the issue of redesignating sections to reflect the addition of new sections. Thus, it argues a section-based tariff offers no improvement in historical research, and concludes that the costs of converting to a section-based system outweigh the limited benefits. The Association of Oil Pipelines and Buckeye Pipe Line Company (collectively, AOPL) support a section-based tariff for the oil program. Given the current format of oil tariffs, AOPL believes a section-based system is appropriate.

23. While reformatting tariffs in a section-based format will cause some additional effort in the initial filing stage, the Commission believes that such a change is warranted for the reasons discussed above. Continuing with a system of dual referencing to tariff provisions causes confusion and makes tariff research more difficult. In fact, pipeline companies, when establishing internal tariff cross-references, use tariff sections as the cross reference and not tariff sheet numbers.

24. INGAA contends that printing sections will be more difficult than printing tariff sheets, because a section may require multiple pages to print. But this same problem can occur with tariff sheets, since in most instances, those using tariffs print the tariff section in which they are interested, even if that section covers numerous tariff sheets. As to the ability to print a large number of sections with a minimum of unused space, that is simply an issue of software design which is being examined.

25. INGAA maintains that moving to a section-based tariff will not change the problem of having to redesignate sections as new sections are added. As discussed below, the Commission is requesting comment on whether under a section-based system, utilities should not be permitted to change the initial section numbering of the tariff sheets in order to improve the ability to do tariff research.

26. The Commission requests specific comment on a number of issues raised by different section numbering methods.

27. First, tariffs filed with the Commission currently use different section numbering or outlining schemes. Public utility tariffs generally number sections using a numeric numbering approach, *e.g.*, 1.1.2.3. In contrast the gas pipelines often use a Roman outlining approach for each portion of the tariff. For example, the General Terms and Conditions (GT&C) portion of the tariff would use (a)(2)(i) to identify various tariff provisions within the GT&C. The oil pipelines' tariffs frequently utilize only paragraph numbering.

28. The tariff filing software the Commission is developing can handle any document numbering scheme. However, the Commission requests comment on whether to adopt a standardized numbering or outlining scheme for tariff filings across industries, to adopt a standardized scheme within each industry, or to permit each filer to choose its own numbering scheme. The use of a numeric scheme, such as 1.1.2, appears more consistent with electronic filing, because it can easily accommodate the filing of new tariff sections between other sections. For example, if there are two sections, 1.1 and 1.2, and a section needs to be inserted between those, it can simply be labeled 1.1.1.[19] On the other hand, the Commission recognizes that changing numbering schemes could require the utility to go through its tariff to identify all cross-references that need to be changed. The Commission requests comment from users of tariffs as to whether a uniform numbering and citation scheme would be of sufficient use as to warrant the effort involved in changing numbering schemes.

29. Second, the Commission requests comment on whether utilities should not (except in extreme cases) change the initial numbering of tariff provisions. For instance, in adding a tariff section in between existing sections, 3.1 and 3.2, the utility should not renumber the pre-existing sections, but instead should add a subsection, 3.1.1, or a new section, 3.3. Keeping section numbers stable would make historical tariff research easier, since a reference in a two-year old order to a particular tariff section will still refer to the same section at a later point in time, and permit the user to see how the section read at the time of the order.

[19] Indeed, whatever choice is made, the proposed tariff software will be using such a numbering scheme internally to keep track of the relationship between labeled sections.

30. Third, commenters should address the size of the individual sections to be included in the tariff. In other words, should the utilities in making their initial filing be required to break their tariff into the same sections they currently use, or should they be able to file larger or smaller sections. For example, if a utility currently breaks its tariff into sections of three levels (1.1.1), should it be required to create its initial tariff with at least that many levels or should it be able to create larger sections, filing only sections of two levels. Decreasing the number of levels would make the creation of the initial tariff easier, but on the other hand would make each level less specific. This issue will also be examined during the testing of the prototype software.

31. Fourth, commenters should address whether using date stamps to reference changes in tariff sections is sufficient or whether the existing practice of numbering revisions with designations like Second Revised 1.1.2 would provide for more accurate tracking and citation.

C. Description of the Proposed Tariff Software

32. The Commission will describe in more detail below the way in which the tariff software and filing system will operate.

1. Tariff Creation and Submission

33. The tariff creation and submission modules will be available from the Commission's website and downloadable to anyone, free of charge. These modules will install on most personal computers that have a Microsoft Windows operating system, such as Windows 2000 or XP. The Commission expects that, at a minimum, every regulated entity, agent or person that submits tariff filings will have to install this software after the rule becomes effective. These parties, for the purposes of this discussion, will be referred to as the "client." The tariff creation and submission software consists of several components. The principal components are the actual tariff text; and the data that provide information about the tariff section (in this NOPR referred to as "metadata").

2. Tariff Text

34. Tariffs consist largely of text. However, either as required by Commission regulation or company option, some type of graphic may be required, such as a map showing zone boundaries.[20] Some tariff content is best formatted in programs other than a text program, such as a table or columns created by a spreadsheet program for tariff sections that identify rates or rate tables. The software which the Commission provides to the client will be capable of accommodating at least these standard electronic formats. Utilities will be expected to make all rate case filings using the Commission software.

35. The software the Commission provides to clients will permit the regulated entities to create their tariffs in several electronic formats, provided such format meets certain criteria. First, the electronic tariff text must be in a format that can be cut and pasted into the Commission's software. This requirement permits the use of virtually every Windows text software including Word, WordPerfect, AmiPro, Adobe and dozens of other text programs, spreadsheet programs such as Excel and Quattro, presentation software, and many other software programs. Material generated on other operating systems, such as Apple's or Linux", in programs with cut and paste capabilities also can serve as sources for tariff material. These programs permit the tariff creator to create many different text formats. While there is never a guarantee that material cut and pasted from one software product into another will retain its formatting, most of the formatting should transfer. The Commission's tariff creation software will have limited text editing capabilities to correct minor problems that may occur.

36. The electronic tariff may not include embedded objects. Embedded objects require additional software to access and read that the Commission or the public may not have. Further, embedded objects are difficult to manage and extract information necessary for other required functions, such as word searches of tariffs.

37. The tariff may include graphics. However, the Commission proposes that graphics cannot include any text that cannot be found utilizing standard search software.

38. The formatting requirements for gas pipeline rate case filings established in Order No. 582 will continue to apply. In this proceeding, the Commission is not proposing similar requirements for the other regulated entities; although such changes in filing requirements may be proposed in the future in other proceedings. Public utilities and oil pipelines can make their rate case filings in any format accepted by the Commission's software.

3. Meta Data

39. Each tariff section has a large amount of data that is associated with it that provide information as to whose tariff it is, what its origins are, and what its status is. These data will be available for viewing along with the tariff sections as an information resource to improve understanding about the tariff and tariff sections. Some of these data change over time, such as status of the tariff section (*e.g.*, proposed, accepted, accepted and suspended, rejected) and effective date. The Commission's tariff filing requirements define what data is required for a regulated entity to submit a complete tariff filing, such as the proposed effective date.

40. In a paper environment, some data are required to be placed on the same sheet as the tariff text, such as the company name and tariff name. Other data are maintained elsewhere, such as the date of filing or docket number. The Commission proposes to maintain an electronic tariff data base that has each of these metadata elements associated with every section of the tariff. The software will populate certain metadata with default required values (such as company name and filer's name), and require the company to populate other required fields, such as the proposed effective date.

4. Tariff Filing

41. Once a regulated entity completes its creation of the tariff filing and the supporting documentation, the tariff filing must be assembled prior to submission to the Commission's Secretary. The Commission's software will provide industry specific tariff filing menus for electric, gas or oil filings. The software will permit the required and additional supporting documents to be attached as part of the tariff filing.

42. The Commission is not proposing any additional formatting requirements for the electronic files, such as spreadsheets or other types of documents that contain large amounts of data. Existing formatting requirements will continue, such as those established for natural gas rate case filings in Order No. 582.[21] The Commission's experience with gas rate case filings shows that in many cases, raw data provided in spreadsheets is easier to manipulate than data which is formatted for viewing or printing, but

[20] *See* 18 CFR 154.106.

[21] Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (Oct. 11, 1995), FERC Stats. & Regs. Regulations Preambles (Jan. 1991—June 1996) ¶ 31,025 at 31,434–35 (Sept. 28, 1995).

may not be as legible and easy to read. The Commission invites comments on whether to impose requirements with respect to formatting or legibility.

43. There are some types of files that the Commission currently cannot manage as part of a tariff filing. These include video and audio files. The Commission will post on its Web site the file types it cannot accept as part of a tariff filing. The software will check file extensions and provide a warning to the client.

44. Natural gas pipelines and public utilities will still be required to file a marked version of the tariff. Although the tariff creation software the Commission provides will have the capability to generate marked versions of the tariff, the Commission believes that applicants should be responsible for identifying those changes for which they are requesting Commission action.

45. Currently, oil pipelines are required to indicate changes in tariff language through the use of symbols. These symbols are part of the effective tariff and show where changes occurred from the superceded tariff. These symbols may be considered graphics in the Commission's software, which could lead to unpredictable results in generating a redlined/strikeout version of the tariff. The Commission proposes to require oil pipelines to mark tariff changes in the same manner as the electric and gas programs.

46. The Commission's Secretary will receive electronic tariff and tariff filings. If the Secretary deems the filing to have satisfied the minimal elements for submitting a filing to the Commission, the Secretary will assign a docket number and an eLibrary accession number to the filing.[22] The Secretary will then e-mail a response to the filing party with that information.

5. Confidential Information

47. Although most tariff filings do not contain confidential information, in some cases such information, including maps or other critical energy infrastructure information, may be included. The Commission's tariff filing software will contain options for the applicants to identify various levels of security as provided by the Commission's regulations. Further, the tariff filing submission process will abide with all applicable federal laws with regard to filing sensitive material with a government agency over the Internet. In cases in which confidential information is included, the filer will have to file the confidential information and a redacted version of the document. In addition, in cases where the confidential information is germane to the filing, the filer should have a protective order prepared that will permit parties to the case to review such information so they can knowledgeably participate in the proceeding.[23]

6. Public Access to the Tariffs and Tariff Filings

48. Access to tariffs and tariff filings is necessary for the public to ascertain a regulated entity's effective rates, terms and conditions, and whether they have an interest in a pending proceeding. Experience with the electronic gas tariff database also has shown the value of providing access to a historical record of past tariff sections, and the ability to search using a variety of criteria both within a tariff, among tariffs, and within an industry's tariffs.

49. Currently, the Commission provides the gas program's electronic tariffs in two formats from the Commission's Web site. One format, FASTR, is the Commission's tariff software and the other format is HTML, which can be accessed using a standard web browser such as Netscape or Internet Explorer. The FASTR format provides the public and natural gas pipelines the same functionality that is available to the Commission and access to the same metadata not otherwise shown on the tariff sheets. However, this level of access requires downloading the FASTR software and a tariff data base. The Commission's posted HTML version only reflects the currently effective tariff, without search capability and additional metadata information.

50. The Commission proposes to make the electronic tariff data base accessible to the public in a similar manner through its Web site at *http://www.ferc.gov.*

D. Proposed Transition Procedures

51. The Commission is aiming for a March 1, 2005, effective date for the proposed regulations, along with a staggered implementation period as described below. Regulated entities, therefore, should take this date and the transition process into account in their in-house planning process. Since the Commission is making the software for this effort available soon after the issuance of this NOPR, the regulated entities will have more than half a year to become familiar with the software.

52. The Commission proposes to implement the electronic tariff filing in a staggered six month transition process. During this period all entities with tariffs on file at the Commission will have to refile their existing and effective tariffs in electronic format utilizing the Commission's software. This initial filing will be referred to as the baseline tariff filing. The baseline tariff filing is to have no other proposed changes included in it. Rather, the baseline tariff filing will strictly be used for the purpose of putting the existing effective tariff into an electronic format using the Commission's software. Any other changes to the tariff, which are not specifically mandated by the Commission's software, will be rejected.[24]

53. The baseline tariff filings will be subject to notice and comment to permit customers to ensure that the proposed baseline tariff is an accurate duplication of the effective tariff. Protests in the baseline tariff proceedings, therefore, will only be considered if they involve the issue of whether the baseline tariff reflects an accurate duplication of the existing effective tariff. No protests involving other issues, such as the merits of various sections of the tariff, will be considered. Rather, they will be rejected as being outside the scope of the baseline tariff filing proceedings.

54. If a regulated entity has a pending or suspended tariff change filing at the time of the filing of the baseline tariff, the regulated entity will not have to file these pending or suspended tariff sections as part of the baseline tariff filing. However, the regulated entity will be required to identify the proceedings where such tariff changes exist. As the Commission acts on pending or suspended tariffs sections, the Commission will require the regulated entities to file the accepted tariffs in the new electronic format.

55. The Commission proposes to implement the proposed electronic tariff regulations as follows. All new regulated entities filing tariffs for the first time from the effective date of the final rule must file complete electronic tariffs under the proposed regulations. Any regulated entity that wishes to file its baseline tariff in accordance with the new regulations after the effective date of the final rule, but before the required transition date, is free to do so.

56. The Commission proposes to require the majority of the regulated entities to transition to the new electronic format over a six month period, with natural gas pipelines filing in the first eight week period, followed by oil pipelines over an eight week

[22] eLibrary is the Commission's electronic document management system.

[23] *See* 18 CFR 385.214 (5)(i).

[24] For example, since the software will be section-based, as opposed to page-based, changes necessary to implement this change will be acceptable.

period, and public utilities, including RTOs and ISOs, as well as Power Authorities and Power Marketing Administrations, over a 14 week period. The Commission proposes that the gas pipelines proceed first, as their tariffs are largely already in an electronic format and they are accustomed to filing tariffs with the Commission in an electronic format. The Commission proposes that the oil pipelines follow, as their tariffs are comparatively small, but are not currently maintained in an electronic format. The Commission proposes that the electric entities file after the oil filing period ends. With the exception of the OATTs, electric tariffs are not maintained in an electronic format. Further, the Commission is aware that many public utilities have not made full use of their opportunities provided by Order Nos. 614 and 2001. These orders provide utilities with an opportunity to purge their tariffs of outdated, superceded, unnecessary and no longer required tariff text, and to reorganize their tariffs. These changes can reduce the volume of tariff sections requiring conversion and resubmission as part of the baseline tariff. Placing the electric industry last in the conversion process will give them additional time to bring their tariffs up to current standards.

57. The Commission is proposing a compliance period of one year for the following: (1) Pipelines which are subject to the NGPA and part 284 of the Commission's regulations; (2) part 153 natural gas pipelines (*i.e.*, natural gas pipelines constructed for import or export purposes); (3) industrial natural gas pipelines subject to the NGA that filed transportation contracts with the Commission but received waiver of having to file these tariffs consistent with part 154 of the Commission's regulations; and (4) all other regulated entities that are required to file tariffs, rates, or contracts.

58. All regulated entities with tariffs, including those that previously received a waiver of the requirements to file tariffs in the formats previously required by the Commission's regulations, will be required to file their baseline tariff in electronic format, in accordance with the requirements described in this NOPR, but as may be changed in the Final Rule.

E. Proposed Changes to the Commission Regulations

59. The basic changes to the Commission regulations will occur in § 35.7 for public utilities, § 154.4 for natural gas pipelines, § 284.123 for NGPA § 311 pipelines, and § 341.2 for oil pipelines. These regulations would require regulated entities to file tariffs and other materials electronically using the software provided by the Commission. Once this rule is implemented, utilities will no longer be required to file rate cases on paper. In filing documents requiring signatures as well as those requiring sworn declarations or verifications, the filings will have to comply with the electronic signature requirements as the Commission adopts them in Docket No. RM04–9–000.[25] Under these procedures, sworn declarations and oaths would have to comply with 28 U.S.C. 1746, which requires that all such documents include the following language: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."[26]

60. The Commission also is proposing to clean up other regulations that are inconsistent with the electronic filing regulations, such as language changes to reflect the change from tariff sheets to tariff sections and the elimination of paper formatting requirements. In addition, miscellaneous changes are being proposed to update outdated references and dates (*e.g.*, updating the references from the Offices of Pipeline and Electric Power Regulation to Office of Markets, Tariffs, and Rates and correcting regulation citations). The Commission has made an effort to identify all parts of its tariff filing regulations that must be modified to reflect the new electronic tariff filing and tariff formatting requirements. The Commission requests that parties identifying other sections of the regulations which potentially require change bring such potential changes to the attention of the Commission in comments submitted regarding this rulemaking, so that such changes, if necessary, can be reflected in the Final Rule.

61. Further, the Commission is proposing changes to the regulations regarding notices of cancellation, termination, or succession and withdrawal of tariff filings in order to ensure uniform procedures for all regulated entities and to better fit with the electronic software the Commission will be providing.

1. Notices of Cancellation, Termination, or Succession

62. Parts 35, 154, and 341 specify different processes for canceling, terminating, succeeding, or adopting tariff provisions. Section 154.603 provides for a pipeline to provide a notice of succession, and then file a tariff within 90 days of the notice. Section 341.6 has a slightly more formal procedure in that it requires a tariff supplement to the adopted tariff, followed by a formal tariff filing within 30 days. Section 35.16 simply provides for a notice of succession, but there is no requirement to actually file the succeeded tariff in the public utility's own name. This requirement is inconsistent with § 35.9, which requires every tariff and tariff sheet to be properly associated with the public utility providing the service. Sections 154.602 and 341.5 require tariff filings to cancel tariffs. However, §§ 35.9 and 35.15 have inconsistent requirements. Section 35.9 requires a tariff filing that contains a cancellation tariff sheet. Section 35.15 only requires notice of cancellation.

63. The Commission proposes to standardize these filing requirements. The Commission proposes to require regulated entities that propose to cancel, terminate, succeed or adopt tariff changes to make a tariff filing which would accompany the proposed tariff change. This standardized requirement will render the various notices of adoption, succession or termination superfluous.

64. The Commission proposes to eliminate the grace period contained in §§ 154.603 and 341.6. Both currently require a filing from which the grace period starts. With the Commission's proposed electronic tariff, regulated entities will be able to quickly file termination and succession tariffs by downloading complete tariffs, loading them into a tariff filing that reflects their new data, and creating cancellation tariff text for the superceded tariff. Thus, the Commission concludes that the current grace period is no longer necessary.

2. Withdrawal of Pending Tariff Filings and Amendments to Tariff Filings

65. Currently the electric, gas, and oil programs at the Commission have different procedures for withdrawing a tariff filing. For a public utility to withdraw a proposed tariff change, the utility must make a new tariff filing that amends the underlying tariff filing. This withdrawal filing stops the statutory notice period by which the Commission must act on the underlying tariff filing and initiates a new statutory action date based on the date of the withdrawal filing, and requires a Commission order to effectuate the withdrawal of the

[25] Electronic Notification of Commission Issuances, Notice of Proposed Rulemaking, 107 FERC ¶ 61,311 (2004).

[26] 18 U.S.C. 1746.

filing.[27] Filings by gas pipelines to withdraw tariff filings are treated as motions to withdraw pleadings pursuant to § 385.216. This rule provides that, if the motion has not been protested or the Commission does not act to deny the motion within 15 days, then the motion is deemed granted. Section 341.13 provides that oil pipelines may withdraw any tariff filing that has not gone into effect and filings that are subject to investigation upon notice to the Commission's Secretary and the parties to the proceeding. The Commission's electric and gas regulations do not address amendments to tariff filings prior to suspension,[28] in particular, whether such amendments toll the statutory notice dates on which the Commission must act before the initial filing becomes effective.

66. Tariff withdrawal and amendment filings affect the status of tariff proposals, which is information that will be included in the tariff filing software. The principal differences exist in the approaches taken with respect to electric and gas filings. In order to create greater standardization of this process, the Commission proposes to revise the process of withdrawing and amending gas and electric tariff filings. Such standardization should streamline the withdrawal process, to the extent possible, so as to reduce the administrative burden for both the regulated entities, the public which uses the tariffs, and the Commission.

67. The Commission does not see the need for public utilities or natural gas pipelines to make new tariff filings to effectuate withdrawal or a formal Commission order as is now required. The Commission therefore is proposing to make withdrawal of public utility tariff filings more similar to the approach used for oil and gas pipelines.

68. The Commission proposes to allow a gas pipeline or public utility to withdraw in its entirety a rate schedule or tariff filing upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. The withdrawal will become effective, and the filing deemed withdrawn, at the end of 15 days, so long as no answer in opposition to the withdrawal motion is filed within that period and the Commission has not acted to deny the withdrawal motion. If such an answer in opposition is made, the withdrawal is not effective until a Commission or delegated order accepting the withdrawal is issued.

[27] See Canal Electric Co., 29 FERC ¶ 61,330 (1984).

[28] Sections 35.17 and 154.205 address amendments made after suspensions.

Upon the filing of the withdrawal motion, the notice periods of the FPA and NGA will be tolled, so that the tariff filing cannot become effective in the absence of Commission action. The Commission is also proposing to delegate to the Director of the Office of Markets, Tariffs and Rates the authority to take appropriate action on contested and uncontested motions to withdraw tariff filings filed under parts 35 and 154.

69. All motions to withdraw pending filings would be filed utilizing the Commission's tariff filing software. Filings made utilizing this mechanism will ensure that withdrawals become automatically effective absent answers in opposition or Commission action denying the motion. Also, the software will assist in the creation of the necessary data to effect the withdrawal in the tariff data base, and create a historical record for that tariff section.

70. Amendments or modifications to tariff provisions can correct minor technical errors in a filing or may have a substantive effect on the filing. Because such modifications may have a substantive effect, the Commission is proposing that the filing of an amendment or modification to a tariff section will toll the period for action on the prior filing and establish a new period for action. The Commission, however, will continue its past practice of trying to process gas amendment filings within the initial 30-day notice period, as long as the amendment is not significant or does not create a major substantive difference in the tariff proposal.

III. Prototype Testing

71. After the issuance of this NOPR, the Commission will post on its Web site the prototype tariff and tariff filing software. Commission staff will work with various regulated entities and associations representing the natural gas, electric, and oil industries to test and improve the software prototype. The testing will involve each of the software's modules, including the installation of the software on clients' machines, tariff recreation and modification, tariff filings, tariff data base maintenance and verification that the Commission's tariff filing and tariff regulations are accurately implemented. While the software will be posted and available to clients, the Commission will not accept tariffs or tariff filings utilizing this software at this time. Nor will the Commission support the prototype software for parties who are not part of the testing team.

72. When the Commission staff determines that the software is ready for regulated entities to use for beginning the process to create a baseline electronic tariff, the Office of the Secretary will provide a notice that the tariff software is ready for experimental use, and draft instructions will be posted on the Commission's Web site.

73. Commission staff will hold a technical conference to address issues that have arisen during the testing, and any related software and electronic format issues. The technical conference should be held prior to the date comments are due on this NOPR.

IV. Comment Procedures

74. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 4, 2004. Comments must refer to Docket No. RM01–5–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

75. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

76. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

V. Information Collection Statement

77. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected

and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

78. OMB regulations [29] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this NOPR will be submitted to OMB for review.

Title: FERC–516: Electric Rate Schedule Filings; FERC–545, Gas Pipeline Rates: Rate Change(Non-Formal); FERC–549 Gas Pipeline Rates: NGPA Title III and NGA Blanket Certificate Transactions; FERC–550 Oil Pipeline Rates: Tariff Filings.

Action: Proposed Collections.

OMB Control Nos.: 1902–0096, 1902–0154, 1902–0086, 1902–0089.

Respondents: Business or other for profit, (public utilities, natural gas pipelines and oil pipelines).

Frequency of respondents: Most tariff filings are made at the discretion of the applicant and are a function of their business judgment.

Necessity of Information: This proposed rule, if implemented would require that all tariffs be filed electronically in lieu of paper. Electronically filed tariffs and rate case filings should improve the efficiency of the administrative process for tariff and rate case filings, by providing time and resource savings for all stakeholders. Respondents should see savings by reducing the number of personnel required to assemble and submit paper filings, and a reduction in duplication and mailing expenses. Users of the information will be able to access the data at lower costs due to efficiencies provided by electronic filing and retrieval. Data filed electronically can be processed faster than paper filings. This is due in part because procedural steps related to verifying the applicant, receiving the tariff filing, routing the tariff filing, entering the tariff filing into FERC's official record, public tariff maintenance, public access to the tariff and tariff filing, and confirming receipt of the tariff filing largely can be automated. Also the speed at which tariff filings can be processed electronically can increase the integrity of the data by speeding the process by which the applicants and public can view the filings and identify errors, and facilitating rapid filing of corrections. This capability is beneficial as many tariff filings involve statutory processing deadlines.

This proposed rule will assist the Commission in its efforts to comply with the Government Paperwork Elimination Act (GPEA) by developing the capability to file electronically with the Commission via the Internet with uniform formats using software that is readily available and easy to use and also achieve the President's Management Agenda initiatives of expanding electronic government.

Estimated Annual Burden: The public reporting burden for these information collections has two components. The first impact will be the requirement for all regulated entities to refile their complete tariffs in the new electronic format. This is a one-time cost that will not recur. The Commission's estimate cost for this one-time requirement for all three industries is approximately $350,000. This estimate is for installing the Commission's software and converting existing tariffs into the new electronic format. The Commission's estimates for various classes of filer are shown the in following table.

BASELINE TARIFF FILING COSTS

Data Collection	Number of respondents	Cost per tariff	Total cost
FERC–516:			
Utilities	152	$288	$43,836
Marketers	984	139	136,415
RTOs/ISOs	5	2,057	10,283
FERC–545:			
Small Pipelines	96	482	46,245
Large Pipelines	60	579	34,740
NGPA	200	168	33,539
FERC-550 Oil	200	216	43,225
Total			348,283

The second component of the cost estimate is the impact on regulated entities after the proposed regulations go into effect. The Commission estimates that the cost savings to the industries of no longer having to print, assemble and mail tariff filings to the Commission will be approximately $1.4 million per year. This estimate does not include additional cost savings that may result should the Commission grant requests of regulated entities to electronically provide service of their filings.

GOING FORWARD COST SAVINGS PER YEAR

	Total number of filings	Cost per filing	Total cost savings
Oil	689	$55	$37,895
Electric	4,445	203	902,335
Gas	2,548	203	517,244
Total			1,457,474

[29] 5 CFR 1320.11.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with this collection of information and assured itself, by means of internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collections of information proposed by this NOPR and has determined that these collections of information are necessary and conform to the Commission's plans, as described in this order, for the collection, efficient management, and use of the required information.[30]

79. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*).

VI. Environmental Analysis

80. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VII. Regulatory Flexibility Act Certification

81. The Regulatory Flexibility Act of 1980 (RFA)[32] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed rule will be applicable to all entities regulated by the Commission, a small number of which may be small businesses. The Commission finds that the regulations proposed here should not have a significant impact on these few small businesses. The regulations only require that a small business have a computer, which the vast majority already have. The software to file tariffs will be provided for free by the Commission. Indeed, by eliminating the requirement to file numerous paper copies of tariffs and documents associated with rate filings, these regulations are designed to reduce the filing burden on all companies, including small businesses. Accordingly, the Commission certifies that these regulations will not impose a significant economic impact on small businesses and no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

VIII. Document Availability

82. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page at *http://www.ferc.gov* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

83. From the Commission's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

84. User assistance is available for eLibrary and the Commission's Web site during normal business hours by contacting FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676 or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (or e-mail the Public Reference Room at *public.referenceroom@ferc.gov*).

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity, Incorporation by reference.

18 CFR Part 131

Electric power.

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements, Natural gas companies, Rate schedules and tariffs.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 281

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

18 CFR Part 300

Administrative practice and procedure, Electric power rates, Reporting and recordkeeping requirements, Electricity.

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 344

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 347

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act, Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 35, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

[30] *See* 44 U.S.C. 3506(c).

[31] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[32] 5 U.S.C. 601–612.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.1 is amended as follows:

a. In paragraphs (b) and (c) remove all references to "supplement".

b. In paragraph (c), the reference to "Notices of Cancellation or Termination" is revised to read "cancellation or termination".

c. Paragraph (a) is revised to read as follows:

§ 35.1 Application; obligation to file rate schedules and tariffs.

(a) Every public utility shall file with the Commission and post, in conformity with the requirements of this part, full and complete rate schedules and tariffs, as defined in section 35.2(b) and (f), clearly and specifically setting forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates and charges and all contracts that in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act (49 Stat. 851; 16 U.S.C. 824 d(c)). Where two or more public utilities are parties to the same rate schedule, each public utility transmitting or selling electric energy subject to the jurisdiction of this Commission shall post and file such rate schedule, or the rate schedule may be filed by one such public utility on behalf of all other parties having an obligation to file; the concurrence of other parties must also be filed.

* * * * *

3. Section 35.2 is amended as follows:

a. In paragraph (b), remove footnote 1.

b. In paragraph (d), remove the phrase "or schedules".

c. Add paragraph (f) to read as follows:

§ 35.2 Definitions.

* * * * *

(f) *Tariff.* A "tariff" is the compilation of any rates, schedules, rate schedules, contracts, applications, rules, or similar matters clearly and specifically setting forth all rates, charges, and terms and conditions for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates, charges, and terms and conditions, and all contracts that in any manner affect or relate to such rates, charges, terms and conditions, classifications, services, rules, regulations or practices.

4. Section 35.7 is revised to read as follows:

§ 35.7 Electronic filing requirements.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, and contracts, or parts thereof, and material related thereto, cancellation, termination or adoption of tariffs, statements, workpapers, responses to data requests, compliance filings, and rehearings. Paper submittals are not required to be filed.

(b) *Requirement for Signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that: the contents are true and correct to the best knowledge and belief of the signer; and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(d) *Format Requirements for Electronic Filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

5. Section 35.9 is removed and reserved.

6. Section 35.10 is revised to read as follows:

§ 35.10 Filing a marked version of rate schedule or tariff changes.

At the time a public utility files with the Commission and posts under this part to supersede or otherwise change the provisions of a rate schedule or tariff previously filed with the Commission under this part, in addition to the other requirements of this part, it must file and post a marked version of the tariff sections to be changed showing additions and deletions. The new language must be marked by highlight, background shading, bold text, or underlined text. Deleted language must be marked by strike-through.

7. In § 35.10a(b), the reference to "§ 35.10(b)" is revised to read "§ 35.7".

8. In § 35.11, the reference to "purchasers under other rate schedules" is revised to read "purchasers under other rate schedules or tariff provisions".

9. In § 35.12, the section heading and the last sentence of paragraph (a) are revised to read as follows:

§ 35.12 Filing of rate schedules and tariffs.

(a) * * * In the case of coordination and interchange arrangements in the nature of power pooling transactions, all supporting data required to be submitted in support of a rate schedule filing shall also be submitted by all parties to the arrangement, or a representative to file supporting data on behalf of all parties may be designated as provided in § 35.1.

* * * * *

10. Amend § 35.13 as follows:

a. In paragraph (a) introductory text, remove the reference to "supplement,".

b. In paragraph (c)(1) introductory text, remove the reference to "or supplemented".

c. In paragraph (f), the reference to "each party filing a certificate of concurrence" is revised to read "each concurring party".

d. Revise the section heading, and add a sentence to the end of paragraphs (a)(2)(i)(F) and paragraph (a)(3) to read as follows:

§ 35.13 Filing of changes in rate schedules and tariffs.

(a) * * *

(2) * * *

(i) * * *

(F) * * * These filings must be made electronically in conformance with the electronic filing instructions.

* * * * *

(3) * * * These filings must be made electronically in conformance with the electronic filing instructions.

* * * * *

11. In § 35.15, the first sentence of paragraph (a) is revised to read as follows:

§ 35.15 Notices of cancellation or termination.

(a) *General rule.* When a rate schedule or tariff or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or

tariff or part thereof is to be filed in its place, each party required to file the rate schedule or tariff shall notify the Commission of the proposed cancellation or termination by filing a cancellation tariff section at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect.* * *

* * * * *

12. In § 35.16, the reference to "on the form indicated in § 131.51 of this chapter" is revised to read "with a tariff consistent with the electronic filing requirements in § 35.7".

13. Section 35.17 is amended as follows:

a. Paragraphs (a), (b), and (c) are redesignated (c), (d), and (e), respectively.

b. The section heading is revised and paragraphs (a) and (b) are added to read as follows:

§ 35.17 Withdrawals and amendments of rate schedules or tariff filings.

(a) *Withdrawals of rate schedule or tariff filings prior to Commission action.* (1) A public utility may withdraw in its entirety a rate schedule or tariff filing upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed rate schedule or tariff sections will not become effective under section 205(d) of the Federal Power Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to rates or tariff sections prior to Commission action on the filing.* A public utility may file to amend or modify a rate or tariff section contained in a rate schedule or tariff filing upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 61 days from the date of the filing of the amendment or modification.

* * * * *

§ 35.21 [Amended]

14. In § 35.21, in footnote 5, remove the reference to "footnote 1 to".

15. In § 35.28, a last sentence is added to paragraph (e)(1) introductory text to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(e) * * *

(1) * * * These tariff filings must be made in accordance with the requirements of § 35.7.

* * * * *

16. In § 35.30, a last sentence is added to paragraph (c) to read as follows:

§ 35.30 General Provisions.

* * * * *

(c) * * * These tariff filings must be made in accordance with the requirements of § 35.7.

§§ 35.1, 35.2, 35.4, 35.6, 35.11, 35.12, 35.13, and 35.17 [Amended]

17. In addition to the amendments set forth above, in 18 CFR part 35, the following nomenclature changes are made to the sections indicated:

a. In §§ 35.1(b) and (c), 35.2(c), (d) and (e), 35.4, 35.6, 35.11, 35.12(a), 35.13(a), 35.13(a)(1), 35.13(a)(2)(iii), 35.13(b)(1), 35.13(c)(1), 35.17(c), 35.17(d), and 35.17(e), all references to "rate schedule" are revised to read "rate schedule or tariff".

b. In the headings of §§ 35.17(c), 35.17(d), and 35.17(e), all references to "rate schedules" are revised to read "rate schedules or tariffs".

c. In §§ 35.2(c), 35.13(a)(3), all references to "Director of the Office of Electric Power Regulation" are revised to read "Director of the Office of Markets, Tariffs, and Rates".

PART 131—FORMS

18. The authority citation for part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§§ 131.51, 131.52, and 131.53 [Removed]

19. Sections 131.51, 131.52, and 131.53 are removed.

PART 154—RATE SCHEDULES AND TARIFFS

20. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

21. In § 154.2, paragraph (b) is amended by removing the phrase "either in book form or".

22. Section 154.4 is revised to read as follows:

§ 154.4 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, and contracts, or parts thereof, and material related thereto, cancellation, termination or adoption of tariffs, statements filed pursuant to subpart D of this part, workpapers, responses to data requests, compliance filings, and rehearings. Paper submittals are not required to be filed.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

§ 154.5 [Amended]

23. Amend § 154.5 as follows:

a. Remove the words "Pipeline Regulation" and add in their place the words "Markets, Tariffs and Rates".

b. The reference to "(b)(2)" is revised to read "(f)(2)".

§§ 154.101, 154.102, and 154.102 [Removed and Reserved]

24. Sections 154.101, 154.102, and 154.104 are removed and reserved.

§ 154.106 [Amended]

25. In § 154.106, paragraph (b) is removed and reserved.

§ 154.112 [Amended]

26. Amend § 154.112 as follows:

a. In paragraph (a) remove the word "page" and add in its place "section".

b. In paragraph (a) remove the phrase "or insert sheets" and add in its place "tariff sections".

§ 154.201 [Amended]

27. Amend § 154.201 as follows:

a. Amend paragraph (a) to remove the references to "pages" and add in its place "tariff sections".

b. Amend paragraph (a) to remove the words "each copy of".

28. Section 154.205 is amended as follows:

a. Paragraphs (a), (b), and (c) are redesignated (c), (d), and (e), respectively.

b. The section heading is revised and paragraphs (a) and (b) are added to read as follows:

§ 154.205 Withdrawals and amendments of tariff filings and executed service agreements.

(a) *Withdrawals of tariff filings or service agreements prior to Commission action.* (1) A natural gas company may withdraw in its entirety a tariff filing or executed service agreement upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed tariff sections or service agreements will not become effective under section 4(d) of the Natural Gas Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to tariff sections or service agreements prior to Commission action on a tariff filing.* A natural gas company may file to amend or modify a tariff or service agreement contained in a tariff filing upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 4(d) of the Natural Gas Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 31 days from the date of the filing of the amendment or modification.

* * * * *

§ 154.402 [Amended]

29. In § 154.402, paragraph (b)(1) is amended to replace the word "schedules" with the words "rate schedules".

§ 154.602 [Amended]

30. Section 154.602 is amended by removing the phrase "on the form indicated in § 250.2 or § 250.3 of this chapter, whichever is applicable" and add in its place the phrase "tariff filing in the electronic format required by § 154.4".

31. Section 154.603 is revised as follows:

§ 154.603 Adoption of the tariff by a successor.

Whenever the tariff or contracts of a natural gas company on file with the Commission is to be adopted by another company or person as a result of an acquisition, or merger, authorized by a certificate of public convenience and necessity, or for any other reason, the succeeding company must file with the commission, and post within 30 days after such succession, a tariff filing in the electronic format required by § 154.4 bearing the name of the successor company.

§§ 154.7, 154.111, 154.202, 154.206, 154.208, 154.402, and 154.403 [Amended]

32. In addition to the amendments set forth above, in 18 CFR part 154, the following nomenclature changes are made to the sections as amended:

a. In §§ 154.7(a)(5), 154.111(c), 154.202 (b), 154.206(a), 154.208(a), all references to "sheets" are revised to read "sections".

b. In §§ 154.402(b), 154.402(b)(3), 154.403(b), all references to "sheet" are revised to read "section".

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMNENT UNDER SECTION 7 OF THE NATURAL GAS ACT

33. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

34. Amend § 157.217 by adding a sentence to the end of paragraph (a)(4) to read as follows:

§ 157.217 Changes in rate schedules.

(a) * * *

(4) * * * This tariff filing must be filed in the electronic format required by § 154.4 of this chapter.

* * * * *

PART 250—FORMS

35. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352.

§§ 250.2, 250.3, and 250.4 [Removed and Reserved]

36. Sections 250.2, 250.3, and 250.4 are removed and reserved.

PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

37. The authority citation for part 281 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352.

38. In § 281.204, the first sentence in paragraph (a) is revised to read as follows:

§ 281.204 Tariff filing requirements.

(a) *General Rule.* Each interstate pipeline listed in § 281.202 shall file tariff sheets, in accordance with § 154.4 of this chapter, including an index of entitlements, which provides that if the interstate pipeline is in curtailment, natural gas will be delivered in accordance with the provisions of this subpart.* * *

* * * * *

§§ 281.204, 281.212, 281.213 [Amended]

39. In addition to the amendments set forth above, in 18 CFR part 281, the following nomenclature changes are made to the sections as amended:

a. In §§ 281.204 (a), 281.212 (a), 281.212 (b), 281.212 (c), 281.213 (b), 281.213 (d), 281.213 (e), all references to "sheets" are revised to read as "sections".

b. In § 281.212, the section heading is amended to remove the reference to "sheets" and add in its place "sections."

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

40. The authority for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

§ 284.8 [Amended]

41. In § 284.8, paragraph (i) is removed.

42. In § 284.123, the heading of paragraph (e)(1), paragraph (e)(2), and paragraph (f) are added to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.* (1) *Information to be filed.* * * *

(2) *Form of filing.* The filed statement must contain rates and operating conditions for each rate schedule. Additional sections such as forms of service agreements may be added where applicable. Each rate schedule must be separately designated. Each rate scheduled and section of the operating conditions must be numbered for convenient reference.

(f) *Electronic filing of statements, and related materials.* (1) *General Rule.* All filings made in proceedings initiated under this part must be made electronically, including rates and charges, or parts thereof, and material related thereto, statements, and all workpapers. Paper submittals are not required to be filed.

(2) *Requirements for Signature.* All filings must be signed in compliance with the following:

(i) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(iii) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(3) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

43. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–8321, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

44. Section 300.10 is amended as follows:

a. In paragraph (h)(2), the reference to "Electric Power Regulation" is revised to read "Markets, Tariffs and Rates".

b. Add paragraph (a)(4) to read as follows:

§ 300.10 Application for confirmation and approval.

(a) * * *

(4) *Electronic Filing.* All material must be filed electronically in accordance with the requirements of § 35.7 of this chapter. Paper submittals are not required to be filed.

* * * * *

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

45. The authority citation for part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 341.0 [Amended]

46. Amend § 341.0 as follows:

a. In paragraph (a)(11), remove the words "pages and supplements" and add in their place "sections".

b. Paragraph (b)(3) is removed and reserved.

47. Section 341.1 is revised to read as follows:

§ 341.1 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, and contracts, or parts thereof, and material related thereto, cancellation, termination or adoption of tariffs, statements, workpapers, responses to data requests, compliance filings, and rehearings. Paper submittals are not required to be filed.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Information and Reference Branch, 888 First Street, NE., Washington, DC 20426.

48. Section 341.2 is amended as follows:

a. In paragraph (c)(1) the phrase "tariffs or supplement numbers" is revised to read "tariff sections".

b. Paragraph (c)(3) is removed.

c. Paragraph (a) is revised to read as follows:

§ 341.2 Filing requirements.

(a) *Service of filings.* Carriers must serve a copy of the tariff publication and any tariff justification to each shipper and subscriber consistent with §§ 385.2010 of this chapter.

* * * * *

49. Section 341.3 is amended as follows:

a. Paragraphs (b)(2) and (c) are removed.

b. Paragraphs (b)(3) through (b)(11) are redesignated paragraphs (b)(2) through (b)(10).

c. Paragraphs (a), (b) introductory text, (b)(1), (b)(5)(ii), (b)(5)(iv), (b)(5)(v), (b)(9) and the section heading are revised to read as follows:

§ 341.3 Format of tariff publication.

(a) *Structure of tariff.* Each carrier's tariff publication must be structured so that the rates for movements, rules and regulations, and other information are contained in sections of a single tariff addressing each of the carrier's movements.

(b) *Contents of tariff.* All major tariff sections must contain the following information:

(1) *General information.* (i) The number designation of the section, numbered consecutively, and the number designation of the section that is canceled, if any, under it;

(ii) The type of rates, *e.g.*, local, joint, or proportional, and the commodity to which the tariff or section applies, *e.g.*, crude, petroleum product, or jet fuel;

(iii) Governing sections, *e.g.*, separate "rules and regulations" tariffs or sections, if any;

(iv) The specific Commission order pursuant to which the tariff or section is issued;

(v) The issue date;

(vi) The expiration date, if applicable;

(vii) The name of the issuing officer or duly appointed official issuing the relevant section, the complete street and mailing address of the carrier, and the name and phone number of the individual responsible for compiling the tariff publication.

* * * * *

(5) * * *

(ii) Each rule must be given a separate number, and the title of each rule must be shown in distinctive font.

* * * * *

(iv) Rules may be separately published in a general rules section when it is not desirable or practicable to include the governing rules in the rate section. Rate sections that do not contain rules must make specific reference to the governing general rules section.

(v) When joint rate tariffs or sections refer to a separate governing rules section, such separate tariff must be concurred in by all joint carriers.

* * * * *

(9) *Changes to be indicated in tariff.* (i) A marked version of the tariff sections to be changed or superseded showing additions and deletions. All new numbers and text must be marked by either highlight, background shading, bold, or underline. Deleted text and numbers must be indicated by a strike-through. A marked version of the tariff sections to be changed must be included in each copy of the filing required by these regulations.

(ii) When a tariff publication that cancels a previous tariff publication does not include points of origin or destination, or rates, rules, or routes that were contained in the prior tariff publication, the new tariff publication must indicate the cancellation.

* * * * *

50. Section 341.4 is revised to read as follows:

§ 341.4 Postponing the effective date of a pending tariff.

Tariff filings postponing the effective date of pending tariffs must be filed prior to the proposed effective date of the filing. A postponement tariff filing may not postpone the effective date for more than 30 days. Postponements must be filed in conformance with § 341.1.

51. Section 341.5 is revised to read as follows:

§ 341.5 Cancellation of tariffs.

Carriers must cancel prior tariffs when the tariffs are reissued. If the service in connection with the tariff is no longer in interstate commerce, the tariff publication must so state. Cancellation of tariffs must be filed in accordance with the requirements of § 341.1.

52. In § 341.6, paragraph (b) is amended to remove the last sentence, and paragraphs (c) and (d) are revised to read as follows:

§ 341.6 Adoption rule.

* * * * *

(c) *Change of name.* When a carrier changes its legal name, the carrier must file revised tariffs incorporating the name change.

(d) *Adoption.* When the ownership of a carrier's properties is transferred in whole or in part to another carrier, the adopting and former carrier must comply with the following:

(1) The adopting carrier must file and post a revised tariff that reflects the transfer and indicates whether the rates remain unchanged after the transfer; and

(2) The former owner must immediately file revisions to its tariff or applicable sections covered by the adoption that states that the movement is transferred, names the adopting carrier, and specifies the tariff section where it can be found in the adopting carrier's tariff.

53. Section 341.7 is removed and reserved.

54. In § 341.9, paragraph (f) is removed and paragraph (e) is revised to read as follows:

§ 341.9 Index of tariffs.

* * * * *

(e) *Updating.* The index must be kept current by tariff section filings pursuant to § 341.2. The index updates may be issued quarterly. At a minimum, the index must be reissued every four years.

§ 341.11 [Amended]

55. In § 341.11, paragraph (b) is removed and reserved.

56. In § 341.13, paragraph (b) introductory text is revised to read as follows:

§ 341.13 Withdrawal of proposed tariff publications.

* * * * *

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by filing a notice with the Commission, which includes a transmittal letter, a certification that all subscribers have been notified of the withdrawal, and the previous tariff provisions that are to be reinstated upon withdrawal of the tariff publication under investigation. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

* * * * *

§ 341.14 [Amended]

57. In § 341.14 (a) remove the phrase "on the Title Pages".

§ 341.15 [Amended]

58. In § 341.15 (d), remove the reference to "the title page of".

PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

59. The authority citation for part 344 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

60. Amend § 344.2 as follows:

a. Remove and reserve paragraph (b).

b. Revise paragraphs (a) and (c) to read as follows:

§ 344.2 Manner of submitting quotations.

(a) The quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) [Reserved]

(c) *Filing procedure.* (1) The quotation must be filed with a letter of transmittal that prominently indicates that the filing is in accordance with section 22 of the Interstate Commerce Act.

(2) All filings pursuant to this part must be filed electronically consistent with §§ 341.1 and 341.2 of this chapter.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

61. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

62. In § 346.1, paragraph (b) is revised to read as follows:

§ 346.1 Content of filing for cost-of-service rates.

* * * * *

(b) The proposed tariff filed consistent with the requirements of §§ 341.1 and 341.2 of this chapter; and

* * * * *

PART 347—OIL PIPELINE DEPRECIATION STUDIES

63. The authority citation for part 347 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

64. In § 347.1, remove and reserve paragraph (b), remove the last two sentences of paragraph (c), and paragraph (a) is revised to read as follows:

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

(a) *Means of filing.* Filing of a request for new or changed property account depreciation rates must be made pursuant to part 347 and must be consistent with §§ 341.1 and 341.2 of this chapter.

* * * * *

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

65. The authority citation for part 348 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

66. In § 348.2, paragraphs (a) and (c) are revised to read as follows:

§ 348.2 Procedures.

(a) A carrier must file in the manner provided by §§ 341.1 and § 341.2 of this chapter. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement. In the event the carrier requests privileged treatment under § 388.112 of this chapter, it must file in the manner provided by § 388.122(b)(2) of this chapter.

* * * * *

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.1(b).

* * * * *

PART 375—THE COMMISSION

67. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

68. In § 375.307, paragraphs (i)(5), (n)(1), and (o) are removed and reserved, and paragraph (k)(5) is added to read as follows:

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

* * * * *

(k) * * *

(5) Take appropriate action on motions to withdraw tariff filings filed under parts 35 and 154 of this chapter.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

69. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

§ 385.203 [Amended]

70. Amend § 385.203 as follows:

a. In paragraph (a)(1), remove the reference to "symbols" and add in its place "information".

b. In paragraph (a)(4) the reference to "sheets" is revised to read "sections".

71. In § 385.215, paragraph (a)(2) is amended to add a first sentence to read as follows:

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) * * *

(2) A tariff or rate filing may be amended or modified only as provided in the regulations governing such filings. * * *

* * * * *

72. In § 385.216, paragraph (a) is redesignated as paragraph (a)(1) and paragraph (a)(2) is added to read as follows:

§ 385.216 Withdrawal of pleadings and tariff or rate filings (Rule 216).

(a) Filing. (1) * * *

(2) A tariff or rate filing may be withdrawn only as provided in the regulations governing such filings. The procedures provided in this section do not apply to withdrawals of tariff or rate filings.

* * * * *

§ 385.217 [Amended]

73. In § 385.217 (d)(1)(iii), the reference to "sheets" is revised to read "sections".

74. Section 385.2011 is amended as follows:

a. Paragraphs (b)(4) and (b)(5) are removed.

b. In paragraph (c)(1), the word "schedule" is revised to read "schedule, tariff".

c. Paragraphs (b)(1), (c)(3), and (d)(1) are revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(b) * * *

(1) All tariff and rate filings required by this chapter to be submitted electronically.

* * * * *

(c) * * *

(3) With the exception of the Form Nos. 1, 2, 2–A and 6, and the tariff and rate filings required to be submitted electronically, the electronic filing must be accompanied by the traditional prescribed number of paper copies.

* * * * *

(d)(1) *Where to file.* The electronic media must be submitted according to the electronic filing instructions applicable to each filing. Electronic files submitted on media such as diskettes or CD Roms, as well as paper copies when applicable, and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

* * * * *

[FR Doc. 04–16478 Filed 7–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD05

Federal Gas Valuation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS is proposing to amend the existing regulations governing the valuation of gas for royalty purposes produced from Federal leases. The current regulations became effective on March 1, 1988, and were amended in relevant respects in 1996 and 1998.

In continuing to evaluate the effectiveness and efficiency of its rules, MMS has identified certain issues that warrant proposal and public comment. These issues primarily concern calculation of transportation costs (including the allowed rate of return in calculation of actual transportation costs in non-arm's-length transportation arrangements, and further specific itemization of allowable and non-allowable costs), revision or simplification of certain provisions, and changes necessitated by judicial decisions in subsequent litigation. The MMS is proposing some changes to be consistent with analogous provisions of the recently-amended Federal crude oil valuation rule.

DATES: Comments must be submitted on or before September 21, 2004.

ADDRESSES: Address your comments, suggestions, or objections regarding this proposed rule to:

By regular U.S. Mail. Minerals Management Service, Minerals Revenue Management, Chief of Staff, P.O. Box 25165, MS 302B2, Denver, Colorado 80225–0165; or

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. *mrm.comments@mms.gov*. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: RIN 1010–AD05" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Revenue Management, MMS, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*. The principal authors of this rule are Geoffrey Heath of the Office of the Solicitor and Larry E. Cobb and Susan Lupinski of Minerals Revenue Management, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS is proposing to amend the existing regulations at 30 CFR 206.150 *et seq.* governing the valuation of gas for royalty purposes produced from Federal leases. The MMS conducted four public workshops from April 23 through May 1, 2003, in Denver, Colorado; Albuquerque, New Mexico; Houston, Texas; and Washington, DC. At those workshops, MMS asked for discussion regarding, among other things, royalty treatment of non-arm's-length dispositions (including possible use of New York Mercantile Exchange (NYMEX) prices or spot market index prices in place of the current "benchmarks" for valuing gas not sold under arm's-length contracts), greater specificity regarding allowable transportation costs, the rate of return used in calculating actual transportation costs, and the royalty effect of sales under joint operating agreements. After considering the input from these workshops, MMS is proposing these amendments in an effort to improve the current rule. The amendments proposed do not alter the basic structure or underlying principles of the current rule.

II. Explanation of Proposed Amendments

Comments at the workshops on major valuation issues—such as using spot market index prices or NYMEX prices to value gas not sold under arm's-length contracts, treatment of affiliate resales, and joint operating agreements—were in some cases somewhat sparse, and in other cases quite polarized. Due to the disparity of comments and concerns expressed at the workshops about publicly available spot market prices for natural gas, we have decided that we are not ready to propose new rules on some of these issues at this time. The MMS is continuing to evaluate these issues but will not address them in this proposed rule. For future consideration, we request current public comment on (1) whether publicly available spot market prices for natural gas are reliable and representative of market value of natural gas and should be considered by MMS as a means of valuing natural gas production that is not sold at arm's-length and, if so, (2) how should these spot market prices be adjusted for location differences between the index pricing point and the lease.

On other matters, however, comments indicated that proposed changes were appropriate. For example, MMS adopted a final rule amending the Federal crude oil royalty valuation regulations that became effective in June 2000. 65 FR 10422. Some of these proposed changes for the gas valuation rules would conform to what MMS adopted for crude oil in June 2000. In addition, there are certain issues, on which MMS did not specifically request comments at the workshops, for which proposed changes are appropriate, particularly in light of both recent judicial decisions and the recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004). This proposal addresses issues in the latter categories.

The explanation of the proposed changes will proceed in order according to the section number in the current rule (30 CFR part 206 subpart D) for which amendment(s) are proposed.

A. Section 206.150—Purpose and Scope

The MMS is proposing to amend §206.150(b) by separating it into subparagraphs and adding a new subparagraph (3). The new subparagraph (3) would provide that if a written agreement between the lessee and the MMS Director establishes a production valuation method for any lease that MMS expects at least would approximate the value otherwise established under this subpart, the written agreement will govern to the extent of any inconsistency with the regulations. This provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. As noted, any such agreement also must at least approximate the royalty value for the production that would apply under these regulations.

This proposed amendment is identical to 30 CFR 206.100(d) in the Federal crude oil valuation rule amended in June 2000. The MMS has used the provision in the crude oil regulation to address a few unexpectedly difficult royalty valuation problems. The MMS believes that if this option is useful to lessees and the MMS Director in the context of crude oil royalty valuation, it likewise should be available for gas valuation.

B. Section 206.151—Definitions

The MMS proposes to add a definition of the term "affiliate" and revise the definition of the term "arm's-length contract" to be identical to the June 2000 Federal crude oil valuation rule and to conform the gas valuation rule with the D.C. Circuit's holding in *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999). As in the 2000 Federal crude oil rule, MMS is proposing to

define the term "affiliate" separately from the term "arm's-length contract." We believe this clarifies and simplifies the definitions and should promote better understanding of both "arm's-length contract" and "affiliate." For a full explanation of the reasons for this proposed change to the definitions, see the discussion in the preamble to the June 2000 final crude oil valuation rule at 65 FR 14022, at 14039–14040 (Mar. 15, 2000).

The MMS also proposes to revise the definition of "transportation allowance," which is part of the term "allowance." In the 1988 rule, the term "transportation allowance" (within the term "allowance") was defined as follows:

Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

30 CFR 206.151 (1988–1995). In 1996, the definition was changed to the current definition, which reads as follows:

Transportation allowance means an allowance for the cost of moving royalty bearing substances (identifiable, measurable oil and gas, including gas that is not in need of initial separation) from the point at which it is first identifiable and measurable to the sales point or other point where value is established under this subpart.

30 CFR 206.151 (1996–2003) (promulgated at 61 FR 5448, at 5464 (Feb. 12, 1996)). The principal purpose of the 1996 rulemaking was to eliminate various form filing requirements in connection with transportation and processing allowances for Federal leases, and, in that connection, to separate the valuation rules applicable to Indian leases from the rules applicable to Federal leases. 61 FR at 5448. The only statement in the preamble to the 1996 rule regarding the definition of "allowance" was as follows:

Allowance. We changed the definition to remove any implication of a forms filing requirement, or of having to seek MMS approval prior to claiming an allowance on Form MMS–2014.

61 FR at 5451. While this reason may be relevant to eliminating the words "or an approved or MMS-initially accepted deduction for costs of such transportation" in the 1988 rule's definition, it has no apparent relevance to the other changes in the wording of the definition, for which no explanation at all was given in the preamble.

Indeed, the proposed rule, published on August 7, 1995, at 60 FR at 40127, did not even propose a change to the definition of "allowance" or of "transportation allowance" at all. Nor did it ask for comments on the allowance definitions.

The only reference to the language promulgated in 1996 in any previous **Federal Register** notice was in a November 6, 1995 proposed rule (60 FR at 56007). That proposal grew out of discussions with States and industry regarding possible major changes in gas valuation methodology. The November 1995 proposal was not related to the changes in the allowance form filing requirements, and was not part of the origins of the February 1996 final rule. The November 1995 proposed rule included a number of interrelated changes. One of them was a change in the definition of "transportation allowance" that was identical to the language found in the February 1996 final rule on allowance form filing requirements. The November 1995 proposed rule was never finalized, and MMS formally withdrew it on April 22, 1997 (62 FR at 19536).

There is no explanation in the preamble to the February 1996 final rulemaking of why or how the definition from the unrelated November 1995 proposal found its way into the February 1996 final rule on allowance form filing requirements. There is no indication in any of the **Federal Register** notices in connection with the February 1996 final rulemaking of any intent to change the definition of "transportation allowance." Nor did the February 1996 final rule include any other provisions from the unrelated November 1995 proposal, including provisions that were related to the definition of "transportation allowance" in that proposal. The 1996 change in the wording of the definition appears to have been an inadvertent clerical mistake. In practice, both industry and MMS have continued to conduct business since 1996 on the basis that the substantive definition of "transportation allowance" has remained unchanged. That practice and course of conduct correctly reflect the underlying intent of the existing rules.

To correct any ambiguity, MMS is proposing to amend the definition of "transportation allowance" to be consistent with the June 2000 Federal crude oil valuation rule, with necessary changes in wording to apply it in the gas context. The proposed definition reads as follows:

Transportation allowance means an allowance for the reasonable, actual costs of moving unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

This proposed change also returns the definition to being substantively the same as the original 1988 rule's definition.

Finally, MMS proposes to add the word "actual" before the word "costs" in the definition of "processing allowance." The February 1996 final rule on allowance form filing requirements deleted that word with no explanation. The proposed change restores the pre-1996 wording and makes the wording of this definition consistent with wording of other allowance definitions. MMS does not intend to change the meaning of the term "processing allowance" in any respect.

C. Section 206.157—Determination of Transportation Allowances

The MMS is proposing a number of changes and technical corrections to this section. First, MMS proposes to change the allowed rate of return in § 206.157(b)(2)(v) used in calculating transportation costs for non-arm's-length transportation arrangements. Under § 206.157(b)(2), the lessee has a choice of two methods for calculating transportation costs. The first method allows the lessee to use its operating and maintenance expenses, overhead, depreciation, and a rate of return on its undepreciated capital investment. Under the second method, the lessee may use its operating and maintenance expenses, overhead, and a rate of return on its initial investment. The MMS proposes to change the allowable rate of return used in both of these calculation methods.

The rate of return in the current § 206.157(b)(2) is the industrial rate associated with the Standard and Poor's BBB rating. The MMS believed that this rate represented an intermediate rate fairly reflective of the industry's overall cost of money necessary to construct transportation facilities (principally through debt financing). The MMS proposes to increase that rate to 1.3 times the rate associated with the BBB rating.

The reason for proposing this rate is a recent MMS, Offshore Minerals Management, Economics Division study of gas pipeline costs of capital. The study examined Energy Information Administration (EIA) published returns on investment for 2000–2001 for firms

engaged in the pipeline business, which is one indicator of the cost of capital. The MMS study also examined cost of capital data for gas pipelines and distributors published by Ibbotson for the first quarter of 2003. The EIA data indicated that the average rate of return for firms in the pipeline business approximated the BBB rate, and that most pipelines have a BBB rating for their debt capital. The Ibbotson data showed a cost of capital range for gas pipelines and distributors between 1.1 times BBB and 1.5 times BBB. (The MMS study also discusses a recent American Petroleum Institute (API) research paper that took the approach that a weighted average cost of debt and equity represents the true cost of capital for non-independent pipelines. The API paper finds a ratio of weighted average cost of capital to the BBB bond rate of between 1.6 and 1.8. However, the API paper appears to be based on the weighted average cost of capital for the oil production industry as opposed to the gas pipeline industry.)

Based on the assumptions underlying the Ibbotson range of findings that MMS's study believed were most accurate, it found 1.3 times BBB to be the most appropriate. The MMS therefore is proposing this rate. This is also the rate that MMS adopted in its recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004). The MMS seeks comments regarding the proper rate of return and supporting data and analysis.

The MMS recognizes that some industry commenters in three of the workshops recommended that the same rate of return that applies in non-arm's-length transportation cost calculations also should apply in non-arm's-length processing cost calculations. The processing cost regulations at 30 CFR 206.159(b)(2)(v) also allow for a rate of return equal to the Standard & Poor's BBB bond rate. However, MMS is not proposing a change in the rate of return for non-arm's-length processing cost calculations at this time because the MMS study did not extend to gas processing plant costs. The MMS welcomes comments, data, and analysis on that issue. If MMS obtains sufficient information and data through the comment process to support a change, it may change the rate of return used in non-arm's-length processing cost calculations in the final rule.

The MMS proposes to rewrite § 206.157(b)(5). This provision allows lessees to apply for an exception to the requirement to calculate actual costs in non-arm's-length transportation situations if the lessee has a tariff approved by the Federal Energy Regulatory Commission (FERC) or a State regulatory agency. The provision as currently written then adds a number of conditions that are difficult to interpret. The MMS's experience has been that these conditions have been difficult to apply and are burdensome on the lessees. (For example, the lessee must calculate actual costs before it can claim the exception from the requirement to calculate actual costs under some circumstances (*i.e.*, if there are no arm's-length transportation charges to use for comparison, and if no FERC or state regulatory agency cost analysis exists, and if FERC or the state regulatory agency declines to investigate after a timely MMS objection).) The underlying concept that the current provision is meant to embody is that if a regulatory agency has either adjudicated a particular tariff for a transportation system (to resolve an objection to the tariff as filed) or has analyzed the tariff (if there is no objection filed) and found it to be a just and reasonable rate, the lessee should be able to use it as the basis for its transportation allowance as long as the tariff rate is still consistent with actual market conditions. The current wording, however, does not necessarily accomplish this objective.

The MMS proposes to simplify §206.157(b)(5) by rewriting it as follows:

You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.

(i) The MMS will grant the exception if (A) the transportation system has a tariff approved by the Federal Energy Regulatory Commission (FERC) or a state regulatory agency that FERC or the state regulatory agency has either adjudicated or specifically analyzed, and (B) third parties are actually paying prices under the tariff to transport gas on the system under arm's-length transportation contracts.

(ii) If MMS approves the exception, you must calculate your transportation allowance for each production month based on the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts during that production month. If during any production month there are no prices paid under the tariff by third parties to transport gas on the system under arm's-length transportation contracts, you may use the volume-weighted average of the rates paid by third parties under arm's-length transportation contracts in the most recent preceding production month in which third parties paid such rates, for up to two successive production months.

(iii) You may use the exception under this paragraph if the tariff remains in effect and no more than two production months have elapsed since third parties paid prices under the tariff to transport gas on the system under arm's-length transportation contracts.

Under this proposal, if a transportation system with which the lessee is affiliated has an approved tariff that has been either adjudicated or specifically analyzed, and if there are currently arm's-length shippers on that system, then the lessee would not have to calculate actual costs. But the allowance would not necessarily be the maximum tariff rate. Instead, it would be the volume-weighted average of the arm's-length rates charged to the non-affiliated shippers. This would avoid the potential for the lessee to claim a transportation allowance that exceeds the market transportation rates actually charged to arm's-length shippers.

The proposed provision also covers situations (which MMS anticipates would be rare) in which there is a short gap of one or two production months in which there are no arm's-length prices paid by third parties to transport gas on the system. Such a situation might arise if there were very few arm's-length third-party shippers, and the third party shippers temporarily were without contracts to sell their gas. In that event, the proposed rule would allow the lessee to use the volume-weighted average of the rates paid by third parties under arm's-length transportation contracts in the most recent preceding production month in which third parties paid such rates, for up to two successive production months, during the "gap" period. If there are no arm's-length transportation rates charged to unaffiliated shippers for more than two successive production months, the lessee would not be able to use the exception and would have to calculate actual costs. Similarly, the lessee would have to calculate actual costs if the tariff expires.

Further, the mere filing of a tariff with FERC or a State regulatory agency is not sufficient for a lessee to invoke the exception. The tariff must either be adjudicated, or, if no party files an objection to a filed tariff, it must be specifically analyzed by either FERC or the State regulatory agency.

The MMS also proposes to amend § 206.157(c) in several respects. First, the proposal would eliminate the requirement that the lessee report its transportation allowance using a separate *line* entry on the Form MMS–2014. That requirement is no longer relevant because the Form MMS–2014 has been revised. While the transportation allowance is still reported in a discrete field, it is not strictly on a separate line from associated sales transaction data. The proposal would revise the regulation accordingly.

Second, the wording of the proposed new paragraph (c) would make it consistent with the analogous provisions of the June 2000 Federal crude oil valuation rule at §§ 206.114 and 206.115.

Third, the proposed rule would add new paragraphs (c)(1)(iii) and (c)(2)(v) to expressly clarify that allowances that were in effect when the 1988 valuation rule became effective and that were "grandfathered" under the former §§206.157(c)(1)(v) and 206.157(c)(2)(v) have been terminated. Paragraphs (c)(1)(v) and (c)(2)(v) were removed by the February 1996 rule discussed above. *See* 61 FR at 5451. Because of the very limited explanation for that removal and the fact that removal of these clauses was not specifically mentioned in the August 1995 proposed rule, disputes have arisen regarding the continued validity after March 1996 of pre-1988 allowances that had continued in effect under the "grandfathering" provisions. The MMS reaffirms its view that the pre-1988 allowances were terminated effective March 1, 1996, when the "grandfathering" provisions were removed. But regardless of the outcome of disputes as to the continued validity of "grandfathered" allowances between 1996 and the present, MMS proposes to specifically clarify that lessees may not use such allowances prospectively.

The proposed rule also would amend § 206.157(f), which identifies allowable costs in determining transportation allowances, in three respects. One proposed change would conform the rule with recent judicial precedent. The other two proposed amendments are analogous to the recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004).

First, MMS proposes to amend 206.157(f)(1) regarding firm demand charges (sometimes called reservation fees). The current rule provides:

Firm demand charges paid to pipelines. You must limit the allowable costs for firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period;

The rule thus prohibits lessees from deducting unused firm demand charges.

Section 206.157(f) was promulgated as part of a rule amendment published on December 16, 1997 (62 FR 65762) (effective February 1, 1998). The 1998 rule amendment specified which of the various costs addressed in and itemized under FERC Order 636 either were deductible or nondeductible in calculating transportation allowances. The producing industry challenged the rule in *Independent Petroleum Association of America et al.* v. *Armstrong,* Nos. 1:98CV00531 and 1:98CV00631 (D.D.C.). The primary issue in the litigation was the lessee's duty to market production at no cost to the lessor, which the rule formally codified at 30 CFR 206.152(i) and 206.153(i). But among the other provisions that the producing industry challenged was the prohibition against deducting unused firm demand charges in § 206.157(f)(1).

In *IPAA* v. *Armstrong,* the district court initially declared the entire rule unlawful. 91 F. Supp. 2d 117, 130 (D.D.C. 2000). On April 10, 2000, the Federal Government moved to alter or amend the judgment under Rule 59(e), Fed. R. Civ.P. Among other things, the Government explained:

> The Court's Order and Final Judgment states that 30 CFR 206.157(f)(1) (Federal leases) and 206.177(f)(1) (Indian leases) are invalidated without further clarification. These sections of the challenged rule allow so-called "firm demand" charges—charges that shippers pay to pipelines to reserve pipeline capacity—to be deducted as transportation costs, but limit the deductibility of these costs to the costs incurred for the actual volumes transported.
>
> In limiting the deductibility of these costs to the actual volumes transported, these provisions correspondingly provide that lessees may not take into account in calculating the allowance "any gains associated with releasing firm capacity"—*i.e.*, selling unused firm capacity to other producer-shippers. In other words, both the cost of unused firm capacity and revenues derived from selling unused firm capacity are disregarded under the rule and are irrelevant in calculating the allowance.
>
> However, the rule does require lessees to reduce the firm demand charge claimed as a transportation allowance by the amount of any payment or credit received from the pipeline. *Id.* This ensures that, if a lessee in the end pays less than the cost originally paid for transportation and used in calculating the allowance originally reported, the lessee will reduce the earlier transportation cost to prevent the allowance of a deduction for transportation costs which it has not actually paid to the pipeline.[2]
>
> In their briefs in this case, Plaintiffs challenged MMS' refusal to allow the costs of unused firm capacity as a transportation cost deduction. At pages 24–25 of the Court's Opinion, the Court seems to indicate some belief that disallowance of unused firm demand charges was arbitrary, but there was no further discussion of this provision in the Opinion. The Order and Final Judgment then stated only that the cited paragraphs were invalid.
>
> Consequently, it appears to Defendants that the Court intended to declare 30 CFR 206.157(f)(1) and 206.177(f)(1) unlawful only with regard to that portion of the regulations which disallows a deduction for unused capacity, and not with regard to those additional provisions discussed above. But invalidating the disallowance of unused firm demand charges (and therefore allowing lessees to deduct them as part of transportation costs) necessarily affects the other provisions of these paragraphs. Accordingly, Defendants seek clarification from the Court.
>
> Before the Court's decision here, when unused firm demand charges were *disallowed,* there correspondingly was no consequence for the allowance calculation if the lessee sold all or part of its unused firm capacity. If lessees now may *deduct* unused firm demand charges, and report transportation allowances on that basis, it necessarily follows that if a lessee sells unused firm capacity, it must reduce the reported allowance and pay the resulting royalties due. This necessarily follows from the gross proceeds rule. If a lessee initially reported a transportation allowance in an amount greater than its ultimate transportation costs, it must amend its royalty reports and pay the additional royalties..
>
> For these reasons, the attached proposed amended judgment both clarifies which portions of these paragraphs have been held invalid and requires lessees to amend their reports and pay additional royalties if they sell firm capacity the costs of which previously had been included in a reported allowance.

Defendants' Motion to Alter or Amend the Judgment, April 10, 2000, at 4–6. On September 1, 2000 (2000 U.S. Dist. LEXIS 22478), the Court granted the motion to alter or amend, and entered an Amended Order that read in relevant part as follows:

> The court hereby declares that the following regulations are unlawful and of no force or effect:
>
> * * * * * *
>
> 2. Those provisions of 30 CFR 206.157(f)(1) and 206.177(f)(1) to the extent that they limit allowable costs for firm demand charges in determining transportation allowances to the applicable rate per MMBtu multiplied by the actual volumes transported; however, to the extent that a lessee sells unused firm capacity, and if the cost of that unused firm capacity was included in a previously reported transportation allowance, the lessee must amend its royalty reports to reduce the transportation allowance by the revenue derived from the sale of the firm capacity, and pay any resulting royalty and late payment interest due.

[2] IPAA challenges that principle at pp. 41–43 of its original brief, but the Court's Opinion contains no discussion of this issue. Defendants thus infer that the Court did not mean to invalidate this provision of the cited paragraphs.

Amended Order and Final Judgment, September 1, 2000, at 1–2.

The Government appealed the district court's decision. In *Independent Petroleum Association of America* v. *DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002), *cert. denied*, __U.S. __, 123 S. Ct. 869 (2003), the Court of Appeals for the District of Columbia Circuit reversed the district court on the principal issue in the litigation, the lessee's duty to market production at no cost to the lessor, and upheld the rule generally. However, with respect to firm demand charges, the D.C. Circuit held:

> *"Unused" firm demand charges.* Shippers of natural gas may choose among different degrees of assurance that space will be available for their shipments, paying (naturally) for extra security. By paying a firm demand charge (an upfront reservation fee), they secure a guaranteed amount of continuously available pipeline capacity; when they actually ship, they incur a "commodity charge" for the transport itself. The reservation fee, however, is nonrefundable—the cost of any reserved capacity that a lessee ultimately cannot use will be lost unless it is able to resell the capacity. (Recall that the district court amended the summary judgment order, at the behest of the government, to provide for a credit to the government in the event of such resales.) In contrast, with "interruptible" service, shippers pay no reservation fee, but their access to pipeline capacity is subject to the changing needs of other, higher priority customers (*i.e.*, those who pay for firm demand). Producers claim that the unused firm demand charges are part of their actual transportation costs, and thus should be deductible.
>
> In defense of its contrary view, Interior said only that it does "not consider the amount paid for unused capacity as a transportation cost," Final Rule, 62 FR at 65757/1, not revealing to what category such expenses did belong. In its opening brief, it quotes its prior assertion and declares that the district court must be reversed because it "offered no cogent reason for rejecting this distinction." Interior Br. at 43. But Interior has offered no "distinction" at all, only an unusually raw *ipse dixit*. On its face, it is hard to see how money paid for assurance of secure transportation is not "for transportation"; the cost of freight insurance looks like a shipping expense, for example, even if the goods arrive without difficulty and the premium therefore goes "unused." And Interior makes no suggestion that producers have incurred such fees extravagantly—an extravagance that seems unlikely, as under the ordinary ⅛ lease the producer would bear ⅞ of the loss. Further, under the crediting arrangement provided by the district court order, the government will share in any recovery of "unused" charge, a recovery that producers have strong incentives to pursue. While some reason may lurk behind the government's position, it has offered none, and we have no basis for sustaining its conclusion. *See, e.g., Motor Vehicle Manufacturers Ass'n., Inc.* v. *State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).
>
> The judgment of the district court is reversed on all issues except for its ruling on unused firm demand charges, which we affirm.

279 F.3d at 1042–1043.

The MMS therefore proposes to amend 30 CFR 206.157(f)(1) to conform with the D.C. Circuit's decision, so as to allow lessees to deduct unused firm demand charges, and to provide for reduction of previously reported transportation allowances in the event the lessee sells unused firm capacity after including it as part of that previously reported allowance. The proposed amended provision would read:

> (1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees paid to a pipeline, including charges or fees for unused firm capacity that you have not sold before you report your allowance. If you receive a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty and late payment interest due;
>
> (2) * * *.

Second, MMS proposes to amend § 206.157(f)(7), addressing actual and theoretical line losses. The current rule prohibits deduction of both actual and theoretical line losses under non-arm's-length transportation arrangements unless the allowance is based on a FERC- or State regulatory-approved tariff. In the recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004), MMS allowed actual, but not theoretical, line losses under non-arm's-length transportation arrangements. As MMS explained in the preamble to that final rule, MMS believes that actual line losses properly may be regarded as a cost of moving production. In addition, if there is a line gain, the lessee must reduce its transportation allowance accordingly. In a non-arm's-length situation, however, a charge for theoretical line losses would be artificial and would not be an actual cost to the lessee. While a lessee may have to pay an amount to a pipeline operator for theoretical line losses as part of an arm's-length tariff, in a non-arm's-length situation, line losses, like other costs, should be limited to actual costs incurred. (However, if a non-arm's-length transportation allowance is based on a FERC- or State regulatory-approved tariff that includes a payment for theoretical line losses, that cost would be allowed, as the current rule already provides.)

The MMS also proposes to amend § 206.157(f) by adding a new paragraph (f)(10) to allow lessees to deduct the costs of securing a letter of credit or other surety that the pipeline requires a shipper to maintain under an arm's-length contract. The MMS recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004) allows this cost in arm's-length situations. The MMS believes that this is a cost that the lessee must incur to obtain the pipeline's transportation service, and therefore is a cost of moving the gas. These costs may include only the costs currently allocable to production from the Federal lease. In non-arm's-length situations, MMS expects that requiring a letter of credit from an affiliated producer is unnecessary and that the corporate organization ordinarily would avoid incurring the costs of the premium necessary for the letter of credit. MMS therefore believes it inappropriate to allow such a deduction.

A surety may take any of several forms—for example, a letter of credit, a bond, or a cash deposit on which a pipeline may draw in the event of nonpayment of transportation charges. To illustrate the principle that the costs may include only the costs of surety that are allocable to the Federal lease or leases, assume hypothetically that you make a cash deposit of 2 months of the expected transportation charges (assume $50,000), and transport 100,000 MMBtu per month, of which 75,000 MMBtu are produced from a Federal lease. You would calculate the cost of the cash deposit in this example as follows:

(i) Calculate the monthly rate of return representing your cost of capital in making the cash deposit. In this example, if the Standard and Poor's BBB rating is 8 percent, the allowable annual rate would be 1.3 × .08 = .104. Divide the annual rate by 12 to obtain a monthly rate. The allowable monthly rate therefore would be .104/12 = .008667.

(ii) Multiply that monthly rate of return by the amount of the deposit ($50,000) to get the monthly cost, which would be $50,000 × .008667 = $433.33.

(iii) Then multiply that result by the proportion of total production that is produced from the Federal lease to calculate the share of that amount applicable to the Federal lease. In this example, the proportion of production applicable to the Federal lease is 75,000 MMBtu/100,000 MMBtu = ¾. So you

could include in your transportation costs $433.33 × .75 = $325 as an allowable transportation cost for as long as the $50,000 is on deposit (and the other factors remain unchanged).

The expense of a letter of credit or other surety would be treated similarly. If you pay a bank $5,000 as a non-refundable fee for a letter of credit, you could include the proportion allocable to Federal production in the month that fee is paid (and then never again), or you may calculate a monthly cost of that $5,000 (similar to calculating the cost of the cash deposit) and include that monthly cost as part of the transportation allowance reported each month for the life of the transportation contract. The MMS welcomes comments on whether these are reasonable ways to calculate the actual costs of sureties that pipelines require from shippers.

The MMS seeks comments regarding whether these various costs should be allowed, and whether there are other costs directly attributable to the transportation of gas that should be included in the final rule.

Finally, MMS proposes to amend § 206.157(g) to add new paragraphs (g)(5), (g)(6), and (g)(7), and to redesignate the current paragraph (g)(5) as paragraph (g)(8), to further specify other costs that are not allowable in determining transportation allowances. These nonallowable costs include:

- Fees paid to brokers. This includes fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees. The MMS believes such fees are marketing costs and are not actual costs of transportation.
- Fees paid to scheduling service providers. This includes fees paid to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees. The MMS believes that these costs are marketing or administrative costs that lessees must bear at their own expense and are not actual costs of transportation.
- Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production. These costs never have been deductible, and MMS proposes to expressly reaffirm this principle for clarity.

The recently-amended Federal crude oil valuation rule (69 FR 24959, May 5, 2004) identifies these costs as non-deductible, and the proposal here would make the two rules consistent.

The proposed paragraph (g)(8), addressing "other nonallowable costs," is the current paragraph (g)(5) renumbered.

The MMS does not believe that any of the above-described costs are incurred as part of the process of physically moving gas. The MMS seeks comments on whether any of these costs should be deductible.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at *www.mrm.mms.gov*. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Royalty Impact Data

Summarized below are the estimated costs and benefits of the proposed rule to all potentially affected groups: Industry, the Federal Government, and State and local governments. The costs and the royalty collection impacts, are segregated into two categories—those that would accrue in the first year after the proposed rule becomes effective and those that would accrue on a continuing basis each year thereafter. Of the five proposed changes that have cost impacts, four will result in royalty *decreases* for industry, States, and MMS. One change will result in a royalty *increase*. The net impact of the five changes will result in an expected overall royalty decrease of $6,916,000, as itemized below.

A. Industry

(1) Net decrease in royalties—Allowable transportation deduction for unused firm demand charges. Under this proposed rule, industry would be allowed to deduct the portion of firm demand charges it paid "arm's-length" to a pipeline, but did not use. Currently, industry may deduct only the firm demand rate per MMBtu applied to the actual volume transported. Therefore, calculating the estimated royalty decrease would be accomplished by determining the total firm demand charges paid to a pipeline and then determining the portion of capacity that is unused. For example, if the lessee ships only 80 percent of the firm capacity it paid for, then it would be able to deduct an additional 20 percent of the total firm demand charges paid. For estimating the annual royalty decrease of this provision of the proposed rule, the following data and assumptions are used:

The total transportation allowances deducted by Federal lessees from gas royalties for FY 2002 were approximately $103,789,000. While MMS does not maintain data or request information regarding the percentage of transportation allowances that fall under either the arm's-length or non-arm's-length category, we believe that gas, unlike oil, is typically transported through interstate pipelines not owned by the lessee. Therefore, we estimate that 75 percent of all gas transportation allowances are arm's-length. We also made the following two assumptions: (1) On average, firm demand charges account for less than 20 percent of arm's-length transportation payments made by Federal lessees to transport gas away from the lease to a sales point (because of their steep cost and level of service, firm demand charges are predominantly paid to pipelines by local distribution companies to guarantee delivery of gas to retail customers), and (2) the amount of unused capacity is 25 percent (although capacity utilization can vary widely from pipe to pipe and from time to time, minimum volumes of gas flowing through an interstate pipeline are typically around 75 percent of the total pipeline capacity). Using these parameters as a maximum estimate of the revenue impact, the royalty decrease for industry resulting from deducting unused firm demand charges would be at most $3,892,000 ($103,789,000 × 0.75 × 0.2 × 0.25).

(2) Net decrease in royalties—Increase Rate of Return in non-arm's-length situations from 1 times the Standard and Poor's BBB bond rate to 1.3 times the Standard and Poor's BBB bond rate. Based on the above estimate of arm's-length transportation usage, we assumed that 25 percent of all reported gas transportation allowances are non-arm's-length. We also assumed that over the life of the pipeline, allowance rates are made up of ⅓ rate of return on undepreciated capital investment, ⅓

depreciation expenses and ⅓ operation, maintenance and overhead expenses (these are the same assumptions used in the recent threshold analysis for the Federal oil valuation rulemaking). Based on total gas transportation allowance deductions of $103,789,000 for FY 2002, and our assumptions regarding the makeup of the allowance components, the portion of allowances attributable to the rate of return would be approximately $8,649,000. Therefore, we estimated that increasing the basis for the rate of return by 30 percent could result in additional allowance deductions of $2,594,725 ($8,649,000 × .30). That is, the net decrease in royalties paid by industry would be approximately $2,595,000.

(3a) Net decrease in royalties—Allow Line Loss as a component of a non-arm's-length transportation allowance. For this analysis, we assumed that gas pipeline losses are 0.2 percent of the volume transported through the pipeline, which would also equate to 0.2 percent of the value of the Federal royalty share of gas production transported. For FY 2002, the total value of the Federal gas royalty share subject to transportation allowances was approximately $2,506,447,000. Assuming 25 percent of that amount was associated with non-arm's-length transportation, the value of the line loss would be $1,253,224 ($2,506,447,000 × .25 × .002). Therefore, the net decrease in royalties would be approximately $1,253,000 annually.

(3b) Net decrease in royalties—Allow the cost of a Letter of Credit as a component of an arm's-length transportation allowance. The cost of a letter of credit is based on the volume of gas transported through a pipeline under third-party transportation. Therefore, in estimating the annual royalty impact of this provision, we first estimated the total volume of the FY 2002 Federal gas royalty share that would be subject to a transportation allowance. We estimated that volume would be no more than 80 percent of the total Federal gas royalty share onshore and offshore. We also estimated that, based on the total sales volume of gas from Federal onshore and offshore leases (5,821,978,000 Mcf) and the average onshore and offshore royalty rate of 13.55 percent, the royalty share of Federal gas production subject to a transportation allowance would be approximately 631,000,000 Mcf. Next, we assumed that 75 percent of that volume would be transported at arm's length, and that typical letter of credit costs would be at most $0.03 per Mcf for 2 months (or ⅙ of a year) supply of gas transported. Finally, we assumed that only 20 percent of those shippers (by volume) did not meet the pipeline credit standards and were required to post a letter of credit, because most Federal gas is transported by major oil corporations with A or higher credit ratings. We thus estimated that the additional cost to industry for which an allowance deduction could be taken against royalties would be no more than approximately $473,000 per year (631,000,000 × .75 × .2 × ⅙ × $0.03).

(4) Net increase in royalties—Require computation under the exception to use non-arm's-length transportation costs to be based on actual arm's-length charges instead of the FERC tariff rate. Our database for requests to use a FERC-approved tariff as an exception to non-arm's-length transportation costs indicates that MMS has received 94 such requests dating back to 1990 (When approved, these exceptions would continue year after year). Therefore, it is apparent that use of the exception is widespread under non-arm's-length transportation situations. Therefore, for this revenue impact analysis, we assumed that at least 50 percent of the non-arm's-length allowances are based on a FERC tariff. (We are not aware of any State-approved tariffs being used). Because we do not have any data suggesting what the average FERC tariff rate would be nationwide, due to significantly varying market conditions, locational differences, and myriad tariff structures, we must assume a conservative estimate regarding the percentage discount to the tariff that would be negotiated by arm's-length shippers. We believe, on average, a reasonable discount that would be paid under the FERC tariff would be 90 percent of the full tariff rate. Therefore, under the new proposed provision, lessees would be allowed to deduct only 90 percent of the tariff rate, instead of 100 percent, a 10 percent reduction in the reported allowance amount. Using these assumptions (including the assumption that 25 percent of reported transportation allowances are non-arm's-length), we estimate that royalties will therefore increase by about $1,297,000 per year ($103,789,000 × .25 × .5 × .1 = $1,297,000).

B. State and Local Governments

This rule will not impose any additional burden on local governments. The MMS estimates that States impacted by this rule would receive an overall decrease in royalties as indicated below:

States receiving revenues from offshore Outer Continental Shelf Lands Act Section 8(g) leases would share in a portion of the reduced royalties resulting from additional transportation allowance deductions claimed by industry. Based on the ratio of offshore Federal revenues disbursed to States for section 8(g) leases (.61 percent), it is assumed that the same proportion of allowance deductions for offshore transportation would impact those State revenues. Of the $103,789,000 total gas transportation allowance deductions for FY 2002, $52,363,000 (or about 50.5 percent) was attributable to offshore production. Using the total revenue impacts calculated under A.(1), (2), (3a), (3b), and (4) above ($6,916,000) applied to offshore production using the offshore factor of 50.5 percent, and the disbursement percentage attributable to section 8(g) leases from Federal offshore revenues of .61 percent, the net *offshore impact* on State revenues for 8(g) lease would be approximately $21,000 (($6,916,000 × .505 × 0.0061 = $21,000). Using the factor of .0030805 (.505 × .0061) applied to the royalty decrease or increase, the impact of each proposed change described above can be easily computed for the States:

(1) Net decrease in royalties—Allowable transportation deduction for unused firm demand charges. $3,892,000 × .0030805 = $11,989.

(2) Net decrease in royalties—Increase Rate of Return in non-arm's-length situations from 1 times the Standard and Poor's BBB bond rate to 1.3 times the Standard and Poor's BBB bond rate. $2,595,000 × .0030805 = $7,994.

(3a) Net decrease in royalties—Allow Line Loss as a component of a non-arm's-length transportation allowance. $1,253,000 × .0030805 = $3,860.

(3b) Net decrease in royalties—Allow the cost of a Letter of Credit as a component of an arm's-length transportation allowance. $473,000 × .0030805 = $1,457.

(4) Net increase in royalties—Require computation under the exception to use non-arm's-length transportation costs to be based on actual arm's-length charges instead of the FERC tariff rate. $1,297,000 × .0030805 = $3,995.

For States receiving 50 percent of the revenues from onshore Federal lands (onshore transportation allowances account for 49.5 percent of the total gas transportation allowance deductions for FY 2002), the estimated net *onshore impact* would be approximately $1,712,000 ($6,916,000 × .495 × .5 = $1,712,000). Using the factor of .2475 (.495 × .5) applied to the royalty decrease or increase, the impact of each proposed change described above can be easily computed for the States:

(1) Net decrease in royalties—Allowable transportation deduction for

unused firm demand charges. $3,892,000 × .2475 = $963,270.

(2) Net decrease in royalties—Increase Rate of Return in non-arm's-length situations from 1 times the Standard and Poor's BBB bond rate to 1.3 times the Standard and Poor's BBB bond rate. $2,595,000 × .2475 = $642,263.

(3a) Net decrease in royalties—Allow Line Loss as a component of a non-arm's-length transportation allowance. $1,253,000 × .2475 = $310,118.

(3b) Net decrease in royalties—Allow the cost of a Letter of Credit as a component of an arm's-length transportation allowance. $473,000 × .2475 = $117,067.

(4) Net increase in royalties—Require computation under the exception to use non-arm's-length transportation costs to be based on actual arm's-length charges instead of the FERC tariff rate. $1,297,000 × .2475 = $321,007.

The *total impact* on all States from offshore and onshore production would be $1,733,000, representing the net impact of the royalty decreases and the royalty increase from offshore and onshore. For each proposed change, the total impact on the States would be the sum of the 8(g) impacts plus the onshore impacts itemized above:

(1) Net decrease in royalties—Allowable transportation deduction for unused firm demand charges. $11,989 + $963,270 = $975,259.

(2) Net decrease in royalties—Increase Rate of Return in non-arm's-length situations from 1 times the Standard and Poor's BBB bond rate to 1.3 times the Standard and Poor's BBB bond rate. $7,994 + 642,263 = $650,257.

(3a) Net decrease in royalties—Allow Line Loss as a component of a non-arm's-length transportation allowance. $3,860 + $310,118 = $313,978.

(3b) Net decrease in royalties—Allow the cost of a Letter of Credit as a component of an arm's-length transportation allowance. $1,457 + 117,067 = $118,5.

(4) Net increase in royalties—Require computation under the exception to use non-arm's-length transportation costs to be based on actual arm's-length charges instead of the FERC tariff rate. $3,995 + $321,007 = $325,002.

C. Federal Government

The Federal Government, like the States, would be impacted by a net overall decrease in royalties as a result of the proposed changes to the regulations governing transportation allowance computations. In fact, the royalty decrease experienced by the Federal Government would be the difference between the total royalty decrease benefiting industry and the royalty decrease affecting the States. In other words, the royalty savings by industry would be shared proportionately between the States and the Federal Government as computed below. The net impact on the Federal Government would be approximately $5,183,000.

(1) Net decrease in royalties—Allowable transportation deduction for unused firm demand charges. $3,892,000 − $975,259 = $2,916,741.

(2) Net decrease in royalties—Increase Rate of Return in non-arm's-length situations from 1 times the Standard and Poor's BBB bond rate to 1.3 times the Standard and Poor's BBB bond rate. $2,595,000 − $650,257 = $1,944,743.

(3a) Net decrease in royalties—Allow Line Loss as a component of a non-arm's-length transportation allowance. $1,253,000 − $313,978 = $939,022.

(3b) Net decrease in royalties—Allow the cost of a Letter of Credit as a component of an arm's-length transportation allowance. $473,000 − $118,524 = $354,476.

(4) Net increase in royalties—Require computation under the exception to use non-arm's-length transportation costs to be based on actual arm's-length charges instead of the FERC tariff rate. $1,297,000 − $325,002 = $971,998.

D. Summary of Costs and Benefits to Industry, State and Local Governments, and the Federal Government

In the table, a negative number means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs. The net expected change in royalty impact is the sum of the royalty increases and decreases.

SUMMARY OF COSTS AND ROYALTY IMPACTS

Description	Costs and royalty increases or royalty decreases	
	Fiscal year	Subsequent years
A. Industry		
(1) Royalty Decrease—Allowable transportation deductions	−$8,213,000	−$8,213,000
(2) Royalty Increase—Restricted use of FERC tariff charges	1,297,000	1,297,000
(3) Net Expected Change in Royalty Payments from Industry	−6,916,000	−6,916,000
B. State and Local Governments		
(1) Royalty Decrease—Allowable transportation deductions	−2,058,000	−2,058,000
(2) Royalty Increase—Restricted use of FERC tariff charges	325,000	325,000
(3) Net Expected Change in Royalty Payments to States	−1,733,000	−1,733,000
C. Federal Government		
(1) Royalty Decrease—Allowable transportation deductions	−6,155,000	−6,155,000
(2) Royalty Increase—Restricted use of FERC tariff charges	972,000	972,000
(3) Net Expected Change in Royalty Payments to Federal Govemment	−5,183,000	−5,183,000

3. Regulatory Planning and Review, Executive Order 12866

Under the criteria in Executive Order 12866, this proposed rule is not an economically significant regulatory action as it does not exceed the $100 million threshold. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this proposed rule because it raises novel legal or policy issues.

1. This proposed rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government. The MMS has evaluated the costs of this rule, and has determined that it will impose no additional administrative costs.

2. This proposed rule will not create inconsistencies with other agencies' actions.

3. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This proposed rule will raise novel legal or policy issues. See *Explanation of Proposed Amendments* in the Preamble of this proposed rule.

4. Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. See the above Analysis titled "Summary of Costs and Royalty Impacts."

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Does not have an annual effect on the economy of $100 million or more. See the Analysis titled "Summary of Costs and Royalty Impacts."

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This proposed rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This proposed rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See the above Analysis titled "Summary of Costs and Royalty Impacts."

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this proposed rule does not have federalism implications. A federalism assessment is not required. It will not substantially and directly affect the relationship between the Federal and State governments. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This proposed rule would not alter any lease management or royalty sharing provisions. It would determine the value of production for royalty computation purposes only. This proposed rule would not impose costs on States or localities.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule will not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rulemaking does not contain new information collections requirements nor significantly change existing information collection requirements; therefore, a submission to OMB is not required. The information collection requirements referenced in this proposed rule are currently approved by OMB under OMB control number 1010–0140 (OMB approval expires October 31, 2006). The total hour burden currently approved under 1010–0140 is 125,856 hours. We request comments on whether there is an increased burden on the industry compared to the current rule from proposed §206.157 (b)(5) that would require lessees to calculate a transportation allowance based on the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts.

11. National Environmental Policy Act

This proposed rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A (2), section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR at 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that the changes we are proposing for Federal

leases will not have an impact on Indian leases.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant adverse effect on the nation's energy supply, distribution, or use. The proposed changes better reflect the way industry accounts internally for its gas valuation and provides a number of technical clarifications. None of these changes should impact significantly the way industry does business, and accordingly should not affect their approach to energy development or marketing. Nor does the proposed rule otherwise impact energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, this proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

15. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol § and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects in 30 CFR Part 206

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: April 28, 2004.

Patricia Morrison,

Acting Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, part 206 of title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. In § 206.150, paragraph (b) is revised as follows:

§ 206.150 Purpose and scope.

* * * * *

(b) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the MMS Director establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

* * * * *

3. In § 206.151, a new definition of "affiliate" is added in alphabetical order and the definitions of "allowance" and "arm's-length contract" are revised to read as follows:

§ 206.151 Definitions.

* * * * *

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Allowance means a deduction in determining value for royalty purposes. *Processing allowance* means an allowance for the reasonable, actual costs of processing gas determined under this subpart. *Transportation allowance* means an allowance for the reasonable, actual costs of moving unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

* * * * *

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

* * * * *

4. Section 206.157 is amended as follows:

A. Paragraph (b)(2)(v) is revised;

B. Paragraph (b)(5) is revised;

C. Paragraph (c) is revised;

D. Paragraphs (f) introductory text, (f)(1), and (f)(7) are revised and paragraph (f)(10) is added; and

E. The word "and" at the end of paragraph (g)(4) is removed, paragraph

(g)(5) is revised, and new paragraphs (g)(6) through (g)(8) are added.

The additions and revisions read as follows:

§ 206.157 Determination of transportation allowances.

* * * * *

(b) * * *

(2) * * *

(v) The rate of return must be 1.3 times the industrial rate associated with Standard and Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.

(i) The MMS will grant the exception if:

(A) The transportation system has a tariff approved by the Federal Energy Regulatory Commission (FERC) or a State regulatory agency that FERC or the State regulatory agency has either adjudicated or specifically analyzed, and

(B) Third parties are paying prices under the tariff to transport gas on the system under arm's-length transportation contracts.

(ii) If MMS approves the exception, you must calculate your transportation allowance for each production month based on the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts during that production month. If during any production month there are no prices paid under the tariff by third parties to transport gas on the system under arm's-length transportation contracts, you may use the volume-weighted average of the rates paid by third parties under arm's-length transportation contracts in the most recent preceding production month in which third parties paid such rates, for up to two successive production months.

(iii) You may use the exception under this paragraph if the tariff remains in effect and no more than two production months have elapsed since third parties paid prices under the tariff to transport gas on the system under arm's-length transportation contracts.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.

(ii) The MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this chapter.

(iii) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

(2) *Non-arm's-length or no contract.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.

(ii) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable gas transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Paragraph (e) of this section will apply when you amend your report based on your actual costs.

(iii) The MMS may require you to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this chapter.

(iv) If you are authorized under paragraph (b)(5) of this section to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of paragraph (c)(1) of this section.

(v) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

* * * * *

(f) *Allowable costs in determining transportation allowances.* You may include, but are not limited to (subject to the requirements of paragraph (g) of this section), the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this paragraph.

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees paid to a pipeline, including charges or fees for unused firm capacity that you have not sold before you report your allowance. If you receive a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty and late payment interest due;

* * * * *

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* However, theoretical losses are not deductible in non-arm's-length transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC-or State regulatory-approved tariff under paragraph (b)(5) of this section. If you receive volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties and late payment interest due.

* * * * *

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you as a shipper to maintain under an arm's-length transportation contract.

(g) * * *

(5) *Fees paid to brokers.* This includes fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees;

(6) *Fees paid to scheduling service providers.* This includes fees paid to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees;

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production; and

(8) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

* * * * *

[FR Doc. 04–16725 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0451b; FRL–7784–1]

Revisions to the California State Implementation Plan, Monterey Bay Unified and Santa Barbara Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern definitions. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by August 23, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

Santa Barbara County Air Pollution Control District, 260 North San Antonio Road, Suite A, Santa Barbara, CA 93110–1315

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPCD Rule 101 and SBCAPCD Rule 102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 15, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–16567 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 402

[CMS–6146–P]

RIN 0938–AL53

Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the procedures for imposing exclusions for certain violations of the Medicare program. These procedures are based on the procedures that the Office of Inspector General has published for civil money penalties, assessments, and exclusions under their delegated authority. These regulations would protect beneficiaries from health care providers and entities found in noncompliance with Medicare rules and regulations and would otherwise improve the safeguard provisions under the Medicare statute.

DATES: To be assured consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on September 21, 2004.

ADDRESSES: In commenting, please refer to file code CMS–6146–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6146–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Cohen, (410) 786–3349.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–6146–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are processed, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order

payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the Federal Register online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

Section 2105 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) added section 1128A to the Social Security Act (the Act) to authorize the Secretary of Health and Human Services to impose civil money penalties, assessments, and/or exclusion from the Medicare program for certain health care facilities, practitioners, suppliers or other entities under prescribed circumstances. Exclusion provides the ultimate enforcement tool for agencies attempting to establish compliance with legal and program standards, and is used in addition to potential civil, criminal, and/or administrative proceedings.

Since 1981, the Congress has significantly increased both the number and types of circumstances under which the Secretary may impose an exclusion of a provider or an entity from the Medicare and State health care programs. The Secretary has delegated the authority for these provisions to either the Office of Inspector General (OIG) or the Centers for Medicare & Medicaid Services (CMS) (59 FR 52967, October 20, 1994). The exclusion authorities delegated to the OIG address fraud, misrepresentation, or falsification, while those that address noncompliance with programmatic or regulatory requirements are delegated to CMS. However, the OIG has the authority to impose an exclusion and to prosecute cases involving exclusions that were delegated to CMS if CMS and the OIG jointly determine it to be in the interest of economy, efficiency, or effective coordination of activities. The determination may be made either on a case-by-case basis, or for all cases brought under a particular listed authority.

On December 14, 1998, we published a final rule in the **Federal Register** (63 FR 68687), delineating the procedures for pursuing civil money penalties (CMPs) and assessments. That final rule added a new part 402 to title 42, chapter IV of the Code of Federal Regulations (CFR) to incorporate our CMP and assessment authorities. We did not address exclusions in that final rule, but did reserve subpart C to incorporate this information at a future date.

In the December 14, 1998 rule, we indicated that our procedures for imposing the CMPs and assessment authorities delegated to CMS were based on the procedures that the OIG has delineated in 42 CFR part 1003. We also made the OIG's hearing and appeal procedures set forth in 42 CFR part 1005 effective for the CMP, assessment, and exclusion authorities delegated to CMS.

II. Provisions of the Proposed Rule

This proposed rule would amend part 402, subpart C, Exclusions, to incorporate the rules concerning exclusions associated with the CMP violations identified in part 402. Subpart C contains the general requirements and procedures that are common to the imposition of an exclusion from Medicare, Medicaid, and, where applicable, other Federal health care programs. These regulations would not materially impact the hearing and appeal procedures currently available to any person on whom we could impose an exclusion.

Specifically, we are proposing to add the following provisions to subpart C:

- *Section 402.200, Basis and purpose.*

[If you choose to comment on issues in this section, please include the caption "Basis and purpose" at the beginning of your comments.]

This section provides the basis and purpose for the imposition of an exclusion from Medicare, Medicaid, and, where applicable, other Federal health care programs for noncompliance with the respective provisions of the Act specified in § 402.1(e). This subpart also sets forth the appeal rights of persons subject to exclusion, and the procedures for reinstatement following exclusion. This subpart is based on § 1003.102, § 1003.105, § 1003.107, and § 1003.109 of the OIG's regulations.

- *Section 402.205, Length of exclusion.*

[If you choose to comment on issues in this section, please include the caption "Length of exclusion" at the beginning of your comments.]

This section describes the duration of exclusion from Medicare, Medicaid, and, where applicable, other Federal health care programs for the applicable violation. Currently, there are four general categories for which violations may cause exclusions. These categories involve non-compliance with assignment billings, non-compliance with charge or service limits, failure to provide information or improperly providing information, or non-compliance with Medigap or Medicare Select. Some exclusion provisions provide that the exclusion is imposed in accordance with section 1842(j)(2) of the Act. Section 1842(j)(2) provides for exclusion from participation in the programs under the Act. These exclusions may not exceed 5 years. For these exclusion provisions, CMS proposes to use its discretion to set a duration for the exclusion, up to 5 years, after considering aggravating and mitigating circumstances as described in this proposed rule. By contrast, many other exclusion provisions extend to all Federal health care programs, and do not address the minimum or maximum duration of the exclusion, but instead simply refer to applying the provisions of section 1128A of the Act, or section 1128(c) of the Act for imposition of the exclusion. However, neither section 1128A, nor section 1128(c) addresses the specific duration of an exclusion for any of the title XVIII exclusion provisions described in this proposed rule. Therefore, where the duration of an exclusion is not specifically addressed by statute for a specific exclusion provision, CMS proposes to use its discretion to apply a time period it believes is justified, taking into account appropriate aggravating and mitigating factors as described in this proposed rule.

While several provisions of title 18 of the Act refer on their face only to CMPs, they also make cross-references to section 1128A of the Act, from which we assert that our exclusion authority derives. For example, several provisions within section 1882 of the Act refer to CMPs. Each of these provisions incorporates by reference portions of section 1128A, articulating with precise specificity which provisions of section 1128A are applicable. In each case, this includes section 1128A's exclusion authority found in section 1877, though there the exclusion authority is made even more clear with the term "exclusion" being found in the section heading. The applicable provision of section 1128A is that provision's last sentence, explicitly made applicable to all the foregoing, which provides that the Secretary "may make a determination in the same [CMP]

proceeding to exclude the person from participation in * * * Federal health care programs * * *''

• *Section 402.208, Factors considered in determining whether to exclude, and the length of exclusion.*

[If you choose to comment on issues in this section, please include the caption ''Factors considered'' at the beginning of your comments.]

The statute specifies the grounds for imposition of the various exclusions, but offers little detail regarding the adjudicatory processes inherent in administering them. Instead, the statute vests CMS with broad administrative discretion. We are sensitive to the fact that the nature of the grounds for imposition of exclusions vary widely.

This section describes the specific details of the aggravating or mitigating circumstances that may be considered. This section is based on corresponding sections of 42 CFR parts 1001 and 1003. We note that our application of aggravating and mitigating factors flows both as a natural result of a statutory scheme that contemplates exclusions of varying lengths, as well as the Secretary's rulemaking authority specified in section 1871 of the Act.

• *Section 402.209, Scope and effect of exclusion.*

[If you choose to comment on issues in this section, please include the caption ''Scope and effect'' at the beginning of your comments.]

This section describes the general scope and effect of an exclusion. Generally, an excluded provider or supplier may not directly or indirectly submit claims, or cause claims to be submitted, to the Medicare program. Providers who submit, or cause to be submitted, claims during the course of an exclusion risk other possible sanctions, including criminal and civil liability. Medicare will not pay claims for beneficiaries who elect to see excluded providers, except, perhaps, for the first claim, which will be accompanied by a notification to the beneficiary that the provider/supplier has been excluded from participation in Medicare and that no further Medicare payments will be made on the beneficiary's behalf. This section is based on § 1001.1901. We note that in § 402.209(b)(3), whereas in some cases the maximum exclusion time limit may preclude us from applying the specified prohibited conduct as the basis for denying reinstatement to the Medicare program, the fact that an excluded provider has engaged in such prohibited conduct may give rise to a new exclusion action by the initiating agency (CMS or OIG), the practical effect of which would be to deny reinstatement into the Medicare program.

• *Section 402.210, Notice of exclusion.*

[If you choose to comment on issues in this section, please include the caption ''Notice of exclusion'' at the beginning of your comments.]

This section describes the contents of the respective notices, and, specifically the timing for release of (a) the written notice of intent to exclude (that is, the proposed determination), and (b) the written notice of exclusion. At a minimum, the written notice of intent to exclude provides the person with such information as to the reason why the person is noncompliant with the statute, the length of the proposed exclusion, and instructions for responding to this notice, including providing argument to the exclusion for the agency to consider. The written notice to exclude is sent to the person in the same manner as the written notice of intent to exclude if the agency determines the exclusion is warranted. This notice will also provide the person with information on their appeal rights to the exclusion. This section is based on the notices provided by the OIG in § 1001.2001, § 1001.2002, § 1001.2003, and § 1003.109.

• *Section 402.212, Response to notice of proposed exclusion.*

[If you choose to comment on issues in this section, please include the caption ''Response to notice'' at the beginning of your comments.]

This section describes the general process and procedure for the respondent to follow when presenting an oral or written response to the notice of intent to exclude (that is, the proposed determination). The agency will accept for consideration any supportive information the respondent provides. The agency does not limit nor suggest what type of information should be presented. The burden to present convincing information is left to the discretion of the respondent. This section is based on the process and procedures delineated by the OIG in § 1003.109. However, to encourage timely communication between the respondent and the initiating agency, we have added an additional element whereby the initiating agency will contact the respondent within 15 days of receipt of the respondent's request to establish a mutually agreed upon time and place for the hearing of oral arguments.

• *Section 402.214, Appeal of exclusion.*

[If you choose to comment on issues in this section, please include the caption ''Appeal of exclusion'' at the beginning of your comments.]

This section describes the general appeal process (as referenced in § 1005) for requesting a hearing before an administrative law judge and details the required elements of the written request for appeal. Generally, the elements of the written request must include the basis for the disagreement with the exclusion, the general basis for the defense of the respondent, reasons why the proposed length of exclusion should be modified. This section is based on § 1001.2003 and § 1001.2007.

• *Section 402.300, Request for reinstatement.*

[If you choose to comment on issues in this section, please include the caption ''Request for reinstatement'' at the beginning of your comments.]

In proposed § 402.300, we discuss the request for reinstatement. In § 402.300(a), we describe the written request for reinstatement. We discuss that an excluded person may submit a written request for reinstatement to the initiating agency no sooner than 120 days prior to the terminal date of exclusion as specified in the notice of exclusion. The written request for reinstatement would be required to include documentation demonstrating that the person has met the standards set forth in § 402.302. We also state that obtaining or reactivating a Medicare provider number (or equivalent) would not constitute reinstatement.

Section 402.300(b) discusses that, upon receipt of a written request for reinstatement, the initiating agency may require the person to furnish additional, specific information, and authorization to obtain information from private health insurers, peer review organizations, and others as necessary to determine whether reinstatement is granted.

In § 402.300(c), we discuss that failure to submit a written request for reinstatement and/or to furnish the required information or authorization would result in the continuation of the exclusion, unless the exclusion had been in effect for 5 years. In that case, reinstatement would be automatic.

Section 402.300(d) discusses that, if a period of exclusion is reduced on appeal (regardless of whether further appeal is pending), the excluded person would be permitted to request and apply for reinstatement within 120 days of the expiration of the reduced exclusion period. A written request for the reinstatement would include the same standards as noted in paragraph (b) of this section. This section is based on § 1001.3001.

• *Section 402.302, Basis for reinstatement.*

[If you choose to comment on issues in this section, please include the caption "Basis for reinstatement" at the beginning of your comments.]

In § 402.302, we discuss that the initiating agency would authorize reinstatement if the agency determined that-

(1) The period of exclusion had expired;

(2) There were reasonable assurances that the types of actions that formed the basis for the original exclusion did not recur and would not recur; and

(3) There is no additional basis under title XVIII of the Act that would justify the continuation of the exclusion.

We are also discussing that the initiating agency would not authorize reinstatement if it determined that submitting claims or causing claims to be submitted or payments to be made by the Medicare program for items or services furnished, ordered, or prescribed, would serve as a basis for denying reinstatement. This section would apply regardless of whether the excluded person had obtained a Medicare provider number (or equivalent), either as an individual or as a member of a group, before being reinstated.

In making a determination regarding reinstatement, the initiating agency would consider—(1) The conduct of the excluded person occurring before the date of the notice of the exclusion, if that conduct was not known to the initiating agency at the time of the exclusion; (2) the conduct of the excluded person after the date of the exclusion; (3) whether all fines and all debts due and owing (including overpayments) to any Federal, State, or local government that relate to Medicare, Medicaid, or, where applicable, any Federal, State, or local health care program were paid in full, or satisfactory arrangements were made to fulfill these obligations; (4) whether the excluded person complied with, or had made satisfactory arrangements to fulfill, all of the applicable conditions of participation or conditions of coverage under the Medicare statutes and regulations; and (5) whether the excluded person had, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by Medicare, Medicaid, and, where applicable, any other Federal health care program, for items or services furnished, ordered, or prescribed, and the conditions under which these actions occurred.

CMS proposes that reinstatement would not be effective until the initiating agency granted the request and provided notice under § 402.304. Reinstatement would be effective as provided in the notice.

A determination for a denial of reinstatement would not be appealable or reviewable except as provided in § 402.306.

We also discuss that an ALJ cannot require reinstatement of an excluded person according to this chapter. The content of this section is based on the criteria provided by the OIG in § 1001.3002.

• *Section 402.304, Approval of request for reinstatement.*

[If you choose to comment on issues in this section, please include the caption "Approval of request" at the beginning of your comments.]

In regard to approval of a request for reinstatement (§ 402.304), we discuss that, if the initiating agency would grant a request for reinstatement, the initiating agency would—

(1) Give written notice to the excluded person specifying the date of reinstatement; and

(2) Notify appropriate Federal and State agencies, and, to the extent possible, all others that were originally notified of the exclusion, that the person had been reinstated into the Medicare program.

A determination by the initiating agency to reinstate an excluded person would have no effect if Medicare, Medicaid, or, where applicable, any other Federal health care program had imposed a longer period of exclusion under its own authorities. The content of this section is based on the procedures provided by the OIG in § 1001.3003.

• *Section 402.306, Denial of request for reinstatement.*

[If you choose to comment on issues in this section, please include the caption "Denial of request" at the beginning of your comments.]

In § 402.306, Denial of request for reinstatement, we discuss that, if a request for reinstatement is denied, the initiating agency would provide written notice to the excluded person. Within 30 days of the date of this notice, the excluded person could submit to the initiating agency—

(1) Documentary evidence and a written argument challenging the reinstatement denial; or

(2) A written request to present written evidence and/or oral argument to an official of the initiating agency.

If this written request were received timely by the initiating agency, the initiating agency, within 15 days of receipt of the excluded person's request, would initiate communication with the excluded person to establish a time and place for the requested meeting.

In addition, we discuss that, after evaluating any additional evidence submitted by the excluded person (or at the end of the 30-day period described above, if no documentary evidence or written request were submitted), the initiating agency would send written notice to the excluded person either confirming the denial; or approving the reinstatement as set forth in § 402.304. If the initiating agency would elect to uphold its denial decision, the written notice would also indicate that a subsequent request for reinstatement would not be considered until at least 1 year after the date of the written denial notice.

The decision to deny reinstatement would not be subject to administrative review. The content of this section is based on the procedures provided by the OIG in § 1001.3004.

III. Collection of Information Requirements

While this regulation contains information collection requirements, these requirements are exempt from the Paperwork Reduction Act as stipulated in 5 CFR 1320.4(a)(2) (collection of information to conduct a civil or administrative action, investigation, or audit involving an agency against specific individuals or entities).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

Overall Impact

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comments.]

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), Executive Order 13132 (August 4, 1999, Federalism), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12866 directs agencies taking "significant regulatory action" to reflect consideration of all

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This proposed rule is not a significant regulatory action as defined by section 3(f) of Executive Order 12866. We believe that there are no significant costs associated with this proposed rule that would impose any mandates on State, local or tribal governments, or the private sector that would result in an expenditure of $100 million in any given year. We expect that all program participants would comply with the statutory and regulatory requirements making unnecessary the imposition of an exclusion from Medicare, Medicaid and, where applicable, other Federal health care programs. Therefore, we do not anticipate more than a *de minimis* economic impact as a result of this proposed rule. Further, any impact that may occur would only affect those limited few individuals or entities that engage in prohibited behavior. We do not anticipate any savings or costs as a result of this proposed rule.

The RFA (15 U.S.C. 603(a)), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to determine whether the proposed rule would have a significant economic impact on a substantial number of small entities and, if so, to identify in the notice of proposed rulemaking any regulatory options that could mitigate the impact of the proposed regulation on small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and small government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $26 million or less annually. Individuals and States are not included in the definition of a small entity. We believe that any impact as a result of the proposed rule would be minimal, since, as mentioned above, the only individuals or entities affected would be those limited few who engage in prohibited conduct. Since the vast majority of program participants comply with statutory and regulatory requirements, any aggregate economic impact would not be significant.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not believe a regulatory impact analysis is required here because, for the reasons stated above concerning our obligations under the RFA and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe that there are no significant costs associated with this technical rule that would impose any mandates on State, local, or tribal governments, or the private sector that would result in an expenditure of $110 million in any given year. As was previously mentioned, since the majority of program participants comply with statutory and regulatory requirements, any aggregate economic impact would not be significant.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not significantly affect the rights, roles, or responsibilities of the States. This rule would not impose substantial direct requirement costs on State or local governments, preempt State law, or otherwise implicate Federalism.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 402

Administrative practice and procedure, Health facilities, Health professions, Medicaid, Medicare, Penalties.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 402 as set forth below:

PART 402—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

1. The authority citation for part 402 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. In § 402.3, the introductory text is republished and a new definition for "initiating agency" is added in alphabetical order to read as follows:

§ 402.3 Definitions.

For purposes of this part:

* * * * *

Initiating agency means whichever agency (CMS or the OIG) initiates the interaction with the person.

* * * * *

3. In part 402, a new subpart C is added to read as follows:

Subpart C—Exclusions

Sec.

Subpart C—Exclusions

§ 402.200 Basis and purpose.

(a) *Basis.* This subpart is based on the sections of the Act that are specified in § 402.1(e).

(b) *Purpose.* This subpart—

(1) Provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions of the Act provided in § 402.1(e) (and further described in § 402.1(c)); and

(2) Sets forth the appeal rights of persons subject to exclusion and the procedures for reinstatement following exclusion.

§ 402.205 Length of exclusion.

The length of exclusion from participation in Medicare, Medicaid, and, where applicable, other Federal health care programs is contingent on the specific violation of the Medicare statute. A full description of the specific violations identified in the sections of

the Act are cross-referenced in the regulatory sections listed in the table below.

(a) In no event will the period of exclusion exceed 5 years for violation of the following sections of the Act:

Social Security Act paragraph	Code of Federal Regulations section
1833(h)(5)(D) in repeated cases.	§ 402.1(c)(1)
1833(q)(2)(B) in repeated cases.	§ 402.1(c)(3)
1834(a)(11)(A)	§ 402.1(c)(4)
1834(a)(18)(B)	§ 402.1(c)(5)
1834(b)(5)(C)	§ 402.1(c)(6)
1834(c)(4)(C)	§ 402.1(c)(7)
1834(h)(3)	§ 402.1(c)(8)
1834(j)(4)	§ 402.1(c)(10)
1834(k)(6)	§ 402.1(c)(31)
1834(l)(6)	§ 402.1(c)(32)
1842(b)(18)(B)	§ 402.1(c)(11)
1842(k)	§ 402.1(c)(12)
1842(l)(3)	§ 402.1(c)(13)
1842(m)(3)	§ 402.1(c)(14)
1842(n)(3)	§ 402.1(c)(15)
1842(p)(3)(B) in repeated cases.	§ 402.1(c)(16)
1848(g)(1)(B) in repeated cases.	§ 402.1(c)(17)
1848(g)(3)(B)	§ 402.1(c)(18)
1848(g)(4)(B)(ii) in repeated cases.	§ 402.1(c)(19)
1879(h)	§ 402.1(c)(23)

(b) For violation of the following sections, there is no maximum time limit for the period of exclusion.

Social Security Act paragraph	Code of Federal Regulations section
1834(a)(17)(c) for a pattern of contacts.	§ 402.1(e)(2)(i)
1834(h)(3) for a pattern of contacts.	§ 402.1(e)(2)(ii)
1877(g)(5)	§ 402.1(c)(22)
1882(a)(2)	§ 402.1(c)(24)
1882(p)(8)	§ 402.1(c)(25)
1882(p)(9)(C)	§ 402.1(c)(26)
1882(q)(5)(C)	§ 402.1(c)(27)
1882(r)(6)(A)	§ 402.1(c)(28)
1882(s)(4)	§ 402.1(c)(29)
1882(t)(2)	§ 402.1(c)(30)

(c) For a person excluded under any of the grounds specified in paragraph (a) of this section, notwithstanding any other requirements in this section, reinstatement occurs—

(1) At the expiration of the period of exclusion, if the exclusion was imposed for a period of 5 years; or

(2) At the expiration of 5 years from the effective date of the exclusion, if the exclusion was imposed for a period of less than 5 years and the initiating agency did not receive the appropriate written request for reinstatement as specified in § 402.300.

§ 402.208 Factors considered in determining whether to exclude, and the length of exclusion.

(a) *General factors.* In determining whether to exclude a person and the length of exclusion, the initiating agency considers the following:

(1) The nature of the claims and the circumstances under which they were presented.

(2) The degree of culpability, the history of prior offenses, and the financial condition of the person presenting the claims.

(3) The total number of acts in which the violation occurred.

(4) The dollar amount at issue (Medicare Trust Fund dollars and/or beneficiary out-of-pocket expenses).

(5) The prior history of the person insofar as its willingness or refusal to comply with requests to correct said violations.

(6) Any other facts bearing on the nature and seriousness of the person's misconduct.

(7) Any other matters that justice may require.

(b) *Criteria to be considered.* As a guideline for taking into account the general factors listed in paragraph (a) of this section, the initiating agency may consider any one or more of the circumstances listed in paragraphs (b)(1) and (b)(2) of this section, as applicable. The respondent, in his or her written response to the notice of intent to exclude (that is, the proposed exclusion), may provide information concerning potential mitigating circumstances:

(1) *Aggravating circumstances.* An aggravating circumstance may be any of the following:

(i) The services or incidents were of several types and occurred over an extended period of time.

(ii) There were numerous services or incidents, or the nature and circumstances indicate a pattern of claims or requests for payment or a pattern of incidents, or whether a specific segment of the population was targeted.

(iii) Whether the person was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for health care items or services at any time before the incident or whether the person presented any claim or made any request for payment that included an item or service subject to a determination under § 402.1.

(iv) There is proof that the person engaged in wrongful conduct, other than the specific conduct upon which liability is based, relating to government programs and in connection with the delivery of a health care item or service. The statute of limitations governing civil money penalty proceedings at section 1128A(c)(1) of the Act, does not apply to proof of other wrongful conducts as an aggravating circumstance.

(v) The wrongful conduct had an adverse impact on the financial integrity of the Medicare program or its beneficiaries.

(vi) The person was the subject of an adverse action by any other Federal, State, or local government agency or board, and the adverse action is based on the same set of circumstances that serves as a basis for the imposition of the exclusion.

(vii) The noncompliance resulted in a financial loss to the Medicare program of at least $5,000.

(viii) The number of instances for which full, accurate, and complete disclosure was not made as required, or provided as requested, and the significance of the undisclosed information.

(2) *Mitigating circumstances.* A mitigating circumstance may be any of the following:

(i) All incidents of noncompliance were few in nature and of the same type, occurred within a short period of time, and the total amount claimed or requested for the items or services provided was less than $1,500.

(ii) The claim(s) or request(s) for payment for the item(s) or service(s) provided by the person were the result of an unintentional and unrecognized error in the person's process for presenting claims or requesting payment, and the person took corrective steps promptly after the error was discovered.

(iii) Previous cooperation with a law enforcement or regulatory entity resulted in convictions, exclusions, investigations, reports for weaknesses, or civil money penalties against other persons.

(iv) Alternative sources of the type of health care items or services furnished by the person are not available to the Medicare population in the person's immediate area.

(v) The person took corrective action promptly upon learning of the noncompliance from the person's employee or contractor, or by the Medicare contractor.

(vi) The person had a documented mental, emotional, or physical condition before or during the commission of the noncompliant act(s) and that condition reduces the person's culpability for the acts in question.

(vii) The completeness and timeliness of refunding to the Medicare Trust Fund or Medicare beneficiaries any inappropriate payments.

(viii) The degree of culpability of the person in failing to provide timely and complete refunds.

(3) *Other matters as justice may require.* Other circumstances of an aggravating or mitigating nature are taken into account if, in the interest of justice, those circumstances require either a reduction or increase in the sanction in order to ensure achievement for the purposes of this subpart.

(c) *Limitations.* (1) The standards set forth in this section are binding on the person, except to the extent that their application results in an imposition of an amount that exceeds the limits imposed by the United States Constitution.

(2) Nothing in this section limits the authority of the initiating agency to settle any issue or case as provided by § 402.17, or to compromise any penalty and assessment as provided by § 402.115.

§ 402.209 Scope and effect of exclusion.

(a) *Scope of exclusion.* Under this title, persons may be excluded from the Medicare, Medicaid, and, where applicable, any other Federal health care programs.

(b) *Effect of exclusion on a person(s).* (1) Unless and until an excluded person is reinstated into the Medicare program, no payment is made by Medicare, Medicaid, and, where applicable, any other Federal health care programs for any item or service furnished by the excluded person or at the direction or request of the excluded person when the person furnishing the item or service knew or had reason to know of the exclusion, on or after the effective date of the exclusion as specified in the notice of exclusion.

(2) An excluded person may not take assignment of a Medicare beneficiary's claim on or after the effective date of the exclusion.

(3) An excluded person that submits, or causes to be submitted, claims for items or services furnished during the exclusion period is subject to civil money penalty liability under section 1128A(a)(1)(D) of the Act, and criminal liability under section 1128B(a)(3) of the Act. In addition, submission of claims, or the causing of claims to be submitted for items or services furnished, ordered, or prescribed, by an excluded person may serve as the basis for denying reinstatement to the Medicare program.

(c) *Exceptions to paragraph (b)(1) of this section.* (1) If a Medicare beneficiary or other person (including a supplier) submits an otherwise payable claim for items or services furnished by an excluded person, or under the medical direction or on the request of an excluded person after the effective date of the exclusion, CMS pays the first claim submitted by the beneficiary or other person and immediately notify the claimant of the exclusion. CMS does not pay a beneficiary or other person (including a supplier) for items or services furnished by, or under the medical direction of, an excluded person, more than 15 days after the date on the notice to the beneficiary or other person (including a supplier), or after the effective date of the exclusion, whichever is later.

(2) Notwithstanding the other provisions of this section, payment may be made for certain emergency items or services furnished by an excluded person, or under the medical direction or on the request of an excluded person during the period of exclusion. To be payable, a claim for the emergency items or services must be accompanied by a sworn statement of the person furnishing the items or services, specifying the nature of the emergency and the reason that the items or services were not furnished by a person eligible to furnish or order the items or services. No claim for emergency items or services is payable if those items or services were provided by an excluded person that, through employment, contractual, or under any other arrangement, routinely provides emergency health care items or services.

§ 402.210 Notice of exclusion.

(a) *Notice of proposed determination.* When the initiating agency proposes to exclude a person from participation in a Federal health care program in accordance with this part, notice of the intent to exclude must be given in writing, and delivered or sent by certified mail, return receipt requested. The written notice must include, at a minimum, the following:

(1) Reference to the statutory basis for the exclusion.

(2) A description of the claims, requests for payment, or incidents for which the exclusion is proposed.

(3) The reason why those claims, requests for payments, or incidents subject the person to an exclusion.

(4) The length of the proposed exclusion.

(5) A description of the circumstances that were considered when determining the period of exclusion.

(6) Instructions for responding to the notice, including a specific statement of the person's right to submit documentary evidence and a written response concerning whether the exclusion is warranted, and any related issues such as potential mitigating circumstances. The notice must specify that—

(i) The person has the right to request an opportunity to present oral argument to an official of the initiating agency.

(ii) The request for oral argument must be submitted within 30 days of the receipt of the notice of intent to exclude.

(7) If a person fails, within the time permitted under § 402.212, to exercise the right to respond to the notice of intent to exclude, the initiating agency may initiate actions for the imposition of the exclusion.

(b) *Notice of exclusion.* Once the initiating agency determines that an exclusion is warranted, a written notice of exclusion is sent to the person in the same manner as described in paragraph (a) of this section. The exclusion is effective 20 days from the date of the notice. The written notice must include, at a minimum, the following:

(1) The basis for the exclusion.

(2) The length of the exclusion and, when applicable, the factors considered in setting the length.

(3) The effect of exclusion.

(4) The earliest date on which the initiating agency considers a request for reinstatement.

(5) The requirements and procedures for reinstatement.

(6) The appeal rights available to the excluded person under part 1005 of this title.

(c) *Amendment to the notice.* No later than 15 days before the final exhibit exchanges required under § 1005.8 of this title, the initiating agency may amend the notice of exclusion if information becomes available that justifies the imposition of a period of exclusion other than the one proposed in the original written notice.

§ 402.212 Response to notice of proposed exclusion.

(a) A person that receives a notice of intent to exclude (that is, the proposed determination) as described in § 402.210, may present to the initiating agency a written response arguing whether the proposed exclusion is warranted, and may present additional supportive documentation. The person must submit this response within 60 days of the receipt of notice. The initiating agency reviews the materials presented and initiate a response to the person regarding the argument presented, and any changes to the determination, if appropriate.

(b) The person is also afforded an opportunity to be heard by the initiating agency in order to present oral argument

concerning whether the proposed exclusion is warranted and any related matters. The person must submit this request within 60 days of the receipt of notice. Within 15 days of receipt of the person's request, the initiating agency initiates communication with the person to establish a mutually agreed upon time and place for the requested hearing.

§ 402.214 Appeal of exclusion.

(a) The procedures in part 1005 of this title apply to all appeals of exclusions. References to the Inspector General in that part apply to the initiating agency.

(b) A person excluded under this subpart may file a request for a hearing before an administrative law judge (ALJ) only on the issues of whether—

(1) The basis for the imposition of the exclusion exists; and

(2) The duration of the exclusion is unreasonable.

(c) When the initiating agency imposes an exclusion for a period of 1 year or less, paragraph (b)(2) of this section does not apply.

(d) The excluded person must file a request for a hearing within 60 days from the receipt of notice of exclusion. The effective date of an exclusion is not delayed beyond the date stated in the notice of exclusion simply because a request for a hearing is timely filed (see paragraph (g) of this section).

(e) A timely filed written request for a hearing must include—

(1) A statement as to the specific issues or findings of fact and conclusions of law in the notice of exclusion with which the person disagrees.

(2) Basis for the disagreement.

(3) The general basis for the defenses that the person intends to assert.

(4) Reasons why the proposed length of exclusion should be modified.

(5) Reasons, if applicable, why the health or safety of Medicare beneficiaries receiving items or services does not warrant the exclusion going into or remaining in effect before the completion of an ALJ proceeding in accordance with part 1005 of this title.

(f) If the excluded person does not file a written request for a hearing as provided in paragraph (d) of this section, the initiating agency notifies the excluded person, by certified mail, return receipt requested, that the exclusion goes into effect or continues in accordance with the notice of exclusion. The excluded person has no right to appeal the exclusion other than as described in this section.

(g) If the excluded person files a written request for a hearing, and asserts in the request that the health or safety of Medicare beneficiaries does not warrant the exclusion going into or remaining in effect before completion of an ALJ hearing, then the initiating agency may make a determination as to whether the exclusion goes into effect or continues pending the outcome of the ALJ hearing.

§ 402.300 Request for reinstatement.

(a) An excluded person may submit a written request for reinstatement to the initiating agency no sooner than 120 days prior to the terminal date of exclusion as specified in the notice of exclusion. The written request for reinstatement must include documentation demonstrating that the person has met the standards set forth in § 402.302. Obtaining or reactivating a Medicare provider number (or equivalent) does not constitute reinstatement.

(b) Upon receipt of a written request for reinstatement, the initiating agency may require the person to furnish additional, specific information, and authorization to obtain information from private health insurers, peer review organizations, and others as necessary to determine whether reinstatement is granted.

(c) Failure to submit a written request for reinstatement and/or to furnish the required information or authorization results in the continuation of the exclusion, unless the exclusion has been in effect for 5 years. In this case, reinstatement is automatic.

(d) If a period of exclusion is reduced on appeal (regardless of whether further appeal is pending), the excluded person may request and apply for reinstatement within 120 days of the expiration of the reduced exclusion period. A written request for the reinstatement includes the same standards as noted in paragraph (b) of this section.

§ 402.302 Basis for reinstatement.

(a) The initiating agency authorizes reinstatement if it determines that—

(1) The period of exclusion has expired;

(2) There are reasonable assurances that the types of actions that formed the basis for the original exclusion did not recur and will not recur; and

(3) There is no additional basis under title XVIII of the Act that justifies the continuation of the exclusion.

(b) The initiating agency does not authorize reinstatement if it determines that submitting claims or causing claims to be submitted or payments to be made by the Medicare program for items or services furnished, ordered, or prescribed, may serve as a basis for denying reinstatement. This section applies regardless of whether the excluded person has obtained a Medicare provider number (or equivalent), either as an individual or as a member of a group, before being reinstated.

(c) In making a determination regarding reinstatement, the initiating agency considers the following—

(1) Conduct of the excluded person occurring before the date of the notice of the exclusion, if that conduct was not known to the initiating agency at the time of the exclusion;

(2) Conduct of the excluded person after the date of the exclusion;

(3) Whether all fines and all debts due and owing (including overpayments) to any Federal, State, or local government that relate to Medicare, Medicaid, or, where applicable, any Federal, State, or local health care program are paid in full, or satisfactory arrangements are made to fulfill these obligations;

(4) Whether the excluded person complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or conditions of coverage under the Medicare statutes and regulations; and

(5) Whether the excluded person has, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by Medicare, Medicaid, and, where applicable, any other Federal health care program, for items or services furnished, ordered, or prescribed, and the conditions under which these actions occurred.

(d) Reinstatement is not effective until the initiating agency grants the request and provide notices under § 402.304. Reinstatement is effective as provided in the notice.

(e) A determination for a denial of reinstatement is not appealable or reviewable except as provided in § 402.306.

(f) An ALJ may not require reinstatement of an excluded person in accordance with this chapter.

§ 402.304 Approval of request for reinstatement.

(a) If the initiating agency grants a request for reinstatement, the initiating agency—

(1) Gives written notice to the excluded person specifying the date of reinstatement; and

(2) Notifies appropriate Federal and State agencies, and, to the extent possible, all others that were originally notified of the exclusion, that the person is reinstated into the Medicare program.

(b) A determination by the initiating agency to reinstate an excluded person has no effect if Medicare, Medicaid, or,

where applicable, any other Federal health care program has imposed a longer period of exclusion under its own authorities.

§ 402.306 Denial of request for reinstatement.

(a) If a request for reinstatement is denied, the initiating agency provides written notice to the excluded person. Within 30 days of the date of this notice, the excluded person may submit to the initiating agency—

(1) Documentary evidence and a written argument challenging the reinstatement denial; or

(2) A written request to present written evidence and/or oral argument to an official of the initiating agency.

(b) If a written request as described in paragraph (a)(2) of this section is received timely by the initiating agency, the initiating agency, within 15 days of receipt of the excluded person's request, initiates communication with the excluded person to establish a time and place for the requested meeting.

(c) After evaluating any additional evidence submitted by the excluded person (or at the end of the 30-day period described in paragraph (a) of this section, if no documentary evidence or written request is submitted), the initiating agency sends written notice to the excluded person either confirming the denial, or approving the reinstatement in the manner set forth in § 402.304. If the initiating agency elects to uphold its denial decision, the written notice also indicates that a subsequent request for reinstatement will not be considered until at least 1 year after the date of the written denial notice.

(d) The decision to deny reinstatement is not subject to administrative review.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 5, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

Dated: March 15, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–16791 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AT40

2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to the proposed regulations which were published June 30, 2004, (69 FR 39552). The proposed regulations related to the addition of 10 refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increase the activities available at 7 other refuges. We also develop pertinent refuge-specific regulations for those activities and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2004–2005 season.

DATES: We must receive your comments on or before July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Leslie Marler, (703) 358–2397.

SUPPLEMENTARY INFORMATION:

Background

We issue refuge-specific regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, season, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. The regulations that are the subject of these corrections increase opportunity to hunt upland game only at Big Oaks National Wildlife Refuge in the State of Indiana.

Need for Correction

We provided information in the **SUPPLEMENTARY INFORMATION** section indicating that Big Oaks National Wildlife Refuge was opening for the first time to migratory bird and upland game. The refuge is not opening to migratory bird hunting. The "X" will be removed from the chart in the **SUPPLEMENTARY INFORMATION** on page 39553 under migratory bird hunting, and the amendatory text under § 32.33 for that refuge should continue to reflect that migratory bird hunting is reserved and that we are opening to upland game hunting.

Correction of Publication

Accordingly, the publication on June 30, 2004, of the proposed regulations is corrected as follows:

PART 32—[CORRECTED]

§ 32.33 [Corrected]

1. Direction #15 on page 39595 in the third column is corrected by adding instruction c. as follows: c. Revising paragraph B. of "Big Oaks National Wildlife Refuge."

2. The listing for Big Oaks National Wildlife Refuge should be inserted on page 39595 in the third column in § 32.33 before the listing for "Muscatatuck National Wildlife Refuge". The listing reads as follows:

Big Oaks National Wildlife Refuge

* * *

B. Upland Game Hunting. We allow hunting of squirrel in accordance with State regulations subject to the following condition: We require a refuge permit.

* * * * *

Dated: July 19, 2004.

Susan Wilkinson,

Fish and Wildlife Service, Federal Register Liaison.

[FR Doc. 04–16763 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 141
Friday, July 23, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 15, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: Add Yucatan Peninsula to List of Regions Considered Free of END.

OMB Control Number: 0579–0228.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and manage exotic diseases such as classical swine fever and other foreign animal diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animal and animal product trade. Veterinary Services, a program with APHIS, is responsible for carrying out this disease prevention mission. The agency regulates the importation of animals and animal products into the United States to guard against the introduction of exotic animal diseases such as exotic Newcastle disease (END). The regulations in 9 CFR part 94 allow the importation of poultry meat and products and live poultry from the Mexican States of Campeche, Quintana Roo, and Yucatan under conditions designed to ensure that the poultry meat and products and live poultry will not transmit END.

Need and Use of the Information: APHIS will collect information through the use of a certification statement that must be completed by Mexican veterinary authorities prior to export. The information collected from the certificate will provide APHIS with critical information concerning the origin and history of the items destined for importation in the United States. Without the information APHIS' ability to ensure that poultry, poultry meat, or other poultry products from certain States within Mexico pose a minimal risk of introducing exotic Newcastle disease and other exotic animal diseases in the United States.

Description of Respondents: Farms; individuals or households.

Number of Respondents: 5.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 50.

Animal and Plant Health Inspection Service

Title: West Indian Fruit Fly.

OMB Control Number: 0579–0170.

Summary of Collection: The United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant pests disease or insect pests from entering the United States, preventing the spread of noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plant, and plant pests to prevent the introduction of plant pests in the United States or their dissemination within the United States. The West Indian fruit fly, is a very destructive pest of fruits and vegetables, including carambola, grapefruit, guava, limes, mangoes, oranges, passion fruit, peaches, and pears. This pest can cause serious economic losses by lowering the yield and quality of fruits and vegetables and, in some cases, by damaging seedlings and young plants.

Need and Use of the Information: APHIS will collect information using forms PPQ 540, to certify bulk shipments of regulated articles. If the information were not collected, APHIS would be unable to provide for the interstate movement of certain articles from the quarantined area.

Description of Respondents: Business or other for-profit.

Number of Respondents: 37.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 37.

Animal & Plant Health Inspection Service

Title: TB Payments to El Paso, Texas.

OMB Control Number: 0579–0193.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as tuberculosis, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth disease, rinderpest, and other foreign animal diseases. More specifically, 21

U.S.C. 111, 115, and 118 authorize the Secretary of Agriculture to take such measures as she may deem proper to prevent the introduction or dissemination of any contagious or communicable disease of animals or live poultry from a foreign country into the United States or from one State to another. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection (APHIS) ability to compete in exporting animals and animal products. Since 1985, State Animal Health Officials in Texas, along with APHIS, have been taking measure to eliminate tuberculosis in dairy herds in the El Paso, Texas area. As result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to become reinfected again. Because of this situation, APHIS determined that it is necessary to remove all bovine dairy herds from El Paso to further the eradication of tuberculosis in the United States. If these owners agree to dispose of their dairy herds, close their existing dairy operations and refrain from establishing new cattle breeding operations in the area, APHIS would make payments to El Paso diary herd owners.

Need and Use of the Information: APHIS will collect information to provide payment to owners of dairy cattle and other property used in connection with dairy operations in the area of El Paso, Texas. To be eligible for payment under this program, all owners of dairy operations in the area of El Paso, Texas must sign and adhere to an agreement with APHIS.

Description of Respondents: Business or other for-profit; State, local or tribal government: farms.

Number of Respondents: 95.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 875.

Animal and Plant Health Inspection Service

Title: Karnal Bunt; Compensation for Custom Harvesters in Northern Texas.

OMB Control Number: 0579–0248.

Summary of Collection: The United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant pests disease or insect pests from entering the United States, preventing the spread of noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plant, and plant pests to prevent the introduction of plant pests in the United States or their dissemination within the United States. The regulations regarding Karnal Bunt are set forth in 7 CFR parts 301.89–1 through 301.89–16. APHIS amended the Karnal Bunt regulations to provide for the payment of compensation to custom harvesters for losses they incurred due to the requirement that their equipment be cleaned and disinfected after four counties in northern Texas were declared regulated areas for Karnal Bunt during the 2000–2001 crop season.

Need and Use of the Information: APHIS will collect information using PPQ 540, *Certificate of Federal/State Domestic Plant Quarantines.* The certificate is used for domestic movement of treated articles relating to quarantines. The information collected is critical to the mission of preventing the infestation of Karnal Bunt into non-infested areas of the United States.

Description of Respondents: Farms; business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 8.

Foreign Agricultural Service

Title: Export Assistance and Services.

OMB Control Number: 0551–0031.

Summary of Collection: The Ag Export Services Division of the Foreign Agricultural Service (FAS) facilitates trade contacts between U.S. exporters and foreign buyers seeking U.S. food and agricultural products. Authority for this program falls under 7 U.S.C. part 1761, part 5693 and part 1765B. All of the assistance and services offered by the division are designed to promote U.S. agricultural exports; help. U.S. firms make contact with export agents, trading companies, importers and foreign buyers and create an opportunity to sell their products in overseas markets. The specific programs covered by authority are Trade Shows and Missions, U.S. Suppliers List, Buyer Alert, Foreign Buyers List, Customer Matchmaking, Export Directory of U.S. Food Distribution Companies, Trade Leads, Export Promotion Events, Madigan Award and Newsletters. This service provides the U.S. firm an opportunity to have a data record providing basic information about the company and the products it exports put into a USDA maintained database. FAS will collect information using a combination of forms and telephone interviews.

Need and Use of the Information: FAS will collect information on contact names, mailing addresses, telephones, fax, e-mail, and Web sites. The main purpose for collecting the information is to foster trade contacts in an effort to facilitate greater export of U.S. agriculture food, forestry, and fishery products. The databases are used to recruit U.S. exporters, importers, and buyers to participate in market development activities sponsored by USDA. These databases must be updated periodically to maintain the integrity and usefulness to the trade community.

Description of Respondents: Business or other for-profit.

Number of Respondents: 57,700.

Frequency of Responses: Reporting: annually; on occasion; quarterly.

Total Burden Hours: 8,463.

Foreign Agricultural Service

Title: Export Sales of U.S. Agricultural Commodities.

OMB Control Number: 0551–0007.

Summary of Collection: The export sales reporting system provides commodity market participants with information about commodity export commitments and is one means by which USDA seeks to insure fairness and soundness in commodity marketing. U.S. exports are required to report to the Foreign Agricultural Service (FAS) information on: (1) The quantity of a reportable commodity to be sold to a foreign buyer; (2) the country of destination; and (3) the marketing year of shipment. The authority to collect this information is found at 7 CFR part 20 and the Agricultural Trade Act of 1978 (7 U.S.C. 5712).

Need and Use of the Information: The information collected provides up-to-date market data to FAS administrative officials for making rational export policy decisions to prevent market disruptions. FAS reports the information to the public so that all market participants can be aware of and evaluate the effects of exports on supply and demand estimates of production, prices, and sales.

Description of Respondents: Business or other for-profit.

Number of Respondents: 380.

Frequency of Responses: Recordkeeping: reporting; quarterly; weekly.

Total Burden Hours: 31,190.

Food Safety and Inspection Service

Title: Application for Inspection, Sanitation, and Exemptions.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise

the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are not adulterated, wholesome, and properly labeled and packaged. FSIS requires meat, poultry, and import establishments to apply for a grant of inspection before they can receive Federal inspection. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records.

Need and Use of the Information: FSIS will collect information using several FSIS forms to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS will use the information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products; that retail firms qualifying for a retail store exemption and who have violated the provision of the exemption are no longer in violation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 16,755.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 114,583.

Farm Service Agency

Title: Collection of Market Prices.

OMB Control Number: 0560–NEW.

Summary of Collection: The Farm Security and Rural Investment Act of 2002 (2002 Act) and the Commodity Credit Corporation (CCC) Charter Act gives authority in establishing market values for wheat, feed grains, soybeans, minor oilseeds, and pulses. The market values for these agricultural commodities are used to establish posted county prices (PCP) which the Farm Service Agency (FSA) uses under it marketing assistance loan program. The 2002 Act and CCC Charter Act authorizes CCC to determine and announce alternative repayment rates based upon the market prices at appropriate U.S. markets to minimize loan forfeitures, minimize the Federal Government-owned inventory of the commodities, minimize the storage costs incurred by the Federal Government, and minimize discrepancies in marketing loan benefits across State and county boundaries.

Need and Use of the Information: The Kansas City Commodity Office (KCCO) merchandisers will make daily market calls or collect electronic market prices from warehouse operators, as well as examine values from future closes from the Board of Trade, information from the Commodity News Service, and Agricultural Marketing Service. FSA uses the market prices collected to establish PCPs, which provide an estimate of current prices at the county level and which become the alternative repayment rate, or market price, producers may redeem their marketing assistance loans from county FSA offices.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 30.

Frequency of Responses: Reporting: weekly; other (daily).

Total Burden Hours: 1,800.

Risk Management Agency

Title: Standard Reinsurance Agreement Plan of Operations.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act, title 7 U.S.C. chapter 36 sec. 1508(k) authorizes the Federal Crop Insurance to provide reinsurance to approved insurance providers that insure producers of any agricultural commodity under one or more acceptable plans. The Standard Reinsurance Agreement is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The Plan of Operation provides the information the insurer is required to file for the initial and each subsequent reinsurance year.

Need and Use of the Information FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information were not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms; Federal government.

Number of Respondents: 14.

Frequency of Responses: Reporting: annually.

Total Burden Hours: 11,200.

Rural Housing Service

Title: 7 CFR 1944–L, Tenant Grievance and Appeals Procedure.

OMB Control Number: 0575–0046.

Summary of Collection: The Rural Housing Service (RHS) is authorized, under sections 514, 515, and 521 of the Housing Act of 1949, to provide loans and grants to eligible recipients of the development of rural rental/cooperative and labor housing. The agency is responsible for assuring the public that the housing projects financed are managed and operated as mandated by Congress. The multiple family housing projects are intended to meet the housing needs of persons or families who have moderate, low-and very-low incomes, senior citizens, the handicapped and domestic farm laborers. In 1980, RHS implemented a grievance and appeals procedure for tenants, members and applicants for occupancy in multiple family housing. The procedure requires certain information to be collected whenever a tenant wishes to appeal adverse actions by owners/managers of multi-family housing project financed by RHS.

Need and Use of the Information: The information collected is used to notify tenants of the reasons for the adverse actions, to ascertain the viewpoint of the tenant, and in the course of trying to resolve the grievance. The consequence of not collecting the information is that tenants, members or applicants would not be able to exercise their rights provided by the Tenant Grievance Appeals procedure.

Description of Respondents: Business or for-profit.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 82.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities act, 1930.

OMB Control Number: 0581–0031.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors by prohibiting unfair practices. PACA requires nearly all person who operates as commission merchants, dealers (of which now restaurants are a subset) and brokers buying or selling fruit and or vegetables in interstate or foreign commerce to be licensed. The license for retailers and grocery wholesalers is effective for three years and for all other licensees up to three years, unless withdrawn.

Need and Use of the Information: AMS will collect information from the applicant to administer licensing

provisions under the Act. If this information were unavailable, it would be impossible to identify and regulate those individuals or firms that are restricted due to sanctions imposed because of the reparation or administrative actions.

Description of Respondents: Business or other for-profit; not-for-profit institutions; individuals or households; farms.

Number of Respondents: 15,829.

Frequency of Responses: Recordkeeping; reporting: on occasion.

Total Burden Hours: 155,138.

Food and Nutrition Service

Title: Food Stamp Program Regulations, Part 275—Quality Control.

OMB Control Number: 0584–0303.

Summary of Collection: Section 16 of the Food Stamp Act of 1977 provides the legislative basis for the operation of the Food Stamp Program Quality Control system. The Food and Nutrition Service (FNS), as administrator of the Food Stamp Program, requires each State agency to implement a quality control system to provide basis for determining each State agency's error rates through review of a sample of Food Stamp cases. Each State agency is responsible for the design and selection of the quality control samples and must submit a quality control sampling plan for approval to FNS. Additionally, State agencies are required to maintain case records for three years to ensure compliance with provisions of the Food Stamp Act of 1977.

Need and Use of the Information: The quality control sampling plan is necessary for FNS to monitor State operations and is essential to the determination of a State agency's error rate and corresponding entitlement to increased Federal share of its administrative costs or liability for sanctions.

Description of Respondents: State, local, or tribal government; Federal government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; reporting: on occasion; annually.

Total Burden Hours: 2,074.

Forest Service

Title: Volunteer Application for Natural Resource Agencies.

OMB Control Number: 0596–0080.

Summary of Collection: The Volunteer Act of 1972, (Pub. L. 92–300) as amended, authorizes the Forest Service (FS) to involve as many volunteers as is efficient, effective, and cost-beneficial to accomplish the FS mission. Volunteers build and maintain trails, construct campground facilities, improve wildlife habitat, and perform other useful and important conservation services. FS will collect information using the Volunteer Application OF 301.

Need and Use of the Information: FS will collect the names, addresses, and certain information of individuals who are interested in public service as volunteers. The information is used by FS Managers for the purpose of contacting applicants and interviewing and screening them for volunteer positions. There could be no program without the information from the application.

Description of Respondents: Individuals or households.

Number of Respondents: 58,100.

Frequency of Responses: Reporting: other (one time).

Total Burden Hours: 14,525.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–16778 Filed 7–22–04; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to review funded projects and discuss status of new committee appointments regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on August 24, 2004 from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Sierra National Forest, Supervisor's Office, 1600 Tollhouse Road, Clovis California, 93612. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by August 10, 2004 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) Status report from project recipients; (3) review and adopt project monitoring form and (4) Public comment.

Dated: July 15, 2004.

Ray Porter,

District Ranger.

[FR Doc. 04–16781 Filed 7–22–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on July 29 at 6:30 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: July 29, 2004.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Brian Avery, Designated Forest Official (DFO), District Ranger, Cabinet Ranger District, Kootenai National Forest at (406) 827–3533.

SUPPLEMENTARY INFORMATION: Agenda topics include voting for projects, reviewing project status and receiving public comment. If the meeting time or location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: May 19, 2004.

Brian Avery,

Designated Federal Official, District Ranger, Cabinet Ranger District.

[FR Doc. 04–16794 Filed 7–22–04; 8:45 am]

BILLING CODE 3410–11–M

ANTITRUST MODERNIZATION COMMISSION

Request for Public Comment

AGENCY: Antitrust Modernization Commission.

ACTION: Request for public comment.

SUMMARY: The Antitrust Modernization Commission requests comments from the public on antitrust issues that are appropriate for Commission study.

DATES: Comments are due by September 30, 2004.

ADDRESSES: By electronic mail: *comments@amc.gov*. By mail: Antitrust Modernization Commission, Attn: Public Comments, 1001 Pennsylvania Avenue, NW., Suite 800-South, Washington, DC 20004–2505.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission. Telephone: (202) 326–2487; e-mail: *info@amc.gov*.

SUPPLEMENTARY INFORMATION: The Antitrust Modernization Commission was established to "examine whether the need exists to modernize the antitrust laws and to identify and study related issues." Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, § 11053, 116 Stat. 1856. In conducting its review of the antitrust laws, the Commission is required to "solicit the views of all parties concerned with the operation of the antitrust laws." *Id.* Accordingly, the Commission, by this request for comments, seeks to provide a full opportunity for interested members of the public to provide input to the Commission regarding its agenda for study.

Comments should be submitted in written form. Commenters are asked to provide a brief summary (not to exceed 300 words) of each issue recommended for study, which should include a description of the issue and why the issue merits Commission study. Commenters may submit additional background materials relating to the proposed issue by separate attachment to the summary, but such materials are not necessary.

Submissions should be captioned "Comments regarding Commission issues for study" and should identify the person or organization submitting the comments. If comments are submitted by an organization, the submission should identify a contact person within the organization. Comments should also include the following contact information for the submitter: an address, telephone number, and e-mail address (if available). Comments submitted to the Commission will be made available to the public in accordance with Federal laws.

Comments may be submitted either in hard copy or electronic form. Comments submitted in hard copy should enclose three copies of each submission as well as a 3½ inch computer diskette or CD–ROM containing an electronic copy of the comment. Comments submitted in hard copy should be delivered to the address specified above. Electronic submissions may be sent by electronic mail to *comments@amc.gov*. The Commission prefers to receive electronic documents (whether on diskette or by e-mail) in portable document format (.pdf), but also will accept comments in Microsoft Word or WordPerfect formats.

The AMC has issued this request for comments pursuant to its authorizing statute and the Federal Advisory Committee Act. Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, § 11053, 116 Stat. 1758, 1856; Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(3).

Dated: July 20, 2004.

By direction of the Antitrust Modernization Commission.

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 04–16790 Filed 7–22–04; 8:45 am]

BILLING CODE 6820–YM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* August 22, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 14, May 21, and May 28, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 26805, 29261, and 30609) of proposed additions to the Procurement List.

The following comments pertain to Mechanical Maintenance at four locations in New Jersey.

Comments were received from an Alaska Native small disadvantaged business. The commenter indicated it had responded to a Sources Sought Notice posted by the Government contracting office responsible for these services, and that it had several contacts with that office concerning award of a contract for these services to the company. The commenter claimed that it is improper for the services to be added to the Procurement List while a small disadvantaged business is attempting to obtain a contract for the services.

The Committee contacted the Government contracting office, which confirmed that it had issued the Sources Sought Notice as claimed by the contractor. However, this Notice did not make any commitment to award a contract to any firm which responded to the notice. Furthermore, the contracting office did not make any commitment to award a contract to the commenter. Under these circumstances, the Committee does not believe that it is improper to add these services to the Procurement List.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial & Grounds Maintenance, Avery Street Building, Public Debt Facility, 320 Avery Street, Parkersburg, West Virginia.
NPA: SW Resources, Inc., Parkersburg, West Virginia.
Contract Activity: Bureau of Public Debt, Parkersburg, West Virginia.
Service Type/Location: Food Service, Volk Field Air National Guard, Camp Douglas, Wisconsin.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Iowa Air National Guard, Des Moines Iowa.
Service Type/Location: Janitorial/Custodial, Naval & Marine Corps Reserve Center, 3463 Barnes Avenue, Roanoke, Virginia.
NPA: Goodwill Industries of the Valleys, Inc., Salem, Virginia.
Contract Activity: Naval Facilities Engineering Command Contracts, Norfolk, Virginia.
Service Type/Location: Mechanical Maintenance, Martin Luther King Federal Building & U.S. Courthouse, Newark, New Jersey; Paterson Federal Building, Paterson, New Jersey; Peter W. Rodino Federal Office Building, Newark, New Jersey; Veterans Administration Building, Newark, New Jersey.
NPA: Fedcap Rehabilitation Services, Inc., New York, New York.
Contract Activity: GSA, PBS—NJ Property Management Center, Newark, New Jersey.

Deletion

On April 2, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 17391) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Tray, Repositional Note Pad, 7520–01–207–4351.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–16871 Filed 7–22–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed deletion from procurement list.

SUMMARY: The Committee is proposing to delete from the Procurement List a product previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on or Before:* August 22, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

Product/NSN: Head Lantern, 6230–01–387–1399.
NPA: Easter Seals Greater Hartford Rehabilitation Center, Inc., Windsor, Connecticut.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–16872 Filed 7–22–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls,

balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment). To respond to this recruitment notice, please send a copy of your resume to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: July 20, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–16798 Filed 7–22–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–836]

Certain Cut–to-Length Carbon Quality Steel Plate from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: July 23, 2004

FOR FURTHER INFORMATION CONTACT: Michele Mire, AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4711.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2004, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain cut–to-length carbon quality steel plate from the Republic of Korea (Korea) covering the period February 1, 2003 through January 31, 2004 (69 FR 5125).

On March 23, 2004, pursuant to requests by respondent, Dongkuk Steel Mill Co., Ltd. (DSM), and domestic interested parties, International Steel Group Inc. (ISG) and Nucor Corporation (Nucor), the Department initiated an administrative review of DSM, Korea Iron & Steel Co., Ltd. (KISCO), and Union Steel Manufacturing Co. (Union Steel) covering the period February 1, 2003 through January 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788, 15789 (March 26, 2004). On June 7, 2004, ISG withdrew its request for an administrative review of DSM, KISCO and Pohang Iron & Steel Co., Ltd. (POSCO).[1] On June 24, 2004, DSM withdrew its request for an administrative review. On June 25, 2004, Nucor withdrew its request for an administrative review of DSM, KISCO and Union Steel.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review in whole or in part if a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested administrative review. Section 351.213(d)(1) also provides that the Department may extend the 90–day time limit for parties to withdraw their request for an administrative review. On June 7, 2004, June 24, 2004, and June 25, 2004, ISG, DSM, and Nucor, respectively, submitted letters withdrawing their requests that the Department conduct an administrative review of the period February 1, 2003 through January 31, 2004. Although Nucor withdrew its request for the review one day after the 90–day period had expired, the Department is rescinding the administrative review of the antidumping duty order on certain cut–to-length carbon quality steel plate from Korea for the period February 1, 2003 through January 31, 2004, because all parties who requested administrative reviews have withdrawn their requests, and it is otherwise reasonable to rescind the review. This action is consistent with the Department's practice. *See e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913, 40914 (June 14, 2002) where, pursuant to a request filed after the 90–day deadline, the Department rescinded the review with respect to one respondent because the review of that respondent had not progressed beyond a point where it would have been unreasonable to grant the request for rescission.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.213(d)(4) of the Department's regulations.

Dated: July 16, 2004.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Group I Import Administration.

[FR Doc. 04–16866 Filed 7–22–04; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Department did not initiate an administrative review of POSCO because POSCO is excluded from the antidumping duty order on certain cut-to-length carbon quality steel plate from Korea. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-to-Length Carbon Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072004A]

Proposed Information Collection; Comment Request; Sea Grant Program Application Requirements for Grants, for Sea Grant Fellowships, Including the Dean John A. Knauss Marine Policy Fellowships, and for Designation as a Sea Grant College or Sea Grant Institute

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 21, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Francis Schuler, R/SG, Room 11836, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2445, ext. 158).

SUPPLEMENTARY INFORMATION:

I. Abstract

The objectives of the National Sea Grant College Program are to increase the understanding, assessments, development, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources. It accomplishes these objectives by conducting research, education, and outreach programs.

Grant monies are available for funding activities that help obtain the objectives of the Sea Grant Program. Both single and multi-project grants are awarded, with the latter representing about 80 percent of the total grant program. In addition to the SF–424 and other standard grant application requirements, three additional forms are required with a grant application. These are the Sea Grant Control Form, used to identify the organizations and personnel who would be involved in the grant; the Project Record Form, which collects summary date on projects; and the Sea Grant Budget, used in place of the SF–424A or SF–424C.

Applications are also required in order to be awarded a Sea Grant Fellowship, including the Dean John A. Knauss Marine Policy Fellowships.

The law (33 U.S.C. 1126) provides for the designation of a public or private institution of higher education, institute, laboratory, or State or local agency as a Sea Grant college or Sea Grant institute. Applications are required for designation of Sea Grant Colleges and Sea Grant Institutes.

II. Method of Collection

Responses are made in a variety of formats, including forms and narrative paper submissions. The Sea Grant Project Record Form and Sea Grant Budget Form must also be submitted in electronic format.

III. Data

OMB Number: 0648–0362.

Form Number: NOAA Forms 90–1, 90–2 and 90–4.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; and Not-for-profit institutions.

Estimated Number of Respondents: 121.

Estimated Time Per Response: 30 minutes for a Sea Grant Control form; 20 minutes for a Project Record Form; 15 minutes for a Sea Grant Budget form; 20 hours for an application for designation as a Sea Grant college or Sea Grant institute; and 2 hours for an application for a Sea Grant Fellowship, including the Dean John A. Knauss Marine Policy Fellowship.

Estimated Total Annual Burden Hours: 672.

Estimated Total Annual Cost to Public: $1,377.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–16858 Filed 7–22–04; 8:45 am]

BILLING CODE 3510–KA–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Common Request

AGENCY: Department of the Air Force.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Services Agency (HQ AFSVA) announces a continuation of use to the existing Air Force Form (AF) 3211, Customer Comment Card and seeks public comment of the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 6, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ AFSVA/SVOHL, Lodging Branch, 10100 Reunion Place, Suite 401, San Antonio, TX 78216–4138, ATTN: TSgt Pamela D. Cook

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call

HQ AFSVA/SVOHL at (210) 652–8875 or by fax at (210) 652–7041.

Title, Form Number, and OMB Number: Customer Comments, AF Form 3211, OMB Number 0701–0146.

Needs and Uses: Each guest of Air Force Lodging and its contract lodging operations are provided access to AF Form 3211. The AF Form 3211 gives each guest the opportunity to comment on facilities and services received. Completion and return of the form is optional. The information collection requirement is necessary for Wing leadership to assess the effectiveness of their Lodging program.

Affected Public: AFI 34–246, Air Force Lodging Program, specifies who is an authorized guest in Air Force Lodging. Some examples of the public include construction contractors and special guests of the Installation Commander.

Annual Burden: 16.67.

Number of Respondents: 200.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Respondents are authorized guests of Air Force Lodging. The AF Forms 3211 can be used for assessing background documentation/supporting material for all types of management decisions. Higher headquarters also reviews them during lodging assistance and Innkeeper Award competitions.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–16803 Filed 7–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors Meeting

Pursuant to section 9355, title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado Springs, Colorado, 23–24 July 2004. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in paragraphs (2), (6), and subparagraph (9)(B) of subsection (c) of section 552b, title 5, United States Code. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in various locations on the Academy grounds.

For further information, contact Lieutenant Colonel Tom Joyce, Military Assistant, Office of the Deputy Assistant Secretary of the Air Force (Force Management and Personnel), SAF/MRM, 1660 Air Force Pentagon, Washington, DC 20330–1660, (703) 693–9765.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–16804 Filed 7–22–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 21, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 19, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: New.

Title: Gateway to Educational Materials (GEM) Resource Annotation.

Frequency: On Occasion.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 5,000.

Burden Hours: 600.

Abstract: The Gateway to Educational Materials (GEM) (*http://thegateway.org*) is an electronic catalog of lesson plans and other educational resources available on the Web from more than 500 member organizations. The goal of the catalog is to offer easy access to a range of educational resources, so that educators, parents, and students may quickly find educational resources that may be helpful and relevant to their needs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2591. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to

202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16752 Filed 7–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 20, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Management

Type of Review: Reinstatement.

Title: Performance Based Data Management Initiative.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 66,052.

Burden Hours: 288,480.

Abstract: The Performance Based Data Management Initiative (PBDMI) is in the first phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2529. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16870 Filed 7–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the public meeting on September 16, 2004 from 9 a.m. until approximately 4:45 p.m., and on September 17, 2004 from 8:30 a.m. until approximately 11:30 a.m. in Hampton Room at The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. You may call the hotel at 1–800–THE–OMNI (1–800–843–6664) to inquire about room accommodations.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7563, 1990 K St. NW. Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Are the Functions of the National Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended. The Committee's responsibilities are to:

- Evaluate the standards of accreditation applied to applicant foreign medical schools; and
- Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Items Will Be on the Agenda for Discussion at the Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. The countries tentatively scheduled to be discussed at the meeting include Cayman Islands, Czech Republic, Dominica, Grenada, India, Ireland, Liberia, Netherlands, Poland, Saba, St. Lucia, Sweden, Taiwan, Thailand, and United Kingdom. Beginning August 30, you may call the contact person listed above to obtain the final listing of the countries whose standards will be discussed during this meeting. The listing of countries will also be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/about/bdscomm/list/ncfmea.html*.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Authority: 5 U.S.C. Appendix 2.

Dated: July 16, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–16795 Filed 7–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–928–000]

California Independent System Operator Corporation; Notice of Availability of Revised Summary Template

July 20, 2004.

1. Take notice that the template issued by Commission staff on July 15, 2004, contained an error. Staff is therefore issuing a revised template for filing information on Existing Transmission Contracts (ETCs). The revised optional template for filing ETC information is available on *http://www.ferc.gov* under "What's New."

2. The error in the original template affected responses to Questions 6 and 10. Selecting a radio button in response to either question nullified any response selected for the other question. The format of the template is otherwise unchanged.

3. Summary ETC information should be submitted using the Commission's electronic filing system (eFiling link at *http://www.ferc.gov*). Parties filing supplemental information should also use the eFiling system, provided the material is not restricted from publication and meets the maximum file number and file size restrictions for electronic filing.

4. All submissions are due by 5 p.m. Eastern time on July 23, 2004.[1]

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1646 Filed 7–22–04; 8:45 am]

BILLING CODE 6717–01–P

[1] This date was clarified by an Errata Notice issued on July 13, 2004 in this proceeding.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–11–000]

Sempra Energy International, Sempra Energy LNG; Notice of Pre-Filing Process for the Planned Port Arthur LNG Terminal and Pipeline Project and Request for Comments on Environmental Issues

July 20, 2004.

This is an initial notice that the staff of the Federal Energy Regulatory Commission (Commission) has begun the National Environmental Protection Act (NEPA) Pre-filing Process and will prepare an environmental impact statement (EIS) for Sempra Energy International's and Sempra Energy LNG's (collectively referred to as Sempra) planned Port Arthur LNG Terminal and Pipeline Project in Texas and Louisiana. The Commission will use this review process to gather input from the public and interested agencies on the planned project. Your input will help to determine which issues need to be evaluated in the EIS. Once the company has provided more information on the location of the facilities we will issue another notice and schedule scoping meetings.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to Federal, State, and local government agencies; elected officials; landowners, environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We[1] encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Sempra proposes to construct and operate an LNG import terminal and two natural gas send-out pipelines. These facilities would be used to deliver up to 1.5 billion cubic feet per day (Bcf/d) of natural gas to existing intrastate and interstate pipeline systems. The facilities could be expanded to deliver an additional 1.5 Bcf/d of natural gas.

The LNG receiving terminal would be located in the City of Port Arthur, Jefferson County, Texas, on the Port

[1] "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Arthur Ship Channel. The terminal would be designed to accept LNG and temporarily store and vaporize LNG and would contain up to three LNG storage tanks with an approximate capacity of 160,000 cubic meters (m^3) each.

The terminal would contain two berths capable of accommodating the unloading of two LNG tankers. The berths would be designed for LNG tankers ranging in capacity from 100,000 m^3 to 250,000 m^3 and would require dredging to achieve the required size and depth to accommodate the LNG tanker ships. Sempra estimates that the facility could accommodate one ship every other day.

Two send-out pipelines also would be constructed to transport the vaporized natural gas to interconnections with existing intrastate and interstate pipeline systems. A 36-inch-diameter pipeline approximately 70 miles long and running northeast would cross Sabine Lake and connect the terminal with an interstate transmission pipeline at Transco Pipeline Compressor Station 45 near Ragley, Louisiana. A 30-inch-diameter pipeline approximately three miles long and running south would connect the terminal with the Natural Gas Pipeline Company of America interstate pipeline. Metering facilities would be installed at each of the interconnections. These pipelines would pass through Jefferson, and Orange Counties, Texas, and Cameron, Calcasieu, and Beauregard Parishes, Louisiana.

A conceptual map depicting the planned project facilities is provided in appendix 1.[2]

Sempra has requested a Commission decision on the project by September 30, 2005. Sempra proposes to start construction of the facility during the first quarter of 2006 and go into service on or about March 31, 2009.

In order to accommodate the construction of the LNG terminal, U.S. Highway 87, several pipelines, and other utilities would need to be relocated.

Land Requirements

The proposed Sempra LNG terminal would be constructed and operated on approximately 150 acres within an approximate 540-acre parcel. The 540-acre parcel is part of a much larger tract, about 2,900 acres, already owned by Sempra. The pipelines would require about 760 acres for construction.

The EIS Process

The FERC will be the lead Federal agency for the EIS process which is being conducted to satisfy the requirements of NEPA. NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity (Certificate) or Authorization.

NEPA also requires us to discover and address issues and concerns the public may have about proposals and to ensure those issues and concerns are analyzed in the EIS. This process is referred to as "scoping." The goal of the scoping process is to focus the analysis in the EIS on the important and potentially significant environmental issues related to the proposed action, and on reasonable alternatives. The scoping process will begin after we have received more substantial information on the location of the proposed facilities. However, we welcome any comments agencies or the public may have on the Sempra proposal at this time. All comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

The Port Arthur LNG Terminal and Pipeline Project is in the preliminary design stage. At this time, specific facility locations and other details are being finalized and no formal application has been filed with the FERC. Sempra expects to file a formal application with the FERC in November 2004. Although we have no formal Certificate application, we are initiating our review of Sempra's planned project under our NEPA Pre-filing Process. The purpose of the FERC's NEPA Pre-filing Process is to:

- Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff;
- Encourage the early involvement of interested stakeholders to identify issues and study needs; and
- Attempt to resolve issues early, before an application is filed with the FERC.

We are in the process of contacting agencies to request their assistance in the preparation of the EIS as a cooperating agency to satisfy their NEPA responsibilities. By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. Please focus your comments on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 2; and
- Reference Docket No. PF04–11–000 on the original and both copies.

A docket number (PF04–11–000) has been established to place information filed by Sempra and related documents issued by the Commission, into the public record.[3] Once a formal application is filed, the Commission will:

- Publish a Notice of Application in the **Federal Register**;
- Establish a new docket number; and
- Set a deadline for interested persons to intervene in the proceeding.

Because the Commission's NEPA Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

The Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the "eLibrary" link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices are being sent to all those receiving this notice in the mail.

[3] To view information in the docket, follow the instructions for using the eLibrary link in Availability of Additional Information, below.

filing you are making. This filing is considered a "Comment on Filing."

Environmental Mailing List

If you wish to remain on our mailing list to receive any additional environmental notices and copies of the draft and final EIS, it is important that you return the Return Mailer (appendix 2) attached to this notice. If you do not return the mailer, you will be removed from our mailing list.

Availability of Additional Information

Additional information about the planned project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link and click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field (*i.e.*, PF04–11). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnLineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

The Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

In addition, a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Sempra has initiated a Public Participation Plan to provide a means of communication for participating stakeholders. A toll-free number 1–888–843–2464 has been established for communicating with Sempra representatives regarding this project. Also, contacts and information requests can be made by e-mail to Sempra at *SempraEnergyCom@sempra.com*. Finally, Sempra has established a Web site for this project. The Web site includes a list of public repositories along the planned route where all maps are available for inspection, along with applications filed with State and Federal agencies, among other useful information. Sempra's Web site is: *http://www.portarthurlng.com*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1645 Filed 7–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation plan.

b. *Project No.:* 2496–096.

c. *Date Filed:* July 1, 2004.

d. *Applicant:* Eugene Water and Electric Board (EWEB).

e. *Name of Project:* Leaburg-Walterville Project.

f. *Location:* The project is located on the Mckenzie River, in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Gale Banry, Energy Resource Project Manager, Eugene Water and Electric Board, (541) 484–2411.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 23, 2004.

k. All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2496–096) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages e-filings.

l. *Description of Request:* The licensee filed a recreation plan pursuant to article 432 of its license. The plan addresses recreational enhancements at the project, including a boat launch take out facility, trails, day-use facilities and signage.

m. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1644 Filed 7–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM03–8–001]

Quarterly Financial Reporting and Revisions to the Annual Reports; Notice

July 20, 2004.

The Federal Energy Regulatory Commission published in the **Federal Register** of February 26, 2004, Order No. 646, a Final Rule amending the Commission's financial reporting regulations establishing new quarterly financial reporting for respondents that currently file Annual Reports with the Commission.[1] These new quarterly financial reports are the FERC Form No. 3–Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and the FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies.

The software provided by the Commission and used to file the FERC Forms No. 3–Q is now available on the Commission's Web site. It is also available to respondents through automatic updates to the FERC Form Nos. 1, and 2/2–A software. Respondents may contact *FERCOnLineSupport@ferc.gov* for questions concerning the use of the software. Questions concerning the financial data reported in the quarterly financial reports may be directed to Brian Holmes at (202) 502–6008 or sent by e-mail to *brian.holmes@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1643 Filed 7–22–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7792–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Environmental Defense in the U.S. District Court for the Northern District of California: *Environmental Defense* v. *EPA*, No. C 03 5508 (N.D. CA). Environmental Defense filed a complaint pursuant to section 304(a) of the Act, 42 U.S.C. section 7604(a), which concerns the U.S. Environmental Protection Agency's (EPA's) alleged failure to meet a mandatory deadline under section 111(b) of the Act, 42 U.S.C. section 7411(b), by failing to promulgate a New Source Performance Standard for stationary Internal Combustion Engines. Under the proposed consent decree, rulemaking schedules will be provided to establish New Source Performance Standards for stationary internal combustion engines.

DATES: Written comments on the proposed consent decree must be received by August 23, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0007, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 564–5583.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Section 111(b)(2) of the Clean Air Act (the Act) requires that EPA publish proposed regulations proposing federal new source performance standards for new sources in categories of stationary sources listed under section 112(b)(1) of the Act, and that EPA promulgate final regulations within one year after publication of the proposed regulations. In the above-captioned case, Environmental Defense alleges that EPA has failed to meet a mandatory deadline under the Act by failing to promulgate a New Source Performance Standard for stationary Internal Combustion Engines.

The proposed consent decree provides a rulemaking schedule to establish New Source Performance Standards for stationary internal combustion engines, with separate schedules for proposal and promulgation of such standards for compression-ignition engines and for spark-ignition engines.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0007 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

[1] Quarterly Financial Reporting and Revisions to the Annual Reports, Order No. 646, 69 FR 9030 (Feb. 26, 2004), III FERC Stats. & Regs. ¶ 31,158 (Feb. 11, 2004).

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 15, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–16833 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[R04–OAR–2004–NC–0002–200422; FRL–7791–6]

Adequacy Status of the Raleigh/Durham and Greensboro/Winston-Salem/High Point, NC 1-Hour Ozone Maintenance Plan Updates for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emission budgets (MVEB) in the Raleigh/Durham area (Durham and Wake Counties and a portion of Granville County) and Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford Counties, and a portion of Davie County) 1-hour ozone maintenance plan updates, submitted June 4, 2004, by the North Carolina Department of Environment and Natural Resources (NCDENR), are adequate for transportation conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for transportation conformity determinations until EPA has affirmatively found them adequate. As a result of EPA's finding, the Raleigh/Durham and Greensboro/Winston-Salem/High Point areas can use the MVEB from the submitted Raleigh/Durham area and Greensboro/Winston-Salem/High Point area 1-hour ozone maintenance plan updates, respectively, for future conformity determinations.

DATES: These MVEB are effective August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Environmental Engineer, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Mr. Laurita can also be reached by telephone at (404) 562–9044, or via electronic mail at *laurita.matthew@epa.gov*. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to NCDENR on June 23, 2004, stating that the MVEB in the submitted Raleigh/Durham area and Greensboro/Winston-Salem/High Point area 1-hour ozone maintenance plan updates submitted on June 4, 2004, are adequate. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of SIP Submissions"). The adequate MVEB are provided in the following table.

RALEIGH/DURHAM AREA MVEB

[Tons per day]

County	Pollutant	2007	2010	2012	2015
Durham	VOC	8.30	6.77	5.94	5.26
	NO_X	15.29	11.35	9.09	6.49
Granville*	VOC	0.55	0.46	0.41	0.37
	NO_X	1.46	1.13	0.89	0.62
Wake	VOC	20.04	17.36	15.64	14.35

RALEIGH/DURHAM AREA MVEB—Continued

[Tons per day]

County	Pollutant	2007	2010	2012	2015
	NO_X	41.38	29.90	24.41	17.90

*Partial County.

GREENSBORO/WINSTON-SALEM/HIGH POINT AREA MVEB

[Tons per day]

County	Pollutant	2007	2010	2012	2015
Davidson	VOC	5.77	4.73	4.38	3.94
	NO_X	10.49	7.79	6.36	4.72
Davie*	VOC	0.01	0.01	0.01	0.01
	NO_X	0.03	0.02	0.02	0.01
Forsyth	VOC	12.06	9.93	9.12	8.14
	NO_X	19.53	14.49	11.83	8.79
Guilford	VOC	17.55	14.32	13.10	11.66
	NO_X	27.28	20.11	16.44	12.18

*Partial County.

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to State air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB are adequate for transportation conformity purposes are outlined in 40 Code of Federal Regulations 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds a budget adequate, the Agency may later determine that the SIP itself is not approvable.

EPA has described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memorandum entitled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). EPA has followed this guidance in making this adequacy determination. This guidance is incorporated into EPA's June 14, 2004, final rulemaking entitled "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes."

Authority: 42 U.S.C. 7401–7671q.

Dated: July 14, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–16832 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6653–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–BLM–J65413–MT Rating EC2, Dillon Resource Management Plan, Provide Direction for Managing Public Lands within the Dillon Field Office, Implementation, Beaverhead and Madison Counties, MT.

Summary: EPA expressed environmental concerns regarding potential impacts to water quality, habitat and on ecosystem processes. EPA believes the final EIS should include additional information to explain how the RMP and actions taken will provide a complete and consistent guide to managing the area, and assessing and mitigating significant impacts of the action.

Final EISs

ERP No. F–AFS–J65016–UT, Bear Hodges II Timber Sale Management Plan, Selective Timber Harvest of Spruce Stands With or Without Road Construction, Implementation, Wasatch National Forest (WCNF), Logan Ranger District, Cache and Rich Counties, UT.

Summary: The final EIS adequately responded to EPA's previous concerns. Therefore, EPA has no objection to the proposed action.

ERP No. F–AFS–J65406–MT, West Troy Project, Proposes Timber Harvesting, Natural Fuels Reduction Treatments, Pre-Commercial Thinning, and Watershed Rehabilitation (Decommissioning) Work, Kootenai National Forest, Three River Ranger District, Lincoln County, MT.

Summary: While the final EIS addressed many of EPA's previous concerns, EPA continues to express concerns that additional necessary watershed restoration work be completed in light of the large backlog and uncertain funding.

ERP No. F–AFS–L65447–00, East Bridge Cattle Allotment Management Plan Revision (AMP), Authorization of Continued Grazing, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID and Lincoln County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–J65384–MT, Glacier National Park Commercial Services Plan, General Management Plan, Implementation, Glacier National Park,

a Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT.

Summary: EPA has no objections to the proposed action.

Dated: July 20, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–16827 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6653–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed July 12, 2004 Through July 16, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040328, Final EIS, COE, LA, Bayou Sorrel Lock Replacement (formerly IWW Locks) Feasibility Study to Relieve Navigation Delays and/or Provide Adequate Flood Protection, Atchafalaya Basin Floodway, Iberville Parish, LA, Wait Period Ends: August 23, 2004, Contact: Richard E. Boe (504) 862–1505.

EIS No. 040329, Draft EIS, AFS, OR, Tamarack Quarry Expansion Project, Secure a Long-Term, Economical Source of Rock Material to Use for Highway and Road Maintenance, Mt. Hood National Forest, Clackamas County, OR, Comment Period Ends: September 7, 2004, Contact: Mike Redmond (503) 668–1776. This document is available on the Internet at: *http://www.fs.fed.us/r6/mthood.*

EIS No. 040330, Final EIS, AFS, CA, Larson Reforestation and Fuel Reduction Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Mariposa and Tuolumne Counties, CA, Wait Period Ends: August 23, 2004, Contact: John R. Swanson Ext 550 (209) 962–7825.

EIS No. 040331, Final EIS, FHW, MD, MD–210 (Indian Head Highway) Multi-Modal Study, MD–210 Improvements between I–95/I–495 (Capitol Beltway) and MD–228 Funding and U.S. COE Section 404 Permit Issuance, Prince George's County, MD, Wait Period Ends: August 23, 2004, Contact: Mary Huie (703) 329–3712.

EIS No. 040332, Final EIS, FHW, IL, Macomb Area Study, Construction from U.S. Route 67 (FAP–310) and Illinois Route 336 (FAP–315), City of Macomb, McDonough County, IL, Wait Period Ends: August 23, 2004, Contact: Norman R. Stoner (217) 492–4640.

EIS No. 040333, Final EIS, NAS, FL, International Space Research Park (ISRP) to Bring New Research and Development Uses to the John F. Kennedy Center, Brevard County, FL, Wait Period Ends: August 23, 2004, Contact: Mario Busacca (321) 867–8456.

EIS No. 040334, Draft EIS, SFW, WA, ID, OR, CA, Caspian Tern (sterna caspia) Management to Reduce Predation of Juvenile Salmonids in the Columbia River Esturary, To Comply with the 2002 Settlement Agreement, Endangered Species Act (ESA), Columbia River, WA, OR, ID and CA, Comment Period Ends: September 22, 2004, Contact: Nanette Seto (503) 231–6164. This document is available on the Internet at: *http://migratorybirds.pacific.fws.gov/CATE_DEIS.htm.*

EIS No. 040335, Final EIS, COE, AZ, EL Rio Antiguo Feasibility Study, Ecosystem Restoration along the Rillito River, Pima County, AZ, Wait Period Ends: August 23, 2004, Contact: John Moeur (213) 452–4219.

EIS No. 040336, Draft EIS, AFS, MT, Frenchtown Face Ecosystem Restoration Project, Maintain or Improve Forest Health and Reduce the Risk of Damage Insects and Disease, Lolo National Forest, Ninemile Ranger District, Missoula County, MT, Comment Period Ends: September 7, 2004, Contact: Brian Riggers (406) 329–3793. This document is available on the Internet at: *http//www.fs.fed.us/rl/lolo/projects.*

EIS No. 040337, Final EIS, AFS, UT, State of Utah School and Institutional Trust Lands Administration (SITLA) Access Route on East Mountain, National Forest System Lands Administered by Mantila Sal National Forest, Ferron/Price Ranger District, Emery Counties, UT, Wait Period Ends: August 23, 2004, Contact: Leland Matheson (435) 637–2817.

EIS No. 040338, Draft EIS, BLM, UT, Price Field Office Resource Management Plan, Implementation, Proposed Areas of Critical Environmental Concerns Suitable Wild and Scenic River Segments and Special Recreation Management Area, Carbon and Emery Counties, UT, Comment Period Ends: October 15, 2004, Contact: Floyd Johnson (435) 636–3600. This document is available on the Internet at: *http://www.pricermp.com/drafteis.asp.*

Dated: July 20, 2004.

Ken Mittelholtz,

Environmental Protection Agency, Office of Federal Activities.

[FR Doc. 04–16828 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0240]; FRL–7372–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 24–25, August 26–27, and September 9–10, 2004, the FIFRA Scientific Advisory Panel (SAP) will hold three separate meetings to consider and review three fumigant bystander exposure models. This particular notice announces the August 24–25 meeting at which the SAP will review the Probabilistic Exposure and Risk model for FUMigants (PERFUM) using iodomethane as a case study. On August 26–27, the SAP will review the Fumigant Exposure Modeling System (FEMS) using metam sodium as a case study. On September 9–10, the SAP will review the SOil Fumigant Exposure Assessment system (SOFEA©) using telone as a case study. Additional details about the August 24–25 meeting are provided below. Separate notices are available for each of the other meetings that provide additional details specific to those meetings.

DATES: The meeting will be held on August 24–25 from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before August 6, 2004.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn National Airport, 2650 Jefferson Davis Hwy, Arlington, VA 22202. The telephone number for the Holiday Inn National Airport is (703) 684–7200.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and Special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0240 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steven Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0103; fax number: (202) 564–8382; e-mail addresses: *knott.steven@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0240. The officialpublic docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than early August, 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0240. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0240. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0240. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0240.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0240 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, August 17, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, August 10, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for the current meeting should have expertise in one or more of the following areas: Exposure assessment, statistics, meteorology, air modeling, fumigant volatility and fumigant agronomic practices. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 6, 2004.

The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the needs of the FIFRA SAP and includes consideration of such issues as adequately covering the areas of expertise (including the different scientific perspectives within each discipline) necessary to address the Agency's charge questions. In addition, ad hoc members of the FIFRA SAP must be available to fully participate in the review; they must not have any conflicts of interest or appearance of lack of impartiality; and they must be independent and unbiased with respect to the matter under review. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or agency or their employment by a Federal department or agency (except the EPA). In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting more than 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

EPA's Office of Pesticide Programs is engaged in pesticide tolerance reassessment activities as mandated by the Food Quality Protection Act (1996). As part of that process, the Agency is currently involved in the development of a comparative risk assessment for six soil fumigant pesticides that include chloropicrin, dazomet, iodomethane, methyl bromide, metam-sodium, and telone. Each of these chemicals has a degree of volatility associated with it which is a key characteristic needed to achieve a satisfactory measure of efficacy. This volatility, however, can contribute to human exposures because these chemicals can travel to non-target receptors, such as nearby human populations. Commonly referred to as bystander exposure, it is considered by the Agency to be the primary pathway through which human exposure to fumigants may occur.

In order to address bystander exposures, the Agency developed a method based on a deterministic use of the Office of Air model entitled Industrial Source Complex Model (ISC3) that is routinely used for regulatory decisions. ISC3 is publicly available from the following Agency website *(http://www.epa.gov/scram001/tt22.htm#isc.* In this approach, the Agency uses chemical-specific measures of volatility to quantify field emission rates for modeling purposes. Additionally, the Agency uses standardized meteorological conditions which represent a stable atmosphere and unidirectional wind patterns that provide conservative estimates of exposure.

Stakeholders expressed concern that the conditions represented by the current approach provide results that are not sufficiently refined for regulatory actions such as risk mitigation. In response, the Arvesta Corporation, the registrant for iodomethane, has submitted a model entitled Probabilistic Exposure and Risk model for FUMigants (PERFUM) for consideration as a possible refinement to the Agency's approach. The Agency believes that this model also may have the potential to be used generically to calculate risks for the six soil fumigants being evaluated in the current risk assessment. The key differences between PERFUM and the current Agency approach are that it incorporates ranges of both field emission rates and 5 years of meteorological data from stations in areas where iodomethane is used.

The purpose of this meeting of the FIFRA Science Advisory Panel (SAP) is to evaluate the approaches contained in PERFUM for integrating actual meteorological data into ISC3 analyses. Additionally, the Agency is seeking a specific evaluation of the methods used pertaining to field emission rates, statistical approaches for data analysis, receptor locations, and defining the exposed populations. Finally, the Agency is seeking a determination as to the scientific validity of the overall approach included in PERFUM. The proposed agenda for this SAP meeting will involve an introductory overview of the current risk assessment approach by the EPA. On behalf of the Arvesta Corporation, a detailed presentation of the PERFUM model will then be given by Dr. Richard Reiss of Sciences International, Inc. located in Alexandria, Virginia. Staff from California's Department of Pesticide Regulation will also be participating with EPA in this SAP meeting.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2004.

Joseph J. Merenda, Jr.

Director, Office of Science Coordination and Policy.

[FR Doc. 04–16953 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0241]; FRL–7371–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 24–25, 2004, August 26–27, 2004, and September 9–10, 2004, the FIFRA Scientific Advisory Panel (SAP) will hold three separate meetings to consider and review three fumigant bystander exposure models. This particular notice announces the August 26–27, 2004 meeting at which the SAP will review the Fumigant Exposure Monitoring System (FEMS) using metam sodium as a case study. On August 24–25, 2004, the SAP will review the Probabilistic Exposure and Risk model for FUMigants (PERFUM) using iodomethane as a case study. On September 9–10, 2004 the SAP will review the SOil Fumigant Exposure Assessment system (SOFEA©) using telone as a case study. Additional details about the August 26–27, 2004 meeting are provided below. Separate notices are available for each of the other meetings that provide additional details specific to those meetings.

DATES: The meeting will be held on August 26–27, 2004, from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before August 6, 2004.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn National Airport, 2650 Jefferson Davis Hwy, Arlington, VA 22202. The telephone number for the Holiday Inn National Airport is (703) 684–7200.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail, Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and Special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0241 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) –564–8381; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0241. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than (early August 2004). In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and-comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is

available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0241. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0241. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0241. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0241.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0241 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, August 19, 2004, in order to be included on the

meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, August 12, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that, appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for the current meeting should have expertise in one or more of the following areas: exposure assessment, statistics, meteorology, air modeling, fumigant volatility and fumigant agronomic practices. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 6, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the needs of the FIFRA SAP and includes consideration of such issues as adequately covering the areas of expertise (including the different scientific perspectives within each discipline) necessary to address the Agency's charge questions. In addition, ad hoc members of the FIFRA SAP must be available to fully participate in the review; they must not have any conflicts of interest or appearance of lack of impartiality; and they must be independent and unbiased with respect to the matter under review. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or agency or their employment by a Federal department or agency (except the EPA). In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting more than 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

EPA's Office of Pesticide Programs is engaged in pesticide tolerance reassessment activities as mandated by the Food Quality Protection Act (1996). As part of that process, the Agency is currently involved in the development of a comparative risk assessment for six soil fumigant pesticides that include chloropicrin, dazomet, iodomethane, methyl bromide, metam-sodium, and telone. Each of these chemicals has a degree of volatility associated with it which is a key characteristic needed to achieve a satisfactory measure of efficacy. This volatility, however, can

contribute to human exposures because these chemicals can travel to non-target receptors, such as nearby human populations. Commonly referred to as bystander exposure, it is considered by the Agency to be the primary pathway through which human exposure to fumigants may occur. In order to address bystander exposures, the Agency developed a method based on a deterministic use of the Office of Air model entitled Industrial Source Complex Model (ISC3) that is routinely used for regulatory decisions. ISC3 is publicly available from the following Agency website (*http://www.epa.gov/scram001/tt22.htm#isc*). In this approach, the Agency uses chemical-specific measures of volatility to quantify field emission rates for modeling purposes. Additionally, the Agency uses standardized meteorological conditions which represent a stable atmosphere and unidirectional wind patterns that provide conservative estimates of exposure.

Stakeholders expressed concern that the conditions represented by the current approach provide results that are not sufficiently refined for risk mitigation purposes. In response, the registrants for metam-sodium, which include the Amvac Corporation and other members of the Metam Sodium Task Force, have submitted a model entitled the Fumigant Exposure Monitoring System (FEMS) to the Agency for consideration as a possible refinement to the Agency's approach. The Agency believes that this model also may have the potential to be used generically to calculate risks for the six soil fumigants being evaluated in the current risk assessment. The key differences between FEMS and the current Agency approach are that it incorporates ranges of both field emission rates and actual meteorological conditions. The information it uses includes ranges in the available emission data as well as 5 years of meteorological data from representative weather stations from areas where metam-sodium is used.

The purpose of this meeting of the FIFRA Science Advisory Panel (SAP) is to evaluate the approaches contained in the FEMS model for integrating actual meteorological data into ISC3 analyses. Additionally, the Agency is also seeking a specific evaluation of the methods used pertaining to field emission rates, statistical approaches for data analysis, receptor locations, and defining the exposed populations. Finally, the Agency is seeking a determination as to the scientific validity of the overall approach included in FEMS. The proposed agenda for this SAP meeting will involve an introductory overview of the current risk assessment approach by the EPA. On behalf of the metam sodium registrants, a detailed presentation of the FEMS model will then be given Dr. David Sullivan of Sullivan Environmental Consulting, Inc. located in Alexandria, Virginia. Staff from California's Department of Pesticide Regulation will also be participating with EPA in this SAP meeting.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2004.

Joseph J. Merenda, Jr.

Director, Office of Science Coordination and Policy.

[FR Doc. 04–16954 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0242]; FRL–7371–8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 24–25, 2004, August 26–27, 2004 and September 9–10, 2004, the FIFRA Scientific Advisory Panel (SAP) will hold three separate meetings to consider and review three fumigant bystander exposure models. This particular notice announces the September 9–10, 2004 meeting at which the SAP will review the SOil Fumigant Exposure Assessment system (SOFEA©) using telone as a case study. On August 24–25, 2004 the SAP will review the Probabilistic Exposure and Risk model for FUMigants (PERFUM) using iodomethane as a case study. On August 26–27, 2004 the SAP will review the Fumigant Exposure Modeling System (FEMS) using metam sodium as a case study. Additional details about the September 9–10, 2004 meeting are provided below. Separate notices are available for each of the other meetings that provide additional details specific to those meetings.

DATES: The meeting will be held on September 9–10 from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before August 6, 2004.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn National Airport, 2650 Jefferson Davis Hwy, Arlington, VA 22202 (703) 684–7200. The telephone number for the Holiday Inn National Airport is (703) 684–7200.

Comments: Written comments may be submitted electronically preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, Requests to present oral comments, and Special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0242 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joseph Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail addresses: *bailey.joseph@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this

action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0242. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than mid August, 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

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1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0242. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or

mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0242. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460—0001, Attention: Docket ID number OPP–2004–0242.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also, provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0242 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, September 2, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, August 26, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for the current meeting should have expertise in one or more of the following areas: Exposure assessment, statistics, meteorology, air modeling, fumigant volatility and fumigant agronomic practices. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before August 6, 2004. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the needs of the FIFRA SAP and includes consideration of such issues as adequately covering the areas of expertise (including the different scientific perspectives within each discipline) necessary to address the Agency's charge questions. In addition, ad hoc members of the FIFRA SAP must be available to fully participate in the review; they must not have any conflicts of interest or appearance of lack of impartiality; and they must be independent and unbiased with respect to the matter under review. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal Department or agency or their employment by a Federal department or agency (except the EPA). In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting more than 10 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support.

The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also, shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4–years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

EPA's Office of Pesticide Programs is engaged in pesticide tolerance reassessment activities as mandated by the Food Quality Protection Act (1996). As part of that process, the Agency is currently involved in the development of a comparative risk assessment for six soil fumigant pesticides that include chloropicrin, dazomet, iodomethane, methyl bromide, metam-sodium, and telone. Each of these chemicals has a degree of volatility associated with it which is a key characteristic needed to achieve a satisfactory measure of efficacy. This volatility, however, can contribute to human exposures because these chemicals can travel to non-target receptors, such as nearby human populations. Commonly referred to as bystander exposure, it is considered by the Agency to be the primary pathway through which human exposure to fumigants may occur.

In order to address bystander exposures, the Agency developed a method based on a deterministic use of the Office of Air model entitled Industrial Source Complex Model (ISC3) that is routinely used for regulatory decisions. ISC3 is publicly available from the following Agency website (*http://www.epa.gov/scram001/tt22.htm#isc*). In this approach, the Agency uses chemical-specific measures of volatility to quantify field emission rates for modeling purposes. Additionally, the Agency uses standardized meteorological conditions which represent a stable atmosphere and unidirectional wind patterns that provide conservative estimates of exposure.

Stakeholders expressed concern that the conditions represented by the current approach provide results that are not sufficiently refined for regulatory actions such as risk mitigation. In response, the Dow Agrosciences Corporation, the registrant for telone, has submitted a model entitled SOil Fumigant Exposure Assessment system (SOFEA©) for consideration as a possible refinement to the Agency's approach. The Agency believes that this model also, may have the potential to be used generically to calculate risks for the six soil fumigants being evaluated in the current risk assessment. The key differences between SOFEA© and the current Agency approach are that it calculates fumigant concentrations in air arising from volatility losses from treated fields for entire agricultural regions using multiple transient source terms (e.g., different treated fields), GIS information, agronomic specific variables, user specified buffer zones and field re-entry intervals. A modified version of the ISC3 is used for air dispersion calculations.

The purpose of this meeting of the FIFRA Science Advisory Panel (SAP) is to evaluate the approaches contained in SOFEA© for integrating these different factors into an analysis that considers exposures on a regional level. Additionally, the Agency is seeking a specific evaluation of the methods used pertaining to field emission rates, statistical approaches for data analysis, receptor locations, modifications to ISC3, and defining the exposed populations. Finally, the Agency is seeking a determination as to the scientific validity of the overall approach included in SOFEA©. The proposed agenda for this SAP meeting will involve an introductory overview of the current risk assessment approach by the EPA. A detailed presentation of the SOFEA© model will then be given by S. A. Cryer, I. J. van Wesenbeeck, and B. A Houtman of Dow Agrosciences Corporation. Staff from California's Department of Pesticide Regulation will also be participating with EPA in this SAP meeting.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2004.

Joseph J. Merenda, Jr.

Director, Office of Science Coordination and Policy.

[FR Doc. 04–16955 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0165; FRL–7368–6]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide

products *Aspergillus flavus* NRRL 21882 and afla-guard containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0165. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Aspergillus flavus* NRRL 21882 and its end-use product afla-guard, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Aspergillus flavus* NRRL 21882 and its end-use product afla-guard during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of April 14, 2004 (69 FR 19845) (FRL–7352–7), which announced that Circle One, One Arthur Street, P.O. Box 28, Shellman, GA 39886–0028, had submitted an application to conditionally register the pesticide product, *Aspergillus flavus* NRRL 21882, Manufacturing Use Product (EPA File Symbol 75624–R), containing *Aspergillus flavus* NRRL 21882 at 100%. The company also submitted a request to register an end-use product afla-guard (EPA Registration Number 75624–E) containing *Aspergillus flavus* NRRL 21882 at 0.01% by weight. This active ingredient is not included in any previously registered products.

The applications were conditionally approved on May 28, 2004 for an end-use product and a technical listed below:

1. afla-guard (EPA Registration Number 75624–2) was conditionally registered as an end-use product containing *Aspergillus flavus* NRRL 21882 at 0.01% by weight as an active ingredient. This pesticide is to be manufactured as a granular formulation for a single, seasonal, soil application to peanuts at the pre-pegging stage of peanut plant growth. It is to be applied at a rate of 20 pounds end-use product

(equivalent to approximately 0.002 pound or 1 gram active ingredient per acre). During research, small scale field trials demonstrate that the pesticide is efficacious in reducing aflatoxin in peanuts by 71 to 98%. As a condition of registration, a large scale field trial is required to further demonstrate the efficacy of the pesticide under regular field conditions. Regardless of treatment with pesticide products containing *Aspergillus flavus* NRRL 21882, peanut and its food/feed commodities must meet current regulatory requirements for aflatoxin levels.

2. *Aspergillus flavus* NRRL 21882 (EPA Registration Number 75624–1). This pesticide is to be used as the Technical Grade Active Ingredient or the Manufacturing Use Product for formulation into end-use products for displacement of the aflatoxin-producing strains of *Aspergillus flavus* from peanuts. Health and ecological effects data submitted and reviewed by the Agency support the conditional registration of the pesticidal active ingredient and the use of the end-use product as described above. An exemption from tolerance for residues for *Aspergillus flavus* NRRL 21882 was granted simultaneously with the conditional registration of the technical and its end-use product. The condition of registration includes analysis of five production batches to meet Agency requirements.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 14, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–16834 Filed 7–22–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–04–37–L (Auction No. 37); DA 04–2123]

Removal of FM Broadcast Construction Permits From Auction No. 37

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the removal of two vacant allotments from the Auction No. 37 inventory.

DATES: Auction No. 37 is scheduled for November 3, 2004. The Short-Form Application (FCC Form 175) Filing Window Opens July 22, 2004; noon, e.t. and ends August 6, 2004; 6 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Audio Division, Media Bureau at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released July 14, 2004. The complete text of the Public Notice, including a four page attachment providing the revised Auction No. 37 inventory, is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at their Web site: *http://www.BCPIWEB.com.* This document is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/37/.*

General Information

The Wireless Telecommunications Bureau and the Media Bureau provide additional information about the FM broadcast construction permits being offered in Auction No. 37. scheduled for November 3, 2004. The Media Bureau has determined that coordination with the Mexican government has not been finalized with respect to: (1) FM 282, Cotulla, Texas, Channel 242A, and (2) FM 284, El Dorado, Texas, Channel 285A. These two vacant FM allotments are being removed from the Auction No. 37 inventory.

Federal Communications Commission.

Lisa Scanlan,

Assistant Division Chief, Audio Division, Media Bureau.

[FR Doc. 04–16889 Filed 7–22–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 21, 2004.

ADDRESSES: You may submit comments, identified by FR 2436 or FR Y–12, by any of the following methods:

• Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th & Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed forms and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Semiannual Report of Derivatives Activity

Agency form number: FR 2436

OMB control number: 7100–0286

Frequency: Semiannual

Reporters: Large U.S. dealers of over–the–counter (OTC) derivatives

Annual reporting hours: 2,400 hours

Estimated average hours per response: 150 hours

Number of respondents: 8

General description of report: This information collection is voluntary (12 U.S.C. §§ 248(a)(2) and 353–359) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: This voluntary report collects derivatives market statistics from eight large U.S. dealers of OTC derivatives. Data are collected on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity– and commodity–linked OTC derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements, which publishes global market statistics that are aggregations of national data.

Current Actions: The Federal Reserve proposes to revise the FR 2436 by adding tables to collect data on credit default swaps, effective with the December 31, 2004, report date. Given the very rapid growth of credit derivatives in recent years, the G–10 central banks determined that data on credit default swaps should be collected semiannually. The credit default swaps data would be collected on new Tables 4A through 4D, while existing Table 4 and Table 5 would be re–numbered as Table 5 and Table 6, respectively.

The Federal Reserve proposes to collect data on outstanding positions (notional, gross positive and gross negative market values) of credit default swap contracts for protection bought and protection sold by instrument type and counterparty type. Distinguishing between protection bought and protection sold is of interest because it gives some indication of how credit default swaps are used to shift credit risk among market participants. Additionally, notional values of credit default swap contracts would be reported by rating category of the underlying reference entity, sector of the underlying reference entity, and remaining contract maturity.

Instrument types would be disaggregated into single–name and multiple–name instruments.

Counterparty types would be disaggregated into reporting dealers, other financial institutions, and nonreporting financial institutions. In addition, other financial institutions would be further disaggregated into:

• banks and securities firms

• insurance, reinsurance, and financial guaranty firms

• special purpose entities

• hedge funds

• other

This finer disaggregation of counterparty types, as compared to the disaggregation for other types of OTC derivatives, would enable central banks and other data users to get a clearer picture of how credit default swaps transfer credit risk within the global financial system.

Notional values would be further disaggregated by the credit rating of the underlying reference entity, by the sector of the underlying reference entity, and by remaining maturity of outstanding credit default swap contracts.

Proposed Table 4A–Credit Default Swaps by Rating Category. Data would be disaggregated into upper investment grade (AA and higher), lower investment grade (A and BBB), non investment grade (BB and lower), and not rated. Information on the credit rating of the reference entity would give central banks and other data users a clearer picture of the nature and amount of credit risk that is being transferred in the credit default swap market.

Proposed Table 4B–Credit Default Swaps by Sector of the Reference Entity. Data would be disaggregated into financial firms, nonfinancial firms, sovereigns, and multiple sectors (for multiple–name instruments). Information on the sector of the reference entity would give central banks and other data users a clearer picture of the nature of the credit risk that is being transferred in the credit default swap market.

Proposed Table 4C–Credit Default Swaps by Remaining Contract Maturity. Data would be disaggregated into one year or less, over one year through five years, and over five years.

Proposed Table 4D–Credit Default Swaps, Gross Positive and Gross Negative Market Values. Data would show the magnitude of unsettled changes in value of credit default swap contracts outstanding at the time of reporting. Such a time series is a valuable source of information for researchers and market participants in developing an understanding of the role and function of the credit default swap market in financial systems in various circumstances.

The Federal Reserve would like to solicit comments about Table 4A; specifically about the costs and benefits of a further breakdown of column "A/BBB" into two separate columns, "A" and "BBB." At many institutions, the "A" and "BBB" categories are of comparable size, and the proportion in each category is not constant over time, but appears to vary over the business cycle. Moreover, the default

probabilities of A– and BBB–rated bonds, while both quite small, are nonetheless quite different, with a BBB–rated bond four times more likely to default over a five–year period than an A–rated bond.

2. Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies

Agency form number: FR Y–12

OMB control number: 7100–0300

Frequency: Quarterly and semi–annually

Reporters: Bank holding companies

Annual reporting hours: 1,696 hours

Estimated average hours per response: 16 hours

Number of respondents: 28

General description of report: This information collection is mandatory pursuant to Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and data may be exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 was implemented as of September 30, 2001, in response to the Gramm–Leach–Bliley Act (GLB Act) of 1999, which broadened the scope of permissible investments in nonfinancial companies. The FR Y–12 collects information from certain domestic bank holding companies (BHCs) on their investments in nonfinancial companies on three schedules: Type of Investments, Type of Security, and Type of Entity within the Banking Organization. Large BHCs report on a quarterly basis, and small BHCs report semi–annually.

Current Actions: The Federal Reserve proposes to revise the FR Y–12 reporting form and instructions to enhance the Federal Reserve's ability to monitor and supervise the private equity merchant banking (PEMB) activity across all BHCs for purposes of safety and soundness. The proposed revisions to the FR Y–12 include (1) modifying the reporting threshold to reduce regulatory burden; (2) adding a memorandum item to Schedule A to collect data on investments managed for others; (3) adding a memorandum item to Schedule B to identify whether the BHC holds any warrants received in connection with equity investment activity; (4) simplifying Schedule C by eliminating three columns used to collect data on direct investments in public entities, direct investments in nonpublic entities, and all indirect investments; and (5) adding Schedule D "Nonfinancial Investment Transactions During the Reporting Period" to collect information on all PEMB activity of the BHC during the reporting period and to better reflect the industry's focus on monitoring "cash in and cash out." The Federal Reserve proposes to defer implementation of the revised FR Y–12 until March 31, 2005, to coincide with the implementation of proposed revisions to the FR Y–9C and FR Y–9SP reports (OMB No. 7100–0128).

Proposed Revisions to the FR Y–12 Reporting Form and Instructions

SCHEDULE A – TYPE OF INVESTMENTS

• *Retitle* – Memorandum item 3 from "Impact on net income from items 1, 2, and 3 above" to "Pre–tax impact on net income from items 1, 2, and 3 above." This modification would clarify the intent of the original item, as discussed in the instructions.

• *Add* – Memorandum item 4 "Investments managed for others." This item would collect information on the extent of the BHC's role in managing private equity investments for others. This item would be used to provide new information regarding the extent of the institution's PEMB operation. Significant investment funds management activity could increase the inherent legal and reputational risk of the institution.

SCHEDULE B – TYPE OF SECURITY

• *Add* – Memorandum item 2 "Does the BHC hold any Warrants or similar instruments received in connection with equity investment activity? (Enter "1" if yes, "0" if no)." This item would be used to identify whether the BHC holds any warrants or similar instruments received in connection with equity investment activity or similar "equity kickers" that, while typically carried at only a nominal value, may potentially increase the risk profile of the corporation.

SCHEDULE C – TYPE OF ENTITY WITHIN THE BANKING ORGANIZATION

Schedule C would be modified to categorize the type of investments, reported in Schedule A, by the booking entity within the banking organization. The portfolio totals from Schedule C should equal portfolio totals reported for Schedule A.

• *Add* – New column "(Column B) Net Unrealized Holding Gains Not Recognized As Income." This information would identify net unrealized holding gains (or losses) that have not been recognized as income within the BHC structure through which the investments are made, as reported in Schedules A and B.

• *Retitle* – Old column "(Column B) Carrying Value" as "(Column C) Carrying Value."• Add – Item 2.b "Edge and agreement corporations," renumber "SBICs" as item 2.a, and renumber "Broker/Dealers" as item 2.c. This breakout from "All other" would provide consistency with item 1, as Edge and agreement corporations may be housed in either a depository institution or parent holding company structure.

• *Add* – Item 2.d "Private Equity subsidiaries" and renumber "All other" as item 2.e. This additional breakout would identify those BHCs that have established nonbank subsidiaries primarily devoted to the PEMB activity. The larger BHCs active in PEMB have typically established private equity subsidiaries.

• **DELETE** – Current Columns C, D, and E Carrying Value for: "Direct Investments in Public Entities," "Direct Investments in Nonpublic Entities," and "All Indirect Investments." These data were not significantly different than data collected in Schedule A, and Columns A and B of Schedule C.

SCHEDULE D – NONFINANCIAL INVESTMENT TRANSACTIONS DURING THE REPORTING PERIOD

• *Add* – This proposed schedule would collect information on all PEMB activity of the BHC, on an aggregate basis, for the reporting period. Columns A and B would collect acquisition cost and carrying value for all purchases, returns of capital, and net changes in valuation made for all direct investments. Columns C and D would collect information on the same items for all transactions involving indirect (fund) investments. These data would provide valuable insight into the scope of activity on a transaction basis and, when reviewed over time, would provide critical trend data useful for industry studies as well as BHC supervisory monitoring.

The proposed FR Y–12 instructions would be reorganized and clarified to conform with the proposed changes to the reporting form.

Proposed Revisions to the FR Y–12 Respondent Reporting Threshold Criteria

• *Modify* the reporting threshold criteria for respondents that file the FR Y–9C, by decreasing the aggregate nonfinancial equity investments threshold from $200 million to $100 million (on an acquisition cost basis) and increasing the consolidated Tier 1 capital threshold from 5 percent to 10 percent.

• *Modify* the reporting threshold criterion for respondents that file the FR Y–9SP, by increasing the total capital threshold from 5 percent to 10 percent.

The proposed decrease in the reporting threshold from $200 million to $100 million would require reporting from large complex banking organizations that have a significant

concentration of capital invested in this asset class, but fall below the current reporting threshold.

The proposed increase in the reporting threshold from 5 percent to 10 percent of capital would reduce burden for respondents, while continuing to screen for the smaller BHCs with a significant concentration of capital invested in this asset class.

• *Delete* – "Has the bank holding company made an effective election to become a financial holding company?" This information is readily available on the National Information Center database.

• *Modify* – Clarify the legal authority to read: "Directly or indirectly through a subsidiary or affiliate, any nonfinancial equity investments within a Small Business Investment Company structure, or under section 4(c)(6) or 4(c)(7) of the Bank Holding Company Act, or pursuant to the merchant banking authority of section 4(k)4(H) of the Bank Holding Company Act, or pursuant to the investment authority granted by Regulation K."

The Federal Reserve would like to solicit comments on the following issues related to the FR Y–12:

1. *Request comment on the reporting of information on an acquisition cost and carrying value basis.* Specifically, whether the revised instructions on "acquisition cost" give BHCs the flexibility to report carrying cost in a manner consistent with how they maintain their internal books and records.

2. *Request comment on the reporting of information on convertible debt.* Specifically, whether the reporting of convertible debt information is burdensome.

3. *Request comment on proposed Schedule D, "Nonfinancial Investment Transactions During the Reporting Period."* Specifically, whether the information requested is readily available.

Board of Governors of the Federal Reserve System, July 19, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–16819 Filed 7–22–04; 8:45 am]

BILLING CODE 6210–01–S

Federal Reserve System

Docket No. OP–1207

Bank Holding Company Rating System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for comment.

SUMMARY: The increased complexity of the U.S. banking industry has necessitated over time a shift in the focus of the Federal Reserve's supervisory practices for bank holding companies (BHCs), including financial holding companies (FHCs), away from historical analyses of financial condition toward more forward looking assessments of risk management and financial factors. While the emphasis on risk management has been well established in the Federal Reserve's supervisory processes for BHCs of all sizes, this emphasis is not reflected in the primary components of the current BHC supervisory rating system, BOPEC (Bank subsidiaries, Other subsidiaries, Parent, Earnings, Capital). This document proposes a revised BHC rating system that emphasizes risk management; introduces a more comprehensive and adaptable framework for analyzing and rating financial factors; and provides a framework for assessing and rating the potential impact of the nondepository entities of a holding company on the subsidiary depository institution(s). After reviewing public comments, the Federal Reserve intends to make any necessary changes to the proposal and adopt a final BHC rating system.

DATES: Comments must be received by September 21, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP–1207, by any of the following methods:

Board's Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Deborah Bailey, Associate Director, (202–452–2634), Barbara Bouchard, Deputy Associate Director, (202–452–3072), Molly Mahar, Senior Supervisory Financial Analyst, (202–452–2568), or Anna Lee Hewko, Supervisory Financial Analyst, (202–530–6260). For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

The BHC rating system is a management information and supervisory tool that defines the condition of BHCs in a systematic way. It serves three primary purposes in the supervisory process. First and foremost, the BHC rating provides a summary evaluation of the BHC's condition for use by the supervisory community. Second, the BHC ratings form the basis of supervisory responses and actions. Third, the BHC rating system provides the basis for supervisors' discussion of the firm's condition with BHC management. The current BHC rating system was implemented in 1979. Known as BOPEC/F–M, the rating system components are defined as follows:

• The B rating represents the Federal Reserve's view of the condition of the banking subsidiary(ies).

• The O rating represents the Federal Reserve's view of the condition of the nonbank subsidiary(ies).

• The P rating represents the Federal Reserve's view of the condition of the parent company.

• The E and C represent the Federal Reserve's view of the consolidated capital and earnings position of the BHC, respectively.

• The F rating represents the financial composite rating, whereas the M represents the management composite rating.

During the almost 25 years since the BOPEC/F–M rating system was introduced, the banking industry has become increasingly concentrated and complex. BHCs with assets exceeding $10 billion, as of year–end 2003, accounted for over 83 percent of total company assets, up from 66 percent, as of year–end 1992. In addition, the growing depth and sophistication of financial markets in the United States and around the world has introduced a wider range of activities undertaken by banking institutions. The Gramm–Leach–Bliley Act of 1999 further raised the complexity of the U.S. banking industry by expanding the range of

acceptable activities for FHCs, a subset of BHCs. This upsurge in BHC complexity prompted a fundamental shift in supervisory focus away from historical financial analyses toward more forward–looking assessments of risk management and financial factors.

In response to these developments, commencing in 1996 with the implementation of SR 95–51[1], the Federal Reserve's safety and soundness supervisory staff have assigned a formal supervisory rating to the adequacy of risk management processes at all BHCs, although that rating remains separate from the BOPEC/F–M rating system. As the banking industry has continued to evolve over the past eight years, the focus of the Federal Reserve's examination program for BHCs has increasingly centered on a comprehensive review of financial risk and the adequacy of risk management. However, the BOPEC/F–M rating system has not been updated to facilitate a broader assessment of financial risk or to emphasize risk management, reducing the significance of supervisory information conveyed by the rating.

To better align the assessment process for BHCs with current supervisory practices, the Federal Reserve identified the following key objectives for a new BHC rating system:

- Elevate the prominence of risk management in the rating system in order to align the emphasis of the rating system with that of our supervisory process;
- Provide a more comprehensive framework for assessing risk management;
- Define the financial strength components of the rating system in a more comprehensive and flexible manner, to ensure that the unique structure of each BHC is recognized, and that the related impact of that structure on the depository institution subsidiaries is evaluated; and
- Require an explicit determination as to the likelihood that the BHC and its nondepository subsidiaries (nondepository entities) will have a significant negative impact on the depository subsidiaries, considering the effectiveness of risk management systems and the financial strength of the nondepository entities.

The Federal Reserve believes that the BHC rating system proposed below satisfies these objectives. It also believes that the proposed rating system is flexible enough to remain relevant as the banking industry continues to evolve.

As under the current BHC rating system, all BHCs would be assigned a rating, although they would be subject to differing degrees of supervisory scrutiny depending on their size and complexity, the significance of their depository subsidiary(ies), and other factors. For example, the small shell BHC inspection program would remain in place. Certain noncomplex BHCs with consolidated assets of less than $1 billion in which all subsidiary depository institutions have satisfactory composite and management ratings would receive only a composite rating and a risk management rating, which would be based on the composite and management ratings of the lead depository institution. Further details are provided in the implementation guidance section of the proposal.

The Federal Reserve recognizes that certain regulations and administrative processes, such as expedited application processing, currently use a BHC's composite or BOPEC component rating in determining the BHC's status under those regulations. It would expect to conform those regulations and processes to incorporate any changes made to the BHC rating system.

Proposed Text of the **Bank Holding Company Rating System**

Bank Holding Company Rating System

Introduction and Overview

The bank holding company (BHC) rating system takes into consideration certain financial, managerial, and compliance factors that are common to all BHCs. Under this system, the Federal Reserve endeavors to ensure that all BHCs are evaluated in a comprehensive and uniform manner, and that supervisory attention is appropriately focused on the BHCs exhibiting financial and operational weaknesses or adverse trends. The rating system serves as a useful vehicle for identifying problem or deteriorating BHCs, as well as for categorizing BHCs with deficiencies in particular areas. Further, the rating system assists the Federal Reserve in following safety and soundness trends and in assessing the aggregate strength and soundness of the financial industry.

Each BHC[2] is assigned a composite rating (C) based on an evaluation and rating of three essential components and eight subcomponents of an institution's financial condition and operations. The main components represent: R – risk management; F – financial condition; I – impact of the parent company and nondepository subsidiaries (collectively nondepository entities) on the subsidiary depository institutions. A fourth rating, (D), will generally mirror the primary regulator's assessment of the subsidiary depository institutions. Thus, the component and composite ratings are displayed:

R F I / C (D)

In order to provide a consistent framework for assessing risk management, the R component is supported by four qualitatively rated subcomponents that reflect the effectiveness of the banking organization's risk management and controls. The subcomponents are: Competence of Board and Senior Management; Policies, Procedures, and Limits; Risk Monitoring and Management Information Systems; and, Internal Controls. The F component is supported by four numerically rated subcomponents reflecting an assessment of the quality of the banking organization's C – capital; A – asset quality; E – earnings; and L – liquidity.

With the exception of the risk management subcomponents, composite, component, and subcomponent ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and practices, and least degree of supervisory concern, whereas a 5 indicates the lowest rating, weakest performance, and the highest degree of supervisory concern. Given that the level of detail in the analysis of the risk management subcomponents does not lend itself to rating on a five–point scale, the subcomponents will be assigned a qualitative rating of Strong, Adequate, or Weak.

The composite rating generally bears a close relationship to the component ratings assigned. Each component rating is based on a qualitative analysis of the factors comprising that component and its interrelationship with the other components. When assigning a composite rating, some components may be given more weight than others depending on the situation of the BHC. In general, assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the BHC. Therefore, the composite rating is not derived by computing the arithmetic average of the component ratings.

The following three sections contain detailed descriptions of the composite, component, and subcomponent ratings, definitions of the ratings, and implementation guidance by BHC type.

[1] See Supervisory Letter 95–51, *Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies.*

[2] A simplified version of the rating system that includes only the R and C components will be applied to noncomplex bank holding companies with assets below $1 billion.

I. Description of the Rating System Elements

The "R" (Risk Management) Component

• R represents an evaluation of the ability of the board of directors and senior management to identify, measure, monitor, and control risk. The R rating will underscore the importance of the control environment, taking into consideration the financial complexity and strength of the organization and the risk inherent in its activities.

• The R rating is supported by four subcomponents that are each assigned a separate qualitative rating (strong, adequate, or weak[3]). The four subcomponents are as follows: 1) Competence of the Board and Senior Management; 2) Policies, Procedures and Limits; 3) Risk Monitoring and Management Information Systems; and 4) Internal Controls.[4] The subcomponents will be evaluated in the context of the risks undertaken by and inherent to a banking organization and the overall level of complexity of the firm's operations.

• The subcomponents provide the Federal Reserve System with a consistent framework for evaluating risk management and the control environment. Moreover, the subcomponents provide a clear structure and basis for discussion of the R rating with BHC management.

• The subcomponents reflect the principles of SR 95–51, are familiar to examiners, and parallel the existing risk assessment process.

"R" Component Subcomponents[5]

Competence of the Board and Senior Management

This subcomponent evaluates the adequacy and effectiveness of board and senior management oversight, and the general capabilities of management. This analysis will include a review of management's ability to identify and understand the risks undertaken by the institution, to hire competent staff, and to respond to changes in the institution's risk profile or innovations in the banking sector.

Policies, Procedures and Limits

This subcomponent evaluates the adequacy of a BHC's policies, procedures, and limits given the risks inherent in the activities of the consolidated BHC and the organization's stated goals and objectives. This analysis will include consideration of the adequacy of the institution's accounting and risk disclosure policies and procedures.

Risk Monitoring and Management Information Systems

This subcomponent assesses the adequacy of a BHC's risk measurement and monitoring, and the adequacy of its management reports and information systems. This analysis will include a review of the assumptions, data and procedures used to measure risk and the consistency of these tools with the level of complexity of the organization's activities.

Internal Controls

This subcomponent evaluates the adequacy of a BHC's internal controls and audit procedures, including the accuracy of financial reporting and disclosure and the strength and influence, within the organization, of the audit team. This analysis will also include a review of the independence of control areas from business lines and the consistency of the scope coverage of the audit team with the complexity of the organization.

The "F" (Financial Condition) Component

• F represents an evaluation of the consolidated organization's financial strength. The F rating focuses on the ability of the BHC's resources to support the level of risk associated with its activities, while taking into consideration the ability of management to identify, measure, monitor and control those risks.

• The analysis of the F component will encompass a review of financial issues at the parent company and nondepository subsidiaries and an assessment of the financial impact of those nondepository entities on the depository institution subsidiaries. This review should include discussions with management, an examination of internal documents and procedures, and all relevant public information, including market indicators.

• Any significant difference between the Federal Reserve's view of the financial condition of the consolidated BHC, based on public and nonpublic information, and the market's view of the consolidated company should be thoroughly assessed to determine the cause of the disparity. If the Federal Reserve's view of the BHC is significantly more positive than the market's view of the BHC, then examination staff should review the factors that influenced the market's assessment of the company, and include those influences in their assessment of the financial condition of the BHC, as appropriate. Alternatively, if the Federal Reserve's view of the BHC is more negative than the market's view of the company, then examination staff should assess the effectiveness of the policies, procedures and controls around the BHC's public disclosures. Any deficiencies in those controls should be factored into the overall risk management (R) rating and the appropriate risk management subcomponent ratings.

• The F rating is supported by four subcomponents that consist of the following: C (capital), A (asset quality), E (earnings), and L (liquidity). The CAEL subcomponents can be evaluated along individual business lines, product lines, or on a legal entity basis, depending on what is most appropriate given the structure of the organization. The assessment of the CAEL components should utilize benchmarks and metrics appropriate to the business activity being evaluated.

• The weight afforded to each of the CAEL subcomponents in developing the overall F component rating will depend on the relative importance of each subcomponent to the consolidated organization, as well as the severity of the rating assigned to each subcomponent.

"F" Component (CAEL) Subcomponents

In evaluating each of the CAEL subcomponents, examination staff should include a review of relevant market indicators, such as equity and debt prices, debt ratings, credit spreads, and qualitative rating agency assessments.

"C" Capital Adequacy

C reflects the adequacy of an organization's consolidated capital position, from a regulatory perspective and an economic capital perspective, as appropriate to the BHC. The evaluation of capital adequacy should consider the risk inherent in an organization's activities, the distribution of capital across legal entities, and the transferability of capital among legal entities.

"A" Asset Quality

A reflects the quality of an organization's consolidated assets. The evaluation should include, as

[3] The use of the three–point qualitative evaluation system (versus a five–point numerical rating system) will be evaluated during testing of the new rating system.

[4] Another subcomponent assessing the adequacy of disclosure for bank holding companies using the advanced internal ratings based approach to capital allocation may be added once the Basel II framework has been implemented in the United States.

[5] A detailed description of the four subcomponents is listed in SR 95–51.

appropriate, on–balance sheet and off–balance sheet exposures and the attendant risks, the level of criticized and nonperforming assets, the adequacy of underwriting standards, the level of concentration risk, the adequacy of credit administration policies and procedures, and the adequacy of management information systems for credit risk.

"E" Earnings

E reflects the quality of consolidated earnings. The evaluation considers the level, trend, and sources of earnings, as well as the ability of earnings to augment capital as necessary, to provide ongoing support for a BHC's activities. The earnings analysis should also consider the generation of earnings across legal entities and the implications of that distribution.

"L" Liquidity

L reflects the organization's ability to attract and maintain the sources of funds necessary to support its operations and meet its obligations, both on a consolidated basis and across legal entities. The L assessment requires an analysis of parent company cash flow, as well as an analysis of liquidity on a legal entity basis. The funding conditions for each of the legal entities in the holding company structure should be evaluated to determine if any weaknesses exist that could affect the funding profile of the consolidated organization or the subsidiary depository institution(s).

The "I" (Impact) Component

• The I component is rated on a five point numerical scale. Ratings will be assigned in ascending order of supervisory concern as follows:

1 – low likelihood of significant negative impact;

2 – limited likelihood of significant negative impact;

3 – moderate likelihood of significant negative impact;

4 – considerable likelihood of significant negative impact; and

5 – high likelihood of significant negative impact.

• The I component is an assessment of the impact of the nondepository entities on the subsidiary depository institution(s). The I assessment will consider an evaluation of both the risk management practices and financial condition of the nondepository entities––an analysis that will borrow heavily from the analysis conducted for the R and F components. Further, in rating the I component, examination staff is required to evaluate the degree to which current or potential issues within those entities present a threat to the safety and soundness of the subsidiary depository institution(s). In this regard, the I component will give a clearer indication of the degree of risk posed by the nondepository entity(ies) to the federal safety net than the current rating system.

• The I component focuses on the aggregate impact of the nondepository entities on the subsidiary depository institution(s). In this regard, the I rating does not include individual subcomponent ratings for the parent company and nondepository subsidiaries. Any risk management and financial issues at the parent company and/or nondepository subsidiaries that potentially impact the safety and soundness of the subsidiary depository institution(s) should be identified in the written comments under the I rating. This approach is consistent with the Federal Reserve's objective not to extend bank–like supervision to nondepository entities.

• The analysis of the parent company for the purpose of assigning an I rating should emphasize weaknesses that impair the parent company's ability to provide support to its subsidiary depository institution(s) and weaknesses that directly impact the risk management or financial condition of the subsidiary depository institution(s).

• Similarly, the analysis of the nondepository subsidiaries for the purpose of assigning an I rating should emphasize weaknesses that impact the ability of the parent company to support the subsidiary depository institution(s) and weaknesses that have a direct impact on the risk management practices or financial condition of the subsidiary depository institution(s).

• The analysis under the I component should consider existing as well as potential issues and risks that may impact the subsidiary depository institution(s) now or in the future.

The Reserve Bank should pay particular attention to the following risk management and financial factors in assigning the I rating:

Risk Management Factors

• *Strategic Considerations*: The potential risks posed to the subsidiary depository institution(s) by the parent company and/or nondepository subsidiaries' strategic plans for growth in existing activities and expansion into new products and services;

• *Operational Considerations*: The spillover impact on the subsidiary depository institution(s) from actual losses, a poor control environment, or an operational loss history of the nondepository entities; and,

• *Legal and Reputational Considerations*: The spillover effect on the subsidiary depository institution(s) of complaints and litigation that name the parent company and/or nondepository subsidiaries as defendants, or violations of laws or regulations, especially pertaining to intercompany transactions where the subsidiary depository institution(s) is involved.

• *Concentration Considerations*: The potential risks posed to the subsidiary depository institution(s) by concentrations within the nondepository entities in business lines, geographic areas, industries, customers, or other factors.

Financial Factors

• *Capital Distribution*: The distribution of capital across the organization, given that, in general, the Federal Reserve cannot unilaterally require the capital of a functionally regulated entity to be transferred to the subsidiary depository institution(s);

• *Intra–Group Exposures*: The extent to which intra–group exposures, including servicing agreements, credit concentrations, and derivative and payment system exposures, have the potential to undermine the condition of subsidiary depository institution(s); and,

• *Parent Company Cash Flow and Leverage*: The extent to which the parent company is dependent on dividend payments, from both the nondepository subsidiaries and the subsidiary depository institution(s), to service debt and cover fixed charges. Also, the effect that these upstreamed cash flows have had, or can be expected to have, on the financial condition of the BHC's nondepository subsidiaries and subsidiary depository institution(s).

The "C" (Composite) Rating

• C represents the overall composite assessment of the organization based on the quality and effectiveness of consolidated risk management, the BHC's consolidated financial strength, and the impact of the parent company and nondepository subsidiaries on the subsidiary depository institution(s). The composite rating encompasses both a forward–looking and static assessment of the consolidated organization, and incorporates an assessment of issues related to the ability of the parent company and nondepository subsidiaries to act as a source of support to the subsidiary depository institution(s). The C rating is not derived as a simple average of the R, F, I and (D) components, but instead, reflects examiner judgement with respect to the relative importance of

each of the components to the overall safety and soundness of the institution's operations.

The "(D)" (Depository Institutions) Component

• The (D) component will generally reflect the composite CAMELS rating assigned by the subsidiary depository institution's primary regulator. In a multi–bank BHC, the (D) rating will reflect the combined CAMELS composite ratings of the individual subsidiary depository institutions, and will consider both asset size and the relative importance of each depository institution within the holding company structure. In this regard, the CAMELS composite rating for a subsidiary depository institution that dominates the corporate culture may figure more prominently in the assignment of the (D) rating than normally dictated by asset size, particularly when problems exist within that depository institution.

• If in the process of analyzing the financial condition and risk management programs of the consolidated organization, a major difference of opinion relative to the safety and soundness of the depository institution emerges between the Federal Reserve and the depository institution's primary regulator, then the (D) rating should reflect the Federal Reserve's evaluation.

II. Rating Definitions for the RFI/C (D) Rating System

"R" (Risk Management) Component and Subcomponents

The R component is rated on a five point numerical scale. Ratings will be assigned in ascending order of supervisory concern as follows: 1 – Strong; 2 – Satisfactory; 3 – Fair; 4 – Marginal; and 5 – Unsatisfactory.

Rating 1 (Strong). A rating of 1 indicates that management effectively identifies and controls all major types of risk posed by the BHC's activities, including those emanating from new products and changing market conditions. The board and management are active participants in managing risk. Management ensures that appropriate policies and limits exist and are understood, reviewed, and approved by the board. Policies and limits are supported by risk monitoring procedures, reports, and management information systems that provide management and the board with the information and analysis that is necessary to make timely and appropriate decisions in response to changing conditions. Risk management practices and the organization's infrastructure are flexible and are adjusted appropriately in response to changing industry practices and current regulatory guidance. Staff has sufficient experience, expertise and depth to manage the risks assumed by the institution.

Internal controls and audit procedures are sufficiently comprehensive and appropriate to the size and activities of the institution. There are few noted exceptions to the institution's established policies and procedures, and none is material. Management effectively and accurately monitors the condition of the institution consistent with the standards of safety and soundness, and in accordance with internal and supervisory policies and practices. Risk management processes are fully effective in identifying, monitoring, and controlling the risks to the institution.

Rating 2 (Satisfactory). A rating of 2 indicates that the institution's management of risk is largely effective, but lacking in some modest degree. Management demonstrates a responsiveness and ability to cope successfully with existing and foreseeable risks that may arise in carrying out the institution's business plan. While the institution may have some minor risk management weaknesses, these problems have been recognized and are in the process of being resolved. Overall, board and senior management oversight, policies and limits, risk monitoring procedures, reports, and management information systems are considered satisfactory and effective in maintaining a safe and sound institution. Generally, risks are controlled in a manner that does not require more than normal supervisory attention.

Internal controls may display modest weaknesses or deficiencies, but they are correctable in the normal course of business. The examiner may have recommendations for improvement, but the weaknesses noted should not have a significant effect on the safety and soundness of the institution.

Rating 3 (Fair). A rating of 3 signifies that risk management practices are lacking in some important ways and, therefore, are a cause for more than normal supervisory attention. One or more of the four elements of sound risk management[6] (active board and senior management oversight; adequate policies, procedures, and limits; adequate risk management monitoring, and management information systems; comprehensive internal controls) is considered less than acceptable, and has precluded the institution from fully addressing one or more significant risks to its operations. Certain risk management practices are in need of improvement to ensure that management and the board are able to identify, monitor, and control all significant risks to the institution. Weaknesses may include continued control exceptions or failures to adhere to written policies and procedures that could have adverse effects on the institution. Also, the risk management structure may need to be improved in areas of significant business activity, or staff expertise may not be commensurate with the scope and complexity of business activities. In addition, management's response to changing industry practices and regulatory guidance may need to improve.

The internal control system may be lacking in some important aspects, particularly as indicated by continued control exceptions or by a failure to adhere to written policies and procedures. The risks associated with the internal control system could have adverse effects on the safety and soundness of the institution if corrective action is not taken by management.

Rating 4 (Marginal). A rating of 4 represents marginal risk management practices that generally fail to identify, monitor, and control significant risk exposures in many material respects. Generally, such a situation reflects a lack of adequate guidance and supervision by management and the board. One or more of the four elements of sound risk management is deficient and requires immediate and concerted corrective action by the board and management. A number of significant risks to the institution have not been adequately addressed, and the risk management deficiencies warrant a high degree of supervisory attention.

The institution may have serious identified weaknesses, such as an inadequate separation of duties, that require substantial improvement in internal control or accounting procedures, or improved adherence to supervisory standards or requirements. Unless properly addressed, these conditions may result in unreliable financial records or reports, or operating losses that could seriously affect the safety and soundness of the institution.

Rating 5 (Unsatisfactory). A rating of 5 indicates a critical absence of effective risk management practices with respect to the identification, monitoring, or control over significant risk exposures. One or more of the four elements of

[6] Framework for Risk–Focused Supervision of Large Complex Institutions, August 1997; SR Letter 95–51, Rating the Adequacy of Risk Management Processes and Internal Controls at State Member Banks and Bank Holding Companies.

sound risk management is considered wholly deficient, and management and the board have not demonstrated the capability to address these deficiencies.

Internal controls are critically weak and, as such, could seriously jeopardize the continued viability of the institution. If not already evident, there is an immediate concern as to the reliability of accounting records and regulatory reports and the potential for losses if corrective measures are not taken immediately. Deficiencies in the institution's risk management procedures and internal controls require immediate and close supervisory attention.

"R" (Risk Management) Subcategories

The four R subcomponents are each assigned a qualitative rating of Strong, Acceptable or Weak. The following are the descriptions of the ratings as they apply to each of the subcategories.

Competence of Board and Senior Management

Strong Assessment. An assessment of Strong signifies that the board and senior management clearly understand the types of risk inherent in the BHC's activities and actively participate in managing those risks. Policies, limits, and tracking reports are appropriate and understood, reviewed, and approved by the board. Board and senior management are informed about changes in market conditions and respond appropriately. Oversight of risk management practices is strong and the organization's overall business strategy is effective. Risk management practices are appropriately adjusted in accordance with enhancements to industry practices and regulatory guidance, and exposure limits are adjusted as necessary to reflect the institution's changing risk profile.

Staff possesses the experience and expertise consistent with the scope and complexity of the organization's business activities. There is a sufficient depth of staff to ensure sound operations. Management provides adequate supervision of the day–to–day activities of all officers and employees, including the supervision of the senior officers and the heads of business lines. Management ensures that employees have the integrity, ethical values, and competence that are consistent with a prudent management philosophy and operating style.

Management is able to respond to changes in competition or innovations in the marketplace and proactively identifies all risks associated with proposed new activities or products and ensures that the appropriate infrastructure and internal controls are established.

Acceptable Assessment. An assessment of Acceptable indicates that board and senior management oversight is satisfactory. In this regard, the board and senior management have a good understanding of the organization's risk profile, provide adequate oversight of risk management practices, effectively utilize risk management reporting, set appropriate policies and limits, appropriately adapt to changes in market conditions, and develop and executes reasonable business strategies, although these practices may be lacking in some modest degree. The level of staffing, and its experience, expertise, and depth, is sufficient to operate the business lines in a safe and sound manner. Day–to–day supervision of management and staff at all levels is generally effective. Management responds in a timely fashion to changes in competition, innovations in the marketplace, evolving industry practices, and current regulatory guidance, and has in place an effective process for reviewing new activities and products. Minor weaknesses may exist in the staffing, infrastructure, and risk management processes for individual business lines or products, but these weaknesses have been recognized and are in the process of being addressed.

Weak Assessment. An assessment of Weak signifies that deficiencies exist in board and management oversight that require more than normal supervisory attention. The deficiencies may involve a broad range of activities or be material to a major business line or activity. Board and senior management may not be adequately informed as to the type and severity of the deficiencies or have not demonstrated an ability to provide corrective action in a timely manner. The deficiencies may include a lack of knowledge with respect to the organization's risk profile, insufficient oversight of risk management practices, ineffective policies or limits, inadequate or under–utilized management reporting, an inability to respond to industry enhancements and changes in regulatory guidance, or failure to execute appropriate business strategies. Staffing may not be adequate or staff may not possess the experience and expertise needed for the scope and complexity of the organization's business activities, and the day–to–day supervision of officer and staff activities, including the management of senior officers or heads of business lines, may be lacking.

Policies, Procedures and Limits

Strong Assessment. An assessment of Strong indicates that the policies, procedures, and limits provide for effective identification, measurement, monitoring, and control of the risks posed by the lending, investing, trading, trust, fiduciary, and other significant activities. Policies, procedures, and limits are consistent with the institution's goals and objectives and its overall financial strength. The policies clearly delineate accountability and lines of authority across the institution's activities. The policies also provide for the review of new activities to ensure that the infrastructure necessary to identify, monitor, and control the risks is in place before the activities are initiated.

Acceptable Assessment. An assessment of Acceptable indicates that the policies, procedures and limits cover all major business areas, are thorough and substantially up–to–date, and provide a clear delineation of accountability and lines of authority across the institution's activities. Policies, procedures, and limits are generally consistent with the institution's goals and objectives and its overall financial strength. Any deficiencies or gaps that have been identified are minor in nature and in the process of being addressed.

Weak Assessment. An assessment of Weak signifies that deficiencies exist in policies, procedures, and limits that require more than normal supervisory attention. The deficiencies may involve a broad range of activities or be material to a major business line or activity. Board and senior management may not be adequately informed as to the type and severity of the deficiencies or have not demonstrated an ability to provide corrective action in a timely manner. The deficiencies may include policies, procedures, or limits (or the lack thereof) that do not adequately identify, measure, monitor, or control the risks posed by significant activities; are not consistent with the experience of staff, the organization's strategic goals and objectives, or the financial strength of the institution; or do not clearly delineate accountability or lines of authority. Also, the policies may not provide for adequate due–diligence before engaging in new activities or products.

Risk Monitoring and MIS

Strong Assessment. An assessment of Strong indicates that risk monitoring practices and MIS reports address all material risks. The key assumptions, data sources, and procedures used in measuring and monitoring risk are

appropriate, adequately documented, and tested for reliability on an ongoing basis. Reports and other forms of communication are consistent with activities, are structured to monitor exposures and compliance with established limits, goals, or objectives, and compare actual versus expected performance when appropriate. Management and board reports are accurate and timely and contain sufficient information to identify adverse trends and to adequately evaluate the level of risk faced by the institution.

Acceptable Assessment. An assessment of Acceptable indicates that risk monitoring practices and MIS reports cover major risks and business areas. In general, the reports contain valid assumptions that are periodically tested for accuracy and reliability and are properly documented and distributed to the appropriate decision–makers. Reports and other forms of communication generally are consistent with activities, are structured to monitor exposures and compliance with established limits, goals, or objectives, and compare actual versus expected performance when appropriate. Management and board reports are accurate and timely, although they may be lacking in some modest degree. Any weaknesses or deficiencies that have been identified are in the process of being addressed.

Weak Assessment. An assessment of Weak signifies that deficiencies exist in the risk monitoring practices or the MIS reports that require more than normal supervisory attention. The deficiencies may involve a broad range of activities or be material to a major business line or activity. Board and senior management may not be adequately informed as to the type and severity of the deficiencies or have not demonstrated an ability to provide corrective action in a timely manner. The deficiencies contribute to ineffective risk identification through inappropriate assumptions, incorrect data, poor documentation, or the lack of timely testing. In addition, MIS reports may not be distributed to the appropriate decision–makers, adequately monitor significant risks, or properly identify adverse trends and the level of risk faced by the institution.

Internal Controls

Strong Assessment. An assessment of Strong indicates that the system of internal controls is appropriate for the type and level of risks posed by the nature and scope of the organization's activities. The organizational structure establishes clear lines of authority and responsibility for monitoring adherence to policies, procedures, and limits. Reporting lines provide sufficient independence of the control areas from the business lines and adequate separation of duties throughout the organization–including areas relating to trading, custodial, and back–office activities. The organizational structure reflects actual operating practices. Financial, operational, and regulatory reports are reliable, accurate, and timely, and wherever applicable, exceptions are noted and promptly investigated. Adequate procedures exist for ensuring compliance with applicable laws and regulations, including consumer laws and regulations. Internal audit or other control review practices provide for independence and objectivity. Internal controls and information systems are adequately tested and reviewed; the coverage, procedures, findings, and responses to audits and review tests are adequately documented; identified material weaknesses are given appropriate and timely high level attention; and management's actions to address material weaknesses are objectively reviewed and verified. The board or its audit committee regularly reviews the effectiveness of internal audits and other control review activities.

Acceptable Assessment. An assessment of Acceptable indicates that the system of internal controls adequately covers major risks and business areas. In general, the system is independent, establishes appropriate separation of duties, supports accuracy in record–keeping practices and reporting systems, is adequately documented, and verifies compliance with laws and regulations, including consumer laws and regulations. In most cases identified material weaknesses are given appropriate and timely attention and management's actions to address material weaknesses are objectively reviewed and verified. The board or its audit committee have reviewed the effectiveness of internal audits and other control review activities. Any weaknesses or deficiencies that have been identified are modest in nature and in the process of being addressed.

Weak Assessment. An assessment of Weak signifies that deficiencies exist in the system of internal controls that require more than normal supervisory attention. The deficiencies may involve a broad range of activities or be material to a major business line or activity. Board and senior management may not be adequately informed as to the type and severity of the deficiencies or have not demonstrated an ability to provide corrective action in a timely manner. The deficiencies may include insufficient oversight by the board or its committee; unclear lines of authority and responsibility; a lack of independence; ineffective separation of duties; inadequate or untimely risk coverage and verification, including monitoring compliance with both safety and soundness and consumer laws and regulations; inaccurate records or regulatory reporting; a lack of documentation for work performed; or a lack of timeliness in the correction of identified weaknesses.

"F" (Financial Condition) Component and CAEL Subcomponents

The F (Financial Condition) rating is supported by four subcomponents: "C"(Capital), "A" (Asset Quality), "E" (Earnings) and "L" (Liquidity). The F component and the CAEL subcomponents are rated on a five point numerical scale in ascending order of supervisory concern as follows: 1 – Strong; 2 – Satisfactory; 3 – Fair; 4 – Marginal; and 5 – Unsatisfactory.

The "F" (Financial Condition) Component

Rating 1 (Strong). A rating of 1 indicates that the consolidated BHC is financially sound in almost every respect; any negative findings are basically of a minor nature and can be handled in a routine manner. The capital adequacy, asset quality, earnings, and liquidity of the consolidated BHC are more than adequate to protect the company from external economic and financial disturbances. The company generates more than sufficient cash flow to service its debt and fixed obligations with no harm to subsidiaries of the organization.

Rating 2 (Satisfactory). A rating of 2 indicates that the consolidated BHC is fundamentally financially sound, but may reflect modest weaknesses correctable in the normal course of business. The capital adequacy, asset quality, earnings and liquidity of the consolidated BHC are adequate to protect the company from external economic and financial disturbances. The company also generates sufficient cash flow to service their obligations; however, areas of weakness could develop into areas of greater concern. To the extent minor adjustments are handled in the normal course of business, the supervisory response is limited.

Rating 3 (Fair). A rating of 3 indicates that the consolidated BHC exhibits a combination of weaknesses ranging from fair to moderately severe. The company has less than adequate financial strength stemming from one or more of the following: modest capital

deficiencies, poor asset quality, weak earnings, or liquidity problems. As a result, the BHC and its subsidiaries are less resistant to adverse business conditions. The financial condition of the BHC will likely deteriorate if concerted action is not taken to correct areas of weakness. The company's cash flow is sufficient to meet immediate obligations, but may not remain adequate if action is not taken to correct weaknesses. Consequently, the BHC is vulnerable and requires more than normal supervision. Overall financial strength and capacity are still such as to pose only a remote threat to the viability of the company.

Rating 4 (Marginal). A rating of 4 indicates that the consolidated BHC has either inadequate capital, an immoderate volume of problem assets, very weak earnings, serious liquidity issues, or a combination of factors that are less than satisfactory. An additional weakness may be that the BHC's cash flow needs are met only by upstreaming imprudent dividends and/or fees from subsidiaries. Unless prompt action is taken to correct these conditions, they could impair future viability. BHCs in this category require close supervisory attention and increased financial surveillance.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the volume and character of financial weaknesses of the BHC are so critical as to require urgent aid from shareholders or other sources to prevent insolvency. The imminent inability of such a company to service its fixed obligations and/or prevent capital depletion due to severe operating losses places its viability in serious doubt. Such companies require immediate corrective action and constant supervisory attention.

The "CAEL" (Capital, Asset Quality, Earnings, and Liquidity) Subcategories

The CAEL subcategories can be evaluated along business lines, product lines, or legal entity lines—depending on which type of review is most appropriate for the holding company structure. The weight afforded to each subcategory in the overall F rating will depend on the severity of the condition of that subcategory and the relative importance of that subcategory to the consolidated organization. The following is a description of rating definitions for the CAEL subcategories.

"C" Capital Adequacy

Rating 1 (Strong). A rating of 1 indicates that the consolidated BHC maintains more than adequate capital to: 1) support the volume and risk characteristics of all parent and subsidiary business lines and products; 2) provide a sufficient cushion to absorb unanticipated losses arising from holding company and subsidiary activities; and, 3) support the level and composition of corporate and subsidiary borrowing. In addition, a company assigned a rating of 1 has more than sufficient capital to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries.

Rating 2 (Satisfactory). A rating of 2 indicates that the consolidated BHC maintains adequate capital to: 1) support the volume and risk characteristics of all parent and subsidiary business lines and products; 2) provide a sufficient cushion to absorb unanticipated losses arising from holding company and subsidiary activities; and, 3) support the level and composition of corporate and subsidiary borrowing. In addition, a company assigned a rating of 2 has sufficient capital to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries.

Rating 3 (Fair). A rating of 3 indicates that the consolidated BHC may not maintain sufficient capital to ensure support for one or more of the following: 1) the volume and risk characteristics of all parent and subsidiary business lines and products; 2) the unanticipated losses arising from holding company and subsidiary activities; or, 3) the level and composition of corporate and subsidiary borrowing. In addition, a company assigned a rating of 3 may not maintain a sufficient capital position to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries. The capital position of the consolidated BHC could quickly become inadequate in the event of further asset deterioration or other negative factors and therefore requires more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the capital level of the consolidated BHC is significantly below the amount needed to ensure support for one or more of the following: 1) the volume and risk characteristics of all parent and subsidiary business lines and products; 2) the unanticipated losses arising from holding company and subsidiary activities; and, 3) the level and composition of corporate and subsidiary borrowing. In addition, a company assigned a rating of 4 does not maintain a sufficient capital position to provide a base for the growth of risk assets and the entry into capital markets as the need arises for the parent company and subsidiaries. If left unchecked, the consolidated capital position of the company might evolve into weaknesses or conditions that could threaten the viability of the institution. The capital position of the consolidated BHC requires immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the level of capital of the consolidated BHC is critically deficient and in needed of immediate corrective action. The consolidated capital position threatens the viability of the institution and requires constant supervisory attention.

"A" Asset Quality

Rating 1 (Strong). A rating of 1 indicates that the BHC maintains strong asset quality and credit administration practices across all parts of the organization. Any identified weaknesses in asset quality are minor in nature. Credit risk across the organization for a 1 rated company is commensurate with management's abilities and modest in relation to credit risk management practices.

Rating 2 (Satisfactory). A rating of 2 indicates that the BHC maintains satisfactory asset quality and credit administration practices across all parts of the organization. Any identified weaknesses in asset quality are correctable in the normal course of business. Credit risk across the organization for a 2 rated company is commensurate with management's abilities and generally modest in relation to credit risk management practices.

Rating 3 (Fair). A rating of 3 indicates that the asset quality or credit administration across all or part of the consolidated BHC is less than satisfactory. The BHC may be experiencing an increase in credit risk exposure that has not been met with an appropriate improvement in risk management practices. It may also be facing a decrease in the overall quality of assets currently maintained on and off balance sheet. BHCs assigned a rating of 3 require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's asset quality or credit administration practices are deficient. The level of problem assets and/or unmitigated credit risk subjects the holding company to potential losses that, if left unchecked, may threaten its viability. BHCs assigned a rating of 4 require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC's asset quality or

credit administration practices are critically deficient and present an imminent threat to the institution's viability. BHCs assigned a rating of 5 require immediate remedial action and constant supervisory attention.

"E" Earnings

Rating 1 (Strong). A rating of 1 indicates that the quantity and quality of the BHC's consolidated earnings are more than sufficient to make full provision for the absorption of losses and accretion of capital when due consideration is given to asset quality and BHC growth. Generally, BHCs with a 1 rating have earnings well above peer–group averages.

Rating 2 (Satisfactory). A rating of 2 indicates that the quantity and quality of the BHC's consolidated earnings are generally adequate to make provision for the absorption of losses and accretion of capital when due consideration is given to asset quality and BHC growth. BHCs with a 2 earnings rating have earnings that are in line with or slightly above peer–group averages.

Rating 3 (Fair). A rating of 3 indicates that the BHC's consolidated earnings are not fully adequate to make provisions for the absorption of losses and the accretion of capital in relation to company growth. The consolidated earnings of companies rated 3 may be further clouded by static or inconsistent earnings trends, chronically insufficient earnings, or less than satisfactory asset quality. BHCs with a 3 rating for earnings generally have earnings below peer–group averages. Such BHCs require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's earnings, while generally positive, are clearly not sufficient to make full provision for losses and the necessary accretion of capital. BHCs with earnings rated 4 may be characterized by erratic fluctuations in net income, poor earnings (and the likelihood of the development of a further downward trend), intermittent losses, chronically depressed earnings, or a substantial drop from the previous year. The earnings of such companies are ordinarily substantially below peer–group averages. Such BHCs require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC is experiencing losses or reflecting a level of earnings that is worse than that described for the 4 rating. Such losses, if not reversed, represent a distinct threat to the BHC's solvency through erosion of capital. Such BHCs require immediate and constant supervisory attention.

"L" Liquidity

Rating 1 (Strong). A rating of 1 indicates that the BHC maintains strong liquidity levels and well developed funds management practices. The parent company and subsidiaries have reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.

Rating 2 (Satisfactory). A rating of 2 indicates that the BHC maintains satisfactory liquidity levels and funds management practices. The parent company and subsidiaries have access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses in funds management practices may be evident, but those weaknesses are correctable in the normal course of business.

Rating 3 (Fair). A rating of 3 indicates that the BHC's liquidity levels or funds management practices are in need of improvement. BHCs rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices at the parent company and/or subsidiary levels. However, these deficiencies are considered correctable in the normal course of business. Such BHCs require more than normal supervisory attention.

Rating 4 (Marginal). A rating of 4 indicates that the BHC's liquidity levels or funds management practices are deficient. Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs at the parent company and/or subsidiary levels and require immediate supervisory attention.

Rating 5 (Unsatisfactory). A rating of 5 indicates that the BHC's liquidity levels or funds management practices are critically deficient and may threaten the continued viability of the institution. Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs and constant supervisory attention.

"I" (Impact) Component

The I component rating reflects the aggregate impact of the parent company and nonbank subsidiaries on the subsidiary depository institution(s). The I component is rated on a five point numerical scale. Ratings will be assigned in ascending order of supervisory concern as follows:

1 – low likelihood of significant negative impact;

2 – limited likelihood of significant negative impact;

3 – moderate likelihood of significant negative impact;

4 – considerable likelihood of significant negative impact; and

5 – high likelihood of significant negative impact.

Rating 1 (Low Likelihood of Significant Negative Impact). A rating of 1 indicates that the aggregate impact of the parent company and nonbank subsidiaries of the BHC on the subsidiary depository institution(s) is positive due to factors that include the: 1) sound financial condition of the parent company and nondepository subsidiaries; and 2) strong risk management practices within the parent company and nondepository subsidiaries. A 1 rated BHC maintains an appropriate capital position across all legal entities in line with the risks undertaken by those entities. Intra–group exposures, including servicing agreements and derivative and payment system exposures of a 1 rated BHC do not have the potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow is not dependent on excessive dividend payments from subsidiaries which can potentially undermine the financial condition of the subsidiary depository institution(s). The potential risks posed to the subsidiary depository institution(s) by plans for growth, a poor control environment, and/or complaints and litigation within or facing the parent company or nondepository subsidiaries can be corrected in a routine manner.

Rating 2 (Limited Likelihood of Significant Negative Impact). A rating of 2 indicates that the aggregate impact of the parent company and nonbank subsidiaries of the BHC on the subsidiary depository institution(s) is neutral due to factors that include the: 1) adequate financial condition of the parent company and nondepository subsidiaries, and 2) satisfactory risk management practices within the parent company and nondepository subsidiaries. A 2 rated BHC maintains an adequate capital position across all legal entities in line with the risks undertaken by those entities. Intra–group exposures, including servicing agreements and derivative and payment system exposures, of a 2 rated BHC generally do not have the potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow generally is not dependent on excessive dividend payments from subsidiaries which can potentially undermine the financial condition of the subsidiary depository institution(s). The potential risks posed to the subsidiary depository institution(s) by strategic growth plans

or a poor control environment within the parent company or nondepository subsidiaries are minor in nature and can be corrected in the normal course of business.

Rating 3 (Moderate Likelihood of Significant Negative Impact). A rating of 3 indicates that the aggregate impact of the parent company and nonbank subsidiaries of the BHC on the subsidiary depository institution(s) is potentially negative due to weaknesses in the financial condition and/or risk management practices of the parent company and nondepository subsidiaries. A 3 rated BHC may have only marginally sufficient capital within the parent company and/or nondepository subsidiary(ies) to support its activities. Intra–group exposures, including servicing agreements and derivative and payment system exposures, of a 3 rated BHC may have the potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow may be partially dependent on excessive dividend payments from subsidiaries, potentially undermining the financial condition of the subsidiary depository institution(s). The potential risks posed to the subsidiary depository institution(s) by strategic growth plans or a poor control environment within the parent company or nondepository subsidiaries may be significant. A BHC assigned a 3 impact rating requires more than normal supervisory attention.

Rating 4 (Considerable Likelihood of Significant Negative Impact). A rating of 4 indicates that the aggregate impact of the parent company and nonbank subsidiaries of the BHC on the subsidiary depository institution(s) is negative due to weaknesses in the financial condition and/or risk management practices of the parent company and nondepository subsidiaries. A 4 rated BHC may have insufficient capital within the parent company and/or nondepository subsidiary(ies) to support its activities. Intra–group exposures, including servicing agreements and derivative and payment system exposures, of a 4 rated BHC may also have the potential to undermine the financial condition of the subsidiary depository institution(s). Parent company cash flow may be dependent on excessive dividend payments from subsidiaries, potentially undermining the financial condition of the subsidiary depository institution(s). The potential risks posed to the subsidiary depository institution(s) by strategic growth plans or a poor control environment within the parent company or nondepository subsidiaries may also be significant. A BHC assigned a 4 impact rating requires immediate remedial action and close supervisory attention.

Rating 5 (High Likelihood of Significant Negative Impact). A rating of 5 indicates that the aggregate impact of the parent company and nonbank subsidiaries of the BHC on the subsidiary depository institution(s) is extremely negative due to significant weaknesses in the financial condition and/or risk management practices of the parent company or nondepository subsidiaries. Critical deficiencies in the parent company or nondepository subsidiaries pose an immediate threat to the viability of the subsidiary depository institution(s). The parent company also may be unable to meet its obligations without support from the subsidiary depository institution(s). The BHC requires immediate remedial action and constant supervisory attention.

"C" (Composite) Component

C is the overall composite assessment of the BHC as reflected by consolidated risk management, consolidated financial strength, and the impact of the parent company and nonbank subsidiaries on the depository institutions. The composite rating encompasses both a forward–looking and static assessment of the consolidated organization, as well as an assessment of issues related to the parent company and nonbank subsidiaries acting as a source of strength to the depository institutions. The C rating is not derived as a simple numeric average of the rating system components; rather, it reflects examiner judgement with respect to the relative importance of each component to the safe and sound operation of the BHC.

Rating 1 (Strong). BHCs in this group are sound in almost every respect; any negative findings are basically of a minor nature and can be handled in a routine manner. Risk management practices and financial stability provide resistance to external economic and monetary disturbances. The parent company and nondepository subsidiaries are a source of financial strength to the depository institutions.

Rating 2 (Satisfactory). BHCs in this group are also fundamentally sound but may have modest weaknesses in risk management practices or financial stability. The weaknesses could develop into conditions of greater concern but are believed correctable in the normal course of business. As such, the supervisory response is limited. The parent company and nondepository subsidiaries are not a source of financial weakness to the depository institutions.

Rating 3 (Fair). BHCs in this group exhibit a combination of weaknesses in risk management practices and financial stability that range from fair to moderately severe. These companies are less resistant to the onset of adverse business conditions and could likely deteriorate if concerted action is not effective in correcting the areas of weakness. Consequently, these companies are vulnerable and require more than normal supervisory attention and financial surveillance. However, the strength and financial capacity of the company, including the ability of the parent company and nondepository subsidiaries to provide financial support, if necessary, pose only a remote threat to its continued viability.

Rating 4 (Marginal). BHCs in this group have an immoderate volume of risk management and financial weaknesses. The parent company and nonbank subsidiaries' combined ability to provide financial support to the depository institutions has been limited by these weaknesses. Unless prompt action is taken to correct these conditions, the organization's future viability could be impaired. These companies require close supervisory attention and increased financial surveillance.

Rating 5 (Unsatisfactory). The critical volume and character of the risk management and financial weaknesses of BHCs in this category, and concerns about the parent company and nondepository subsidiaries acting as a source of weaknesses to the subsidiary depository institution(s), could lead to insolvency without urgent aid from shareholders or other sources. The imminent inability to prevent liquidity and/or capital depletion places the BHC's continued viability in serious doubt. These companies require immediate corrective action and constant supervisory attention.

(D) (Depository Institutions) Component

The (D) component is intended to identify the overall condition of the subsidiary depository institution or the combined condition of the depository subsidiaries. For BHCs with only one depository institution, the (D) component rating will mirror the CAMELS composite rating for that depository institution. To arrive at a (D) component rating for BHCs with multi–bank subsidiaries, the CAMELS composite ratings for each of the depository institutions should be weighted, giving consideration to asset size and the relative importance of each depository institution within the overall structure of the organization. In general, it is expected that the resulting (D) component rating will reflect the lead

depository institution's CAMELS composite rating.

If in the process of analyzing the financial condition and risk management programs of the consolidated organization, a major difference of opinion relative to the safety and soundness of the depository institution emerges between the Federal Reserve and the depository institution's primary regulator, then the (D) rating should reflect the Federal Reserve's evaluation.

III. Implementation of Revised Rating System by Bank Holding Company Type

The proposal to change the BHC rating system was driven by the need to align the rating system with current Federal Reserve supervisory practices. The new rating system will require analysis and support similar to that required by current supervisory policy for institutions of all sizes.[7] As such, the level of analysis and support will vary based upon whether a BHC has been determined to be "complex" or "noncomplex."[8] In addition, the resources dedicated to the inspection of each BHC will continue to be determined by the risk posed by the subsidiary depository institution(s) to the federal safety net[9] and the risk posed by the BHC to the subsidiary depository institution(s).

Noncomplex BHCs with Assets of $1 Billion or Less (Shell Holding Companies)

New Rating: R and C

Consistent with SR 02–1, examination staff will be required only to assign an R and C rating for all companies in the shell BHC program (noncomplex BHCs with assets under $1 billion). The R rating is the M rating from the subsidiary depository institution's CAMELS rating. The rating will be changed from the current M to an R to provide consistent terminology. The C rating is the subsidiary depository institution's composite CAMELS rating.

Noncomplex BHCs with Assets Greater than $1 Billion

One–Bank Holding Company
New Rating: RFI/C (D)

For all noncomplex, one–bank holding companies with assets of greater than $1 billion, examination staff will assign all component and subcomponent ratings in the new rating system; however, examination staff should continue to rely heavily on information and analysis contained in the report of examination for the subsidiary depository institution to assign the R and F ratings. If examination staff have reviewed the primary regulator's examination report and are comfortable with the analysis and conclusions contained in that report, then the BHC ratings should be supported with concise language that indicates that the conclusions are based on the analysis of the primary regulator. No additional analysis will be required.

Please note, however, in cases where the analysis and conclusions of the primary regulator are insufficient to assign the new ratings, the primary regulator should be contacted to ascertain whether additional analysis and support may be available. Further, if discussions with the primary regulator do not provide sufficient information to assign the ratings, discussions with BHC management may be warranted to obtain adequate information to assign the ratings. In most cases, additional information or support obtained through these steps will be sufficient to permit the assignment of the R and F ratings. To the extent that additional analysis is deemed necessary, the level of analysis and resources spent on this assessment should be in line with the level of risk the subsidiary depository institution poses to the federal safety net. In addition, any activities that involve information gathering with respect to the subsidiary depository institution should be coordinated with and, if possible, conducted by, the primary regulator of that institution.

Examination staff will be required to make an independent assessment in order to assign the I rating, which provides an evaluation of the impact of the BHC on the subsidiary depository institution. Analysis for the I rating in non–complex one–bank holding companies should place particular emphasis on issues related to parent company cash flow and compliance with 23A.

Multi–Bank Holding Company
New Rating: RFI/C (D)

For all noncomplex BHCs with assets of greater than $1 billion and having more than one subsidiary depository institution, examination staff will assign all component and subcomponent ratings of the new system, also relying, to the extent possible, on the work conducted by the primary bank regulators to assign the R and F ratings. However, any risk management or other important functions conducted by the parent company or any nondepository subsidiary of the BHC, or conducted across legal entity lines, should be subject to review by Federal Reserve examination staff. These reviews should be conducted in coordination with the primary regulator(s). The assessment for the I rating will require an independent assessment by Federal Reserve examination staff.

Complex BHCs

New Rating: RFI/C (D)

For complex BHCs, examination staff will assign all component and subcomponent ratings of the new rating system. The ratings analysis should be based on the primary regulator's assessment of the subsidiary depository institution(s), as well as on the examiners' assessment of the consolidated organization as determined through the BHC inspection process. The resources needed for the inspection and the level of support needed for developing a full rating will depend upon the complexity of the organization, including structure and activities (see footnote 7), and should be commensurate with the level of risk posed by the subsidiary depository institution(s) to the federal safety net and the level of risk posed by the BHC to the subsidiary depository institution(s).

Nontraditional BHCs

New Rating: RFI/C (D)

Examination staff will be required to assign the full rating system for nontraditional BHCs. Nontraditional BHCs include BHCs in which most or all nondepository operations are regulated by a functional regulator and in which the subsidiary depository institution(s) is small in relation to the nondepository operations. The new rating system is not intended to introduce significant additional work in the rating process for these organizations. As discussed above, the

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[7] Including the BHC inspection manual, SR 95–51, SR 97–24, SR 97–25, SR 99–15, and SR 02–01.

[8] The determination of whether a holding company is "complex" versus "noncomplex" is made at least annually on a case–by–case basis taking into account and weighing a number of considerations, such as: the size and structure of the holding company; the extent of intercompany transactions between depository institution subsidiaries and the holding company or nondepository subsidiaries of the holding company; the nature and scale of any nondepository activities, including whether the activities are subject to review by another regulator and the extent to which the holding company is conducting Gramm–Leach–Bliley authorized activities (e.g., insurance, securities, merchant banking); whether risk management processes for the holding company are consolidated; and whether the holding company has material debt outstanding to the public. Size is less important determinant of complexity than many of the factors noted above, but generally companies of significant size (e.g., assets of $10 billion on balance sheet or managed) would be considered complex, irrespective of the other considerations.

[9] The federal safety net is defined as the deposit insurance fund, the payments system, and the Federal Reserve's discount window.

level of analysis conducted and resources needed to inspect the BHC and to assign the consolidated R and F ratings should be commensurate with the level of risk posed by the subsidiary depository institution(s) to the federal safety net and the level of risk posed by the BHC to the subsidiary depository institution(s). The report of examination by, and other information obtained from, the functional and primary bank regulators should provide the basis for the consolidated R and F ratings. On–site work, to the extent it involves areas that are the primary responsibility of the functional or primary bank regulator, should be coordinated with and, if possible, conducted by, those regulators. Examination staff should concentrate their independent analysis for the R and F ratings around activities and risk management conducted by the parent company and non–functionally regulated nondepository subsidiaries, as well as around activities and risk management functions that are related to the subsidiary depository institution(s), for example, audit functions for the depository institution(s) and compliance with 23A.

Examination staff will be required to make an independent assessment of the impact of the parent company and nondepository subsidiary(ies) on the subsidiary depository institution(s) in order to assign the I rating.

By order of the Board of Governors of the Federal Reserve System, July 20, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–16865 Filed 7–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 9, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jerry Wurtele and Susan Wurtele, Nebraska City, Nebraska; to acquire voting shares of Davenport Community Bancshares, Inc., Davenport, Nebraska, and thereby indirectly acquire voting shares of Jennings State Bank, Davenport, Nebraska.

Board of Governors of the Federal Reserve System, July 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–16864 Filed 7–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Liberty Bancshares, Inc., Jonesboro, Arkansas; to acquire 26.34 percent of the voting shares of Russellville Bancshares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire voting shares of First Arkansas Valley Bank, Russellville, Arkansas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. First National Bank Holding Company, to acquire 100 percent of the voting shares of First Capital Bank of New Mexico, Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, July 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–16821 Filed 7–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than August 6, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Amtrust, Inc., Dubuque, Iowa; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–16820 Filed 7–22–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF FEDERAL TRADE COMMISSION

Delegation of Authority To Respond to Requests From the United Kingdom's Office of Fair Trading, the United Kingdom's Information Commissioner, Her Majesty's Secretary of State for Trade and Industry in the United Kingdom, the Australian Competition and Consumer Commission, and the Australian Communications Authority

AGENCY: Federal Trade Commission.

ACTION: Delegation of authority.

SUMMARY: The Commission has delegated authority to the Associate Director for International Consumer Protection to respond to disclosure and other requests from the United Kingdom's Office of Fair Trading, the United Kingdom's Information Commissioner, Her Majesty's Secretary of State for Trade and Industry in the United Kingdom, the Australian Competition and Consumer Commission, and the Australian Communications Authority regarding unsolicited commercial e-mail pursuant to a memorandum of understanding with the Commission.

EFFECTIVE DATE: June 29, 2004.

FOR FURTHER INFORMATION CONTACT: Yael Weinman, Legal Advisor for International Consumer Protection, International Division of Consumer Protection, (202) 326–3748, *yweinman@ftc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given, pursuant to Reorganization Plan No. 4 of 1961, 26 FR 6191, that the Commission has delegated to the Associate Director for International Consumer Protection the authority to respond to disclosure and other requests from the United Kingdom's Office of Fair Trading, the United Kingdom's Information Commissioner, Her Majesty's Secretary of State for Trade and Industry in the United Kingdom, the Australian Competition and Consumer Commission, and the Australian Communications Authority pursuant to a memorandum of understanding with the Commission about commercial e-mail information sharing and enforcement cooperation. This delegated authority does not apply to competition-related investigations. When exercising its authority under this delegation, staff may only disclose information regarding commercial e-mail investigations that involve consumers, businesses, commerce or markets in the United Kingdom or Australia, as applicable, and will require assurances of confidentiality from the United Kingdom's Office of Fair Trading, the United Kingdom's Information Commissioner, Her Majesty's Secretary of State for Trade and Industry in the United Kingdom, the Australian Competition and Consumer Commission, or the Australian Communications Authority, as applicable. Disclosures shall be made only to the extent consistent with current limitations on disclosure, including section 6(f) of the FTC Act, 15 U.S.C. 46(f), section 21 of the Act, 15 U.S.C. 57b–2, and Commission Rule 4.10(d), 16 CFR 4.10(d), and with the Commission's enforcement policies and other important interests. Where the subject matter of the information to be shared raises significant policy concerns, staff shall consult with the Commission before disclosing such information.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–16759 Filed 7–22–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04283]

Partnering With Schools of Public Health to Enhance Public Health Capacity for HIV Prevention and Care Activities in Vietnam; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to provide technical and capacity building assistance for HIV prevention and care in Vietnam. This program should involve training and other capacity building that specifically facilitates the implementation, management, monitoring and evaluation of HIV prevention and care activities, using locally appropriate approaches, and should operate in close collaboration with the CDC Global AIDS Program (GAP) Vietnam Office and its collaborators in Vietnam (*e.g.*, Vietnam Ministry of Health). The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Hanoi School of Public Health (HSPH).

The award specifically aims to use existing capacity through Schools of Public Health to aid in providing Vietnam governmental agencies additional capacity/training in public health management, information-technology, monitoring and evaluation, and other surveillance activities. Currently, the HSPH is the single school of public health in Vietnam and thus the only appropriate and qualified organization to conduct this specific set of activities supportive of the CDC/GAP. In addition,

(1) The HSPH is uniquely positioned, in terms of legal authority and credibility among Vietnamese health institutions, to provide technical and capacity building assistance in the areas of public health informatics and sustainable management development for public health programs.

(2) The HSPH already has established mechanisms to access public health informatics and sustainable management development information, enabling it to immediately become engaged in the activities listed in this announcement.

(3) The purpose of this announcement is to build upon the existing framework of health information and activities that the HSPH itself has collected or initiated.

(4) The HSPH is organizationally within the MOH and can effectively coordinate and implement HIV prevention and care activities supported by MOH and its other agencies. Although other Vietnam government ministries are involved in HIV prevention and care, currently most activities occur out of MOH.

Cost Sharing or Matching

Matching funds are not required for this program.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: S. Patrick Chong, Deputy Director, Global AIDS Program [GAP], Vietnam, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], US Embassy Hanoi, 7 Lang Ha, Hanoi, Vietnam. Telephone: +84 (4) 831–4580, ext. 215. E-mail: *pchong@cdc.gov.*

Dated: July 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16809 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04284]

Strengthening and Expanding HIV/AIDS Surveillance, Prevention, Care and Support Services Targeting Vulnerable Populations in Ho Chi Minh City, Vietnam; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to strengthen and expand HIV/AIDS surveillance, prevention, care and support services targeting vulnerable populations in Ho Chi Minh City (HCMC), Vietnam. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the HCMC Provincial AIDS Committee (HCMC PAC).

The award specifically aims to use existing capacity through the HCMC PAC to strengthen and expand HIV/AIDS surveillance, prevention, care and support activities in high prevalence districts of HCMC. Currently, the HCMC PAC is the single entity designated by the HCMC People's Committee to conduct this specific set of activities supportive of the CDC GAP. In addition,

(1) The HCMC PAC is uniquely positioned, in terms of legal authority and credibility among Vietnamese health institutions, to implement HIV/AIDS surveillance, prevention, care and support activities in HCMC.

(2) the HCMC PAC already has established mechanisms to access HIV/AIDS, TB, STD and other public health information, enabling it to immediately become engaged in the activities listed in this announcement.

(3) the purpose of this announcement is to build upon the existing framework of health information and activities that the HCMC PAC itself has collected or initiated.

(4) the HCMC PAC is multi-sectoral organization, whose membership includes the HCMC People's Committee, Provincial Health Services, Preventive Medicine Center, Ministry of Labor, War Invalids and Social Affairs (MOLISA), Department of Labor, War Invalids and Social Affairs (DOLISA), the Police Department, the Youth Union, the Women's Union, and other governmental and non-governmental organizations and can effectively coordinate and implement HIV/AIDS surveillance, prevention, care and support activities throughout HCMC.

C. Funding

Approximately $350,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: S. Patrick Chong, Deputy Director, Global AIDS Program [GAP], Vietnam, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], US Embassy Hanoi, 7 Lang Ha, Hanoi, Vietnam. Telephone: +84 (4) 831–4580, ext. 215. E-mail: *pchong@cdc.gov.*

Dated: July 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16807 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04267]

Assessment of Youth Interventions in Asembo and Gem, Nyanza Province, Kenya; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to provide a model program for pilot youth interventions in Asembo and Gem, Nyanza Province, Kenya, and for assessment of the impact of these interventions.

The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Institute of Tropical Medicine (ITM), Antwerp, Belgium.

The ITM has a long history of research and effective interventions, in rural Africa, in the areas of HIV/AIDS and other STD. ITM was the first organization to document the extremely high rates of HIV infection in young people in Nyanza province. As a result of this study, ITM established a pilot intervention program, in Asembo, in 2002 to assess in more detail the risk factors in young people, to develop pilot interventions to reduce this risk, and to study the impact of these interventions. ITM is already established in Asembo and enjoys the respect and support of the local community, and studies are currently underway to assess the Parents Matter curriculum. There is no other organization in Asembo and Gem, somewhat remote areas, with the capacity to implement this complex program.

C. Funding

Approximately $2,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or

before September 1, 2004 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Elizabeth Marum, PhD., Project Officer, Global Aids Program [GAP], Kenya Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 606 Village Market, Nairobi, Kenya, Telephone: 256–20–271–3008, E-mail: *emarum@cdcnairobi.mimcom.net.*

Dated: July 16, 2004.

William P. Nichols, MPA,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16808 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04230]

Promoting Extensive Implementation of Quality Prevention of Mother to Child Transmission (PMTCT) Activities in the Republic of Uganda; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to: support the expansion of quality PMTCT program coverage throughout Uganda; conduct PMTCT training; identify gaps in the current national PMTCT program; and develop strategies to fill those gaps and to carry out other PMTCT promotion, policy and quality assurance activities. The overall aim of this program is to promote wide implementation of quality PMTCT programs throughout Uganda.

The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will only be provided to Protecting Families Against AIDS (PREFA). No other applications are solicited. PREFA is the only application being solicited because:

1. CDC Uganda was tasked by President Bush's PMTCT Initiative Workstream in fiscal year 2003 with supporting the establishment of a Ugandan NGO focusing on PMTCT. This is a continuation of this activity.

2. None of the other current stakeholders in PMTCT provision has PMTCT as its core activity and all are already overwhelmed with other HIV/AIDS activities.

3. PREFA is the only national NGO specifically supporting Uganda's efforts to provide comprehensive HIV/AIDS prevention, care, treatment and support to families with emphasis on reducing MTCT.

C. Funding

Approximately $520,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], P.O. Box 49, Entebbe, Uganda. Telephone: +256–41320776. E-mail: *jhm@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–1515. E-mail address: *zbx6@cdc.gov.*

Dated: July 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16806 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04270]

Capacity Building in the Implementation of a Comprehensive Program To Prevent Mother to Child HIV Transmission at University of Nairobi Teaching Hospitals; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to facilitate the implementation of a comprehensive prevention of mother to child transmission program (PMTCT) at the Kenyatta National Hospital and Pumwani Maternity Hospital (the two largest maternity units in Kenya and the clinical teaching settings for the University of Nairobi's Department of Obstetrics and Gynecology). The program will also integrate PMTCT training into the existing curricula of different cadres of health service providers (nurse-midwives, clinical officers and undergraduate and postgraduate doctors) being trained by the medical school.

The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the University of Nairobi. No other applications are solicited.

The University of Nairobi Medical School is the only institution that can provide technical assistance and capacity building to the two teaching hospitals to implement the PMTCT program due to its special relationship with the two institutions. The Kenyatta National Referral Hospital serves as the teaching hospital for the University of Nairobi and sets the standards for medical care within the country. Historically, for the purpose of training, the University of Nairobi Medical School has also established strong links with the Pumwani Maternity Hospital (PMH). Kenyatta National Hospital and Pumwani Maternity Hospital cannot run without University of Nairobi staff. The University deploys obstetricians, residents and nurse midwives to Pumwani Maternity Hospital and has recently assisted the maternity in implementing a PMTCT program. Pumwani is the largest maternity hospital, not only in Kenya but also in

sub-Saharan Africa. With approximately 22,000 deliveries per year and a prevalence rate of HIV of 10–15 percent, a PMTCT program in this facility may prevent a substantial amount of HIV transmission.

The University of Nairobi has well renowned experts in the field of PMTCT who provide technical guidance on the implementation of this program. In addition, as the premier medical training institution in the country, the University of Nairobi is well placed to initiate a pre-service training program on PMTCT to meet the capacity needs of the national PMTCT program.

C. Funding

Approximately $500,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before August 15, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Fabian Mwanyumba, MBChB, MPH, PhD, Technical Advisor PMTCT, Global Aids Program [GAP], Centers for Disease Control and Prevention [CDC], PO Box 606 Village Market, Nairobi, Kenya, Telephone: 256–20–271–3008, E-mail: *FMwanyumba@cdcnairobi.mimcom.net.*

Dated: July 16, 2004.

William P. Nichols, MPA,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16805 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8:30 a.m.–4 p.m., August 25, 2004.

Place: The Adam's Mark Hotel Columbia, 1200 Hampton Street, Columbia, South Carolina 29201; telephone 803–771–7000 or 1–800–880–1885, fax 803–254–2911.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director of CDC and the Administrator of ATSDR pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and to serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include a presentation on completed dose reconstruction projects at other sites, an update from the National Institute for Occupational Safety and Health, and a report by Advanced Technologies and Laboratories International, Inc. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE., (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: July 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16810 Filed 7–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10120]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* 1932 State Plan Amendment Template, State Plan Requirements and Supporting Regulations in 42 CFR 438.50; *Form No.:* CMS–10120 (OMB# 0938–NEW); *Use:* The State Medicaid Agencies will complete the template. CMS will review the information to determine if the State has met all the requirements under 1932(1)(1)(A) and 42 CFR 438.50. Once all requirements are met, the State will

be allowed to enroll Medicaid beneficiaries on a mandatory basis into managed care entities without section 1115 or 1915(b) waiver authority.; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 14, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–16660 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10105, CMS–1561, CMS–10110, CMS–R–216 and CMS–10047]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* In-Center Hemodialysis CAHPS Survey (**Note:** Significant modifications were made to this information collection since the publication of the 60-day FR notice. The title of this information collection was also changed from End Stage Renal Disease Hemodialysis Patient Experience of Care (CAHPS) Survey since its publication.; *Form No.:* CMS–10105 (OMB #0938–NEW; *Use:* The In-Center Hemodialysis CAHPS Survey follows CMS CAHPS efforts in other provider areas (Managed Care, FFS, hospital), and is intended to provide CMS with a picture of the experience of this vulnerable population who receive life sustaining dialysis therapy approximately three times per week from dialysis facilities. A variety of patient satisfaction surveys are already conducted regularly by a many dialysis organizations (although the majority of instruments have not been tested) and this tool would provide the ESRD community with a tested, standardized survey instrument that facilities could use for quality improvement and comparative purposes. It will provide information for consumer choice, data that facilities can use for internal quality improvement and external benchmarking against other facilities, and finally, information that CMS can use for public reporting and monitoring purposes.; *Frequency:* Recordkeeping; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours:* 1,500.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Health Insurance Benefit Agreement and Supporting Regulations in 42 CFR Section 489 and 491; *Form No.:* CMS–1561 (OMB #0938–0832); *Use:* Applicants to the Medicare program are required to agree to provide services in accordance with Federal requirements. The CMS–1561 and CMS–1561A are essential for CMS to ensure that applicants are in compliance with the requirements. Applicants are required to sign the completed forms and provide operational information to CMS to assure that they continue to meet the requirements after approval; *Frequency:* Other: as needed; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 3,300; *Total Annual Responses:* 3,300; *Total Annual Hours:* 175.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Manufacturer Submission of Average Sales Price (ASP) data for Medicare Part B Drugs and Biologicals and Supporting Regulations; *Form No.:* CMS–10110 (OMB #0938–0921); *Use:* This information collection implements the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 that require instructions to manufacturers on the submission of average sales price (ASP) data on Medicare Part B drugs to the Centers for Medicare and Medicaid Services (CMS). This form is the tool used by manufacturers to submit the required data.; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 120; *Total Annual Responses:* 480; *Total Annual Hours:* 15,360.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Procedures for Advisory Opinions Concerning Physician Referrals and Supporting Regulations in 42 CFR Sections 411.370 through 411.389; *Form No.:* CMS–R–216 (OMB #0938–0714); *Use:* A request must include a complete description of the situation that is subject of the advisory opinion and must include copies of all relevant documents (or relevant portions), such as financial statements, contracts, leases, employment agreements and court documents. The submission must include the identities and addresses of all known actual and potential parties to the arrangement. A request for an advisory opinion is purely voluntary. The facts will relate to business plans and the requestor will already have collected and analyzed all or most of the information we will need to review the request; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Individuals or Households, and Business or other for-profit; *Number or Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 2,000.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships and Supporting Regulations in 42 CFR, Sections 411.352 through 411.361; *Form No.:* CMS–10047 (OMB #0938–0846); *Use:* The final rule (HCFA–1809) incorporated into regulations the provisions in paragraphs (a), (b), (c), (d), and (h) of section 1877 of the Social Security Act. Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not refer Medicare patients to that entity for the furnishing of 11 designated health services, unless an exception applies. In addition, section 1877 prohibits an entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payer, or other entity for designated health services furnished under a prohibited referral. Also, Medicare does not pay for a designated health service furnished under a prohibited referral.; *Frequency:* Annually and Other: whenever financial arrangements between entities that furnish designated health services and physicians change.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Individuals or Households; *Number or Respondents:* 62,824; *Total Annual Responses:* 62,824; *Total Annual Hours:* 1,561,633.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 14, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–16661 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2187–N]

State Children's Health Insurance Program (SCHIP); Extended Availability of Unexpended SCHIP Funds From the Appropriation for Fiscal Years 1998 Through 2001; and Provision of Authority for Qualifying States To Use a Portion of SCHIP Funds for Medicaid Expenditures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice describes the extension of availability to the end of Federal fiscal year (FY) 2004 of the amounts of States' unexpended FY 1998 and FY 1999 allotment funds. Additionally, this notice sets forth the amounts of States' unexpended FY 2000 allotments that remained at the end of FY 2002 that will be available under a statutory formula for each of the 50 States, the District of Columbia, and the Commonwealths and Territories through the end of a subsequent period of availability ending September 30, 2004. This notice also sets forth the amounts of States' unexpended FY 2001 allotments that remained at the end of FY 2003 that will be available under a statutory formula for each of the 50 States, the District of Columbia, and the Commonwealths and Territories through the end of a subsequent period of availability ending September 30, 2005.

Finally, this notice permits "Qualifying States" to elect to receive a portion of their available SCHIP allotments as increased Federal matching funding for certain expenditures in their Medicaid programs.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. Extension of Availability and Redistribution of State Children's Health Insurance Program (SCHIP) Fiscal Year 1998 Through 2001 Allotments

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. In this notice, unless otherwise indicated, the terms "State" and "States" refer to any or all of the 50 States, the District of Columbia, and the Commonwealths and Territories. States may implement SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both. Under section 2104 of the Act, the SCHIP allotments for a Federal fiscal year (FY) are available to match expenditures under an approved State child health plan for an initial 3-fiscal year "period of availability," including the fiscal year for which the allotment was provided. After the initial period of availability, the amount of unspent allotments is subject to a subsequent period of availability. With the exception described below for the allotments made in FYs 1998 through 2001, allotments unspent in the initial 3-year period of availability would be redistributed from States that did not fully spend these allotments to States that fully spent their allotments for that fiscal year.

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) enacted as part of Pub. L. 106–554 on December 21, 2000, amended title XXI of the Act, in part by establishing new requirements for a subsequent extended period of availability with respect to the amounts of States' FY 1998 and FY 1999 allotments that were unspent during the initial 3-year period of availability. Under the BIPA amendments, the subsequent period of availability for States' unspent FY 1998 and 1999 allotments was extended to the end of FY 2002.

Section 1 of Pub. L. 108–74, enacted on August 15, 2003, amended title XXI of the Act to establish new requirements for the subsequent period of availability associated with the unexpended amounts of States' FYs 1998, 1999, 2000, and 2001 allotments that were unspent during the initial 3-year period of availability relating to those fiscal years. Specifically, section 2104(g) of the Act extends the subsequent period of availability associated with the allotments and redistribution of allotments for FYs 1998 through 2000 through the end of fiscal year 2004, and through the end of fiscal year 2005 for the redistributed and extended FY 2001 allotments.

The requirements of section 2104(g) of the Act prescribe a methodology and process which includes the retention of certain amounts of unspent FY 2000 and FY 2001 allotments that would remain available to the States that did not fully expend their FY 2000 or FY 2001

allotments (retained allotments), and the redistribution of unspent FY 2000 or FY 2001 allotments that would not be retained but which would be redistributed to those other States that fully spent their FY 2000 or FY 2001 allotments (redistributed allotments).

B. Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures

Under section 2105(a)(1)(A) through (D) of the Act and before enactment of Pub. L. 108–74, only Federal payments for the following Medicaid and SCHIP expenditures were applied against States' available SCHIP allotments: (1) Medical assistance provided under title XIX (Medicaid) at the SCHIP enhanced Federal medical assistance percentage (FMAP) matching rate with respect to the States' Medicaid SCHIP expansion population; (2) medical assistance provided on behalf of a child during presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid FMAP rate); (3) child health assistance to targeted low income children that meets minimum benefit requirements under SCHIP; and (4) certain expenditures in the SCHIP that are subject to the 10-Percent Limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

However, section 1(b) of Pub. L. 108–74, as amended by Pub. L. 108–127 also adds a new section 2105(g) to the Act under which "Qualifying States" that meet prescribed criteria may elect to use up to 20 percent of their available FYs 1998 through 2001 SCHIP allotments as additional Federal financial participation (FFP) in certain expenditures under their Medicaid programs.

II. Provisions of This Notice

A. Extension of Availability and Redistribution of SCHIP Fiscal Year 1998 Through 2001 Allotments

1. Extension of Availability of FY 1998 Through 2001 SCHIP Allotments

Section 2104 of the Act provides an allotment for each fiscal year for Federal matching payments for an initial 3-year period for the States. Section 2104(g) of the Act, as added by BIPA, provided for a methodology to redistribute or continue availability of all unexpended amounts for FYs 1998 and 1999 at the end of the initial 3-year period. Furthermore, under BIPA, the unexpended FY 1998 and 1999 reallotments were available to States until the end of FY 2002. However, section 2104(g) of the Act, as amended by BIPA, provided for a methodology for the redistribution and retention of unexpended allotment amounts only for the FYs 1998 and 1999. Section 2104(g), as amended by BIPA, did not prescribe a methodology for the redistribution or retention of the amounts of the FY 2000 or FY 2001 allotments that were unexpended at the end of the initial 3-year period of availability. Furthermore, there was no provision for States that did not fully expend their FY 2000 or FY 2001 allotment to retain any portion of their unexpended FY 2000 or FY 2001 allotment amounts.

Section 2104(g), as amended by Pub. L. 108–74, extended the subsequent period of availability for reallotted FY 1998 and FY 1999 allotments through the end of fiscal year 2004. Furthermore, section 2104(g) of the Act was amended to specify a methodology for the redistribution and retention of the amounts of unexpended FY 2000 and FY 2001 allotments. Section 2104 of the Act requires the Secretary to calculate allotments for each State with an approved State child health plan based on available appropriated funds for each fiscal year. All States had approved plans in order to have access to their final FY 2000 and FY 2001 SCHIP allotments, which were published on May 24, 2000 and January 22, 2001, respectively, in the **Federal Register** (65 FR 33638) and in the **Federal Register** (66 FR 6630). The final rule setting forth the methodologies and procedures to determine the allotment of Federal funds for each fiscal year and the grant award and payment process was also published on May 24, 2000 in the **Federal Register** (65 FR 33616).

Sections 2104(e) and (f) of the Act require the Secretary to develop an appropriate procedure for the redistribution of States' unexpended SCHIP fiscal year allotments only for those States that have fully expended such allotments during the initial 3-year period of availability. With respect to these provisions, in March 2003, in order to provide States access to funding pending adoption of a final redistribution procedure, we redistributed a portion of the unexpended FY 2000 funds on an interim basis (subject to redistribution in accordance with the final redistribution procedure that would be adopted). The interim redistribution was limited to one-half of the unexpended FY 2000 allotments and was made only to those States (including the Commonwealths and Territories) that fully expended such allotments by the end of FY 2002.

Pub. L. 108–74 amended section 2104(g) of the Act, in accordance with a specified formula, to provide for the retention of certain amounts of States' unexpended FY 2000 allotments and the redistribution of the remaining amounts of such unexpended FY 2000 allotments to States that fully expended their allotments in the initial 3-year period of availability. This notice sets forth the results of the statutory formula to the unexpended allotments for FY 2000 and FY 2001 and describes the methodology for the redistribution and retention of unexpended SCHIP allotments.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for matching allowable State expenditures for a 3-year initial period of availability; the fiscal year for which the funds are allotted, and the two following fiscal years. For FY 2000, the 3-year initial period of availability was October 1, 1999 through September 30, 2002, and For FY 2001, the 3-year initial period of availability was October 1, 2000 through September 30, 2003. Section 2104(f) of the Act requires redistribution of the entire amount of unspent allotments after the initial period of availability has expired.

Neither BIPA nor the recently enacted Pub. L. 108–74 repealed or deleted sections 2104(e) and (f) of the Act. Referencing sections 2104(e) and (f) of the Act, BIPA added section 2104(g) of the Act which established a formula for redistributing and continuing the availability of unexpended allotments for FYs 1998 and 1999. Pub. L. 108–74 further amended section 2104(g) of the Act to provide for the redistribution and retention of unexpended FY 2000 and FY 2001 allotments under a prescribed methodology that differs from the methodology provided under the BIPA amendments for the FY 1998 and FY 1999 unexpended allotments. The FY 2000 and FY 2001 allotment redistribution/retention formula provided for under section 2104(g) of the Act, as amended by Pub. L. 108–74, replaces the redistribution that otherwise would have been required under section 2104(f) of the Act. This FY 2000 and FY 2001 redistribution and retained allotment is described in the next section of this notice.

Section 2104(g) of the Act, as amended by Pub. L. 108–74, requires the Secretary to redistribute and continue availability of States' unexpended FYs 1998, 1999, and 2000 allotments until the end of FY 2004. Before enactment of Pub. L. 108–74, section 2104(g) of the Act provided that the redistributed and retained allotment amounts for FYs 1998 and 1999 was

available only until the end of FY 2002. Similarly, under section 2104(e) of the Act, the redistributed FY 2000 allotments would only be available until the end of FY 2003. Finally, under section 2104(g) of the Act, as amended by Pub. L. 108–74, the redistributed and retained allotment amounts for FY 2001 will continue to be available to States until the end of FY 2005.

2. Ordering of Expenditures

The availability of retained allotment funds is determined in accordance with requirements related to the ordering of expenditures. Specifically, a State's expenditures are applied against the State's available fiscal year SCHIP allotment amounts in the following order:

(1) Title XIX SCHIP-related expenditures for which payment is made at the enhanced Federal medical assistance percentage (FMAP) (section 2105(a)(1)(A) of the Act);

(2) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);

(3) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (section 2105(a)(1)(C) of the Act);

(4) Other child health assistance for targeted low-income children and health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children) (sections 2105(a)(1)(D)(i)and (ii) of the Act);

(5) Outreach expenditures (section 2105(a)(1)(D)(iii) of the Act); and

(6) Administration expenditures (section 2105(a)(1)(D)(iv) of the Act).

In general, States' expenditures will be applied against the FY 2000 and FY 2001 redistribution amounts in accordance with existing SCHIP regulations on allotments (42 CFR part 457). This notice permits States the option to decide the order of application of expenditures against the redistribution amounts and other available fiscal year allotment amounts.

Ordering Election for FY 2000 Redistributed Amounts. A redistribution State, that is, a State that has fully expended its allotment, may have a maximum of four possible choices for the order of the application of FY 2000 redistribution funds in FY 2003, depending on what other fiscal year allotments are available to the State in FY 2003: (1) Before FY 2001 allotments; (2) after FY 2001 and before FY 2002 allotments; (3) after FY 2002 and before FY 2003 allotments; and (4) after FY 2003 allotments. Furthermore, if a FY 1998 and/or FY 1999 redistribution State also has FY 1998 and/or FY 1999 redistribution funds available in FY 2003, it can choose whether the FY 2000 redistribution funds will be used before or after the FY 1998 and/or FY 1999 redistribution funds.

In addition, with the enactment of Pub. L. 108–74, the FY 1998 and FY 1999 redistributed amounts are extended to the end of FY 2004; therefore, the States have the option to choose their ordering election for the FY 1998 and FY 1999 redistribution allotment amounts.

We believe that States should be afforded the flexibility to decide whether redistributed funds would be used before or after other available allotment funds to allow them to optimize the use of the funds. Therefore, during the interim and final redistribution, we offered States that will receive FY 2000 *redistributed amounts* the option of choosing the order of when the funds would be expended during FY 2003 among the other available allotments during FY 2003.

Both the redistributed amounts and the retained amounts for FY 2000 will be available for allowable SCHIP expenditures reported for the period of October 1, 2002 through September 30, 2004.

Ordering Election for FY 2001 Redistributed Amounts. A redistribution State, that is, a State that has fully expended its allotment, may have a maximum of four possible choices for the order of the application of FY 2001 redistribution funds in FY 2004, depending on what other fiscal year allotments are available to the State in FY 2004: (1) Before FY 2002 allotments; (2) after FY 2002 and before FY 2003 allotments; (3) after FY 2003 and before FY 2004 allotments; and (4) after FY 2004 allotments. Furthermore, if a FY 1998, FY 1999, and/or FY 2000 redistribution State also has FY 1998, FY 1999, and/or FY 2000 redistribution funds available in FY 2004, it can choose whether the FY 2001 redistribution funds will be used before or after the FY 1998, FY 1999, and/or FY 2000 redistribution funds, based on their ordering election for those funds.

Both the redistributed amounts and the retained amounts for FY 2001 will be available for allowable SCHIP expenditures reported for the period of October 1, 2003 through September 30, 2005.

All of the redistribution States have responded to us with their decision regarding this option for their ordering elections for the FY 2001 redistributed allotments. Under the final redistribution methodology, *once a State chooses the order of the FY 1998, FY 1999, FY 2000, and FY 2001 redistribution amounts, it cannot change that order at a later date.* We have made provisions to include the States' FY 2000 and FY 2001 redistributed amounts on Form CMS–21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS–21C is used for tracking States' expenditures against their allotments, to include the States' FY 2000 and FY 2001 redistributed amounts. The redistributed allotment amounts will be automatically entered on this form, and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for the period of October 1, 2002 through September 30, 2004 to the FY 2000 redistributed amounts available through September 30, 2004. Similarly, the system will automatically apply expenditures reported on the quarterly expenditure reports for the period of October 1, 2003 through September 30, 2005 to the FY 2001 redistributed amounts available through September 30, 2005.

3. Determination of Redistribution Amounts or Continued Availability of Unexpended FY 2000 and FY 2001 Allotments

In Table 1 and Table 2 of this notice, we set forth the amount of States' unexpended FY 2000/2001 allotments as of November 30, 2002, or November 30, 2003, respectively, as specified in section 2104(g) of the Act. We also set forth the retained amounts that, under statutory formula, are subject to continued availability by States that did not fully expend their FY 2000/2001 allotments, and the amounts that are redistributed for availability to States that fully expended their FY 2000/2001 allotments. The formula for determining the redistributed and retained amounts of the FY 2000/2001 SCHIP allotments are described below.

Establishing the Amount of Unexpended FY 2000/2001 Allotments. Under section 2104(g)(3) of the Act, the amount of States' unexpended FY 2000 allotments at the end of the initial 3-year period of availability is established based on the SCHIP-related expenditures, as reported and certified by States to us on the quarterly expenditure reports (Form CMS–64 or CMS–21) through November 30, 2002 (for the FY 2000 allotments), or through November 30, 2003 (for the FY 2001 allotments), as approved by the

Secretary. These expenditures are applied and tracked against the States' FY 2000 allotments (as published on May 24, 2000 in the **Federal Register** (65 FR 33638)), and the States' FY 2001 allotments (as published on January 22, 2001 in the **Federal Register** (66 FR 6630)), and other available allotments, on Form CMS–21C, Allocation of the Title XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2002, all States reported and certified their FY 2002 fourth quarter expenditure reports (representing the last quarter of the 3-year period of availability for FY 2000). Similarly, by November 30, 2003, all States reported and certified their FY 2003 fourth quarter expenditure reports (representing the last quarter of the 3-year period of availability for FY 2001). Expenditures reflected in Table 1 and Table 2 below were taken from our MBES/CBES "masterfile," which represents the State's official certified SCHIP and Medicaid expenditure reporting system records related to FY 2000 and FY 2001 allotments, respectively.

Based on States' expenditure reports submitted and certified through November 30, 2002, the total amounts of States' FY 2000 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2002, is $2,206,440,396. Based on States' expenditure reports submitted and certified through November 30, 2003, the total amounts of States' FY 2001 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2003, is $1,749,021,146.

Application of the Maintenance of Effort Provision. The $2,206,440,396 in unexpended FY 2000 allotments includes the amounts of reduction to the States' FY 2000 allotments based on the application of the "maintenance of effort" (MOE) provisions specified in the SCHIP statute at section 2105(d)(2) of the Act. Under section 2105(d)(2) of the Act, the amount of a State allotment in a fiscal year, beginning with fiscal year 1999, is reduced if the State does not meet specified spending levels on children's health insurance. The application of this provision resulted in the reduction of one State's FY 2000 allotment by $7,893,711. Because this amount was originally allotted to the State but was not expended by the State, it is subject to redistribution. This amount is not subject to continued availability because it is not available to the State to which it was originally allotted. There were no MOE reductions necessary with respect to the FY 2001 allotments.

Continued Availability of Unexpended FY 2000/2001 Allotments. Section 2104(g)(2)(A)(iii) of the Act specifies the formula for determining the amounts of the FY 2000 allotments that were unexpended at the end of FY 2002 and that will remain available for each retained allotment State. Specifically, the FY 2000 retained allotment amount is calculated for each affected State by multiplying the State's unexpended FY 2000 allotment amount remaining at the end of the 3-year period of availability (that is, at the end of FY 2002) by 50 percent; the result is the FY 2000 retained allotment amount for that State.

Similarly, section 2104(g)(2)(A)(iv) of the Act specifies the same formula for determining the amounts of the FY 2001 allotments that were unexpended at the end of FY 2003 and that will remain available for each retained allotment State. Specifically, the FY 2001 retained allotment amount is calculated for each affected State by multiplying the State's unexpended FY 2001 allotment amount remaining at the end of the 3-year period of availability (that is, at the end of FY 2003) by 50 percent; the result is the FY 2001 retained allotment amount for that State.

Redistribution for the Commonwealths and Territories. Section 2104(g)(1)(A)(ii) of the Act specifies the FY 2000 and FY 2001 redistribution for the Commonwealths and Territories that have fully expended their FY 2000 and/or FY 2001 allotments. First, under this provision, the total Commonwealths and Territories redistribution amount is calculated by multiplying the total amount of the unexpended FY 2000 or FY 2001 allotments available for redistribution and continued availability by 1.05 percent. For the FY 2000 redistribution calculation, this amount is $23,167,624 (1.05 percent of $2,206,440,396). For the FY 2001 redistribution calculation, this amount is $18,364,722 (1.05 percent of $1,749,021,146). Second, only those Commonwealths and Territories that have fully expended their FY 2000 and/or FY 2001 allotments will receive an allocation of this amount, equal to a specified percentage of the 1.05 percent amount. This percentage is determined by dividing the respective SCHIP fiscal year allotment (FY 2000 or FY 2001) for each Commonwealth or Territory that has fully expended its FY 2000 and/or FY 2001 allotment by the total of all the FY 2000 (and/or FY 2001) allotments for those Commonwealths and Territories that fully expended their FY 2000 and/or FY 2001 allotments.

Redistribution for the States and the District of Columbia. As amended by Pub. L. 108–74, section 2104(g)(1)(A)(i)(III) of the Act specifies the formula for calculating the FY 2000 redistribution amounts for each of those States and the District of Columbia that have fully expended their FY 2000 allotments. Similarly, section 2104(g)(1)(A)(i)(IV) of the Act specifies the formula for calculating the FY 2001 redistribution amounts for each of those States and the District of Columbia that have fully expended their FY 2001 allotments. First, the total amount available for redistribution is determined by subtracting the total of the redistribution amounts for the Commonwealths and Territories and the total amount needed for retention by the States, Commonwealths, and Territories from the total available for redistribution. Second, the allocation of this total amount available for redistribution is determined by multiplying this amount by a percentage specific to each State. The percentage is determined for each redistribution State by dividing the difference between the State's total reported applicable expenditures for the respective 3-year period of availability, and the State's fiscal year allotment related to that period of availability, by the total of these differences for all States.

4. Table of SCHIP FY 2000 Redistribution or Extended Availability of Unexpended FY 2000 Allotments

The formula used to determine the amount of the unexpended FY 2000 SCHIP allotments for redistribution or continued availability is described in detail below. The following is a description of Table 1, which presents each State's FY 2000 SCHIP allotment redistribution or retained amount.

A total of $4,249,200,000 was allotted nationally for FY 2000, representing $4,204,312,500 in allotments to the 50 States and the District of Columbia, and $44,887,500 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2002, 14 States fully expended their FY 2000 allotments, 37 States and the District of Columbia did not fully expend their FY 2000 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2000 allotments. For the States and the District of Columbia that did not fully expend their FY 2000 allotments, their total FY 2000 allotments were $3,362,230,713, and the total expenditures applied against their FY 2000 allotments were $1,163,684,028. Therefore, the total amount of

unexpended FY 2000 allotments at the end of FY 2002 equaled $2,198,546,685 ($3,362,230,713 minus $1,163,684,028). In addition, $7,893,711, related to the MOE provision described above, also remained unexpended at the end of FY 2002. Therefore, the total amount of the FY 2000 allotments unexpended at the end of FY 2002 equaled $2,206,440,396 ($2,198,546,685 plus $7,893,711).

In accordance with the redistribution calculation for FY 2000 described above, $1,099,273,343 (50 percent of $2,198,546,685) is retained by the 37 States that did not fully expend their FY 2000 allotments, $23,167,624 is redistributed to the five Commonwealths and Territories, and $1,083,999,429 is redistributed to the 14 redistribution States. Both the $1,107,167,054 redistributed allotment amounts and the $1,099,273,343 retained allotment amounts will remain available through the end of FY 2004.

Key to Table 1—Calculation of The SCHIP FY 2000 Redistribution of the Unexpended FY 2000 Allotments

Column/Description

Column A = *STATE.* Name of State, District of Columbia, the Commonwealth or Territory.

Column B = *FY 2000 ALLOTMENT.* This column contains the FY 2000 SCHIP allotments for all States, which were published on May 24, 2000 in the **Federal Register** (65 FR 33638).

Column C = *EXPENDITURES APPLIED AGAINST FY 2000 ALLOTMENT.* This column contains the cumulative expenditures applied against the FY 2000 allotments, as reported and certified by all States through November 30, 2002.

Column D = *UNEXPENDED FY 2000 ALLOTMENTS OR "REDISTRIBUTION."* This column contains the amounts of unexpended FY 2000 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2000 (FYs 2000 through 2002), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2000 allotments during the period of availability, the entry in this column is "REDISTRIBUTION." The amounts in each of the State lines in this column do not include the MOE provision amount of $7,893,711; the MOE amount is added to the total of the amounts of the States' unexpended FY 2000 allotments in this column at the bottom of Column D. The total amount of $2,206,440,396 ($2,198,546,685, the total unexpended FY 2000 allotments, plus $7,893,711, the MOE provision amounts) represents the total amount available for redistribution and continued availability for FY 2000.

Column E = *FOR REDISTRIBUTION STATES ONLY FY 2000 through 2002 EXPENDITURES.* For those States that have fully expended their FY 2000 allotments, this column contains the total amounts of the States' reported SCHIP related expenditures for each of the years FY 2000 through FY 2002, representing the FY 2000 3-year period of availability. For those States, Commonwealths, and Territories that did not fully expend their FY 2000 allotments during the period of availability, the entry in Column E is "NA."

Column F = *REDISTRIBUTION STATES ONLY FYs 2000 Through 2002 EXPENDITURES MINUS FY 2000 ALLOTMENT.* This column contains the amounts of States' reported SCHIP-related expenditures for each of the years FY 2000 through FY 2002 (Column E), minus the FY 2000 allotment (Column B).

Column G = *FOR REDISTRIBUTION STATES PERCENT OF TOTAL REDISTRIBUTION.* This column contains each State's redistribution percentage of the total amount available for redistribution, calculated as the entry in Column F divided by the total (for States only) in Column F.

Column H = *FY 2000 REDISTRIBUTED ALLOTMENT AMOUNTS.* This column contains the amounts of States' unexpended FY 2000 SCHIP allotments that are being redistributed to those States that have fully expended their FY 2000 allotments. For the States that have fully expended their FY 2000 SCHIP allotments, the amount in Column H is equal to the percentage in Column G multiplied by the total amount available for redistribution ($1,083,999,429). For the 14 States that have fully expended their FY 2000 allotments, the FY 2000 redistribution amounts total $1,083,999,429. For the Commonwealths and Territories that have fully expended their FY 2000 allotments, the amounts in Column H represents their respective proportionate shares (based on their FY 2000 allotments) of $23,167,624 (representing 1.05 percent of the total amount for redistribution and continued availability of $2,206,440,396). For those States, Commonwealths, and Territories that did not fully expend their FY 2000 allotments during the period of availability, the entry in Column H is "NA."

Column I = *FY 2000 RETAINED ALLOTMENT AMOUNTS.* For the States that did not fully expend their FY 2000 allotments, this column contains the amounts of the States' FY 2000 unexpended allotments in Column D multiplied by 50 percent, the result is the amount of these States' unexpended FY 2000 allotments that the States will retain. As indicated at the bottom of Column I, the total FY 2000 retained allotment amounts are $1,099,273,343.

Column J = *UNEXPENDED FY 2000 ALLOTMENT AMOUNTS USED IN REDISTRIBUTION.* For the States that did not fully expend their FY 2000 allotments, this column reflects the amounts of such States' FY 2000 unexpended allotments (not including the MOE reduction amount) that were used in the redistribution in Column H; these amounts are no longer available to these States. The amount in Column J is equal to the difference between Column D, the unexpended FY 2000 Allotments, and Column I, the FY 2000 Retained Allotment Amounts. For States that did fully expend their FY 2000 allotments, the entry in Column J is "NA."

TABLE 1.—CALCULATION OF THE SCHIP FY 2000 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 2000 ALLOTMENTS

State	FY 2000 Allotment	Expenditures applied against FY 2000 allotment	Unexpended FY 2000 allotments or "redistribution"	For redistribution states only FY 2000–2002 expenditures	Redist States only FY 2000–2002 expenditures minus FY 2000 allotment (col E–B)	For redist states percent of total redistribution (col F/sum of col F)	FY 2000 redistributed allotment amounts (col G x amount available for redistribution)	FY 2000 retained allotment amounts (col D x retained %)	Unexpended FY 2000 allotment amounts used in redistribution (col D–I)
A	B	C	D	E	F	G	H	I	J
Alabama	$77,012,259	$28,818,937	$48,193,322	NA	NA	NA	NA	$24,096,661	$24,096,661
Alaska	$7,730,025	$7,730,025	REDISTRIBUTION	$62,676,041	$54,946,016	2.5327%	$27,454,002	NA	NA
Arizona	$130,213,077	$75,293,441	$54,919,636	NA	NA	NA	NA	$27,459,818	$27,459,818
Arkansas	$53,754,360	$0	$53,754,360	NA	NA	NA	NA	$26,877,180	$26,877,180
California	$765,547,705	$23,061,375	$742,486,330	NA	NA	NA	NA	$371,243,165	$371,243,165
Colorado	$46,890,416	$17,691,235	$29,199,181	NA	NA	NA	NA	$14,599,590	$14,599,591
Connecticut	$39,225,273	$4,426,705	$34,798,568	NA	NA	NA	NA	$17,399,284	$17,399,284
Delaware	$9,036,260	$0	$9,036,260	NA	NA	NA	NA	$4,518,130	$4,518,130
District of Columbia	$10,817,074	$1,068,733	$9,748,341	NA	NA	NA	NA	$4,874,171	$4,874,171
Florida	$242,044,718	$215,487,253	$26,557,465	NA	NA	NA	NA	$13,278,732	$13,278,733
Georgia	$132,381,325	$67,636,544	$64,744,781	NA	NA	NA	NA	$32,372,390	$32,372,391
Hawaii	$10,036,935	$0	$10,036,935	NA	NA	NA	NA	$5,018,468	$5,018,468
Idaho	$17,817,572	$12,328,159	$5,489,413	NA	NA	NA	NA	$2,744,707	$2,744,707
Illinois	$137,481,231	$0	$137,481,231	NA	NA	NA	NA	$68,740,615	$68,740,616
Indiana	$63,161,480	$50,187,036	$12,974,444	NA	NA	NA	NA	$6,487,222	$6,487,222
Iowa	$32,382,884	$23,937,736	$8,445,148	NA	NA	NA	NA	$4,222,574	$4,222,574
Kansas	$30,320,974	$30,320,974	REDISTRIBUTION	$73,313,596	$42,992,622	1.9817%	$21,481,440	NA	NA
Kentucky	$56,025,995	$56,025,995	REDISTRIBUTION	$200,089,782	$144,063,787	6.6404%	$71,982,061	NA	NA
Louisiana	$91,130,730	$19,652,547	$71,478,183	NA	NA	NA	NA	$35,739,091	$35,739,092
Maine	$13,978,005	$13,978,005	REDISTRIBUTION	$43,339,164	$29,361,159	1.3534%	$14,670,423	NA	NA
Maryland	$56,869,698	$56,869,698	REDISTRIBUTION	$304,236,730	$247,367,032	11.4020%	$123,597,951	NA	NA
Massachusetts	$48,063,710	$48,063,710	REDISTRIBUTION	$154,330,787	$106,267,077	4.8982%	$53,096,780	NA	NA
Michigan	$102,762,059	$6,288,727	$96,473,332	NA	NA	NA	NA	$48,236,666	$48,236,666
Minnesota	$31,861,256	$31,861,256	REDISTRIBUTION	$65,415,500	$33,554,244	1.5466%	$16,765,516	NA	NA
Mississippi	$58,036,226	$58,036,226	REDISTRIBUTION	$139,819,869	$81,783,643	3.7697%	$40,863,532	NA	NA
Missouri	$57,979,004	$1,278,214	$56,700,790	NA	NA	NA	NA	$28,350,395	$28,350,395
Montana	$13,173,122	$11,149,994	$2,023,128	NA	NA	NA	NA	$1,011,564	$1,011,564
Nebraska	$16,576,269	$8,218,671	$8,357,598	NA	NA	NA	NA	$4,178,799	$4,178,799
Nevada	$30,526,393	$9,119,551	$21,406,842	NA	NA	NA	NA	$10,703,421	$10,703,421
New Hampshire	$10,263,860	$0	$10,263,860	NA	NA	NA	NA	$5,131,930	$5,131,930
New Jersey	$96,858,666	$96,858,666	REDISTRIBUTION	$428,241,575	$331,382,909	15.2746%	$165,576,828	NA	NA
New Mexico	$56,407,772	$0	$56,407,772	NA	NA	NA	NA	$28,203,886	$28,203,886
New York	$286,821,535	$286,821,535	REDISTRIBUTION	$1,116,326,169	$829,504,634	38.2348%	$414,465,389	NA	NA
North Carolina	$89,211,202	$77,768,983	$11,442,219	NA	NA	NA	NA	$5,721,110	$5,721,110
North Dakota	$5,655,883	$1,900,044	$3,755,839	NA	NA	NA	NA	$1,877,920	$1,877,920
Ohio	$129,857,897	$117,814,672	$12,043,225	NA	NA	NA	NA	$6,021,613	$6,021,613
Oklahoma	$76,764,895	$0	$76,764,895	NA	NA	NA	NA	$38,382,447	$38,382,448
Oregon	$43,895,837	$1,026,305	$42,869,532	NA	NA	NA	NA	$21,434,766	$21,434,766
Pennsylvania*	$121,062,524	$90,688,050	$30,374,474	NA	NA	NA	NA	$15,187,237	$15,187,237
Rhode Island	$9,570,566	$9,570,566	REDISTRIBUTION	$63,200,408	$53,629,842	2.4720%	$26,796,370	NA	NA
South Carolina	$71,314,037	$71,314,037	REDISTRIBUTION	$136,657,369	$65,343,332	3.0119%	$32,649,064	NA	NA
South Dakota	$7,951,348	$6,233,781	$1,717,567	NA	NA	NA	NA	$858,784	$858,784
Tennessee	$74,226,011	$0	$74,226,011	NA	NA	NA	NA	$37,113,005	$37,113,006
Texas	$502,812,459	$255,483,677	$247,328,782	NA	NA	NA	NA	$123,664,391	$123,664,391
Utah	$27,199,406	$24,258,592	$2,940,814	NA	NA	NA	NA	$1,470,407	$1,470,407
Vermont	$3,966,889	$1,630,776	$2,336,113	NA	NA	NA	NA	$1,168,057	$1,168,057
Virginia	$73,580,365	$11,234,290	$62,346,075	NA	NA	NA	NA	$31,173,037	$31,173,038
Washington	$52,355,470	$0	$52,355,470	NA	NA	NA	NA	$26,177,735	$26,177,735
West Virginia	$21,145,730	$21,145,730	REDISTRIBUTION	$58,780,823	$37,635,093	1.7347%	$18,804,528	NA	NA
Wisconsin	$45,591,653	$45,591,653	REDISTRIBUTION	$157,259,996	$111,668,343	5.1472%	$55,795,545	NA	NA
Wyoming	$7,068,749	$0	$7,068,749	NA	NA	NA	NA	$3,534,375	$3,534,375
Total States Only	$4,196,418,789	$1,997,872,104	$2,198,546,685	$3,003,687,809	$2,169,499,733	100.0000%	$1,083,999,429	$1,099,273,343	$1,099,273,343

TABLE 1.—CALCULATION OF THE SCHIP FY 2000 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 2000 ALLOTMENTS

State	FY 2000 Allotment	Expenditures applied against FY 2000 allotment	Unexpended FY 2000 allotments or "redistribution"	For redistribution states only FY 2000–2002 expenditures	Redist States only FY 2000–2002 expenditures minus FY 2000 allotment (col E–B)	For redist states percent of total redistribution (col F/sum of col F)	FY 2000 redistributed allotment amounts (col G x amount available for redistribution)	FY 2000 retained allotment amounts (col D x retained %)	Unexpended FY 2000 allotment amounts used in redistribution (col D–I)
Commonwealths and Territories:									
Puerto Rico	$41,116,950	$41,116,950	REDISTRIBUTION	NA	NA	NA	$21,221,544	NA	NA
Guam	$1,571,063	$1,571,063	REDISTRIBUTION	NA	NA	NA	$810,867	NA	NA
Virgin Islands	$1,167,075	$1,167,075	REDISTRIBUTION	NA	NA	NA	$602,358	NA	NA
American Samoa	$538,650	$538,650	REDISTRIBUTION	NA	NA	NA	$278,011	NA	NA
N. Mariana Islands	$493,762	$493,762	REDISTRIBUTION	NA	NA	NA	$254,844	NA	NA
Total	$44,887,500	$44,887,500	$0	NA	NA		$23,167,624	$0	$0
							(Totals to "1.05%" Amount)		
National Total	$4,241,306,289	$2,042,759,604	$2,198,546,685				$1,107,167,053 Total FY 2000 Redistributed Amounts	$1,099,273,343 Total FY 2000 Retained Amounts	$1,099,273,343
*FY 2000 MOE Amount	$7,893,711		$7,893,711						
Total With MOE Amount	$4,249,200,000	$2,042,759,604	$2,206,440,396						

Total Unexpended FY 2000 Allotments (not including MOE):	$2,198,546,685	
FY 2000 MOE Amount:	$7,893,711	
Total Unexpended FY 2000 Allotments (including MOE): [1]	$2,206,440,396	
Total Needed for Retained Allotments: [2]	$1,099,273,343	Retained allotment percentage: 50%
Total Needed for Redistribution for Territories: [3]	$23,167,624	
Total:	$1,122,440,967	
Total Available for Redistribution to States: [4]	$1,083,999,429	

Footnotes:

[1] The total unexpended FY 2000 allotments are $2,206,440,396, calculated as $2,198,546,685 (the total unexpended FY 2000 allotments, not including the maintenance of effort (MOE) amount) plus $7,893,711 (the MOE amount).

[2] $1,099,273,343 is the total needed for retained allotments, calculated as $2,198,546,685 (the total unexpended FY 2000 allotments, not including $7,893,711 (the MOE amount)), multiplied by 50 percent.

[3] $23,167,624 is the total amount needed for redistribution to the commonwealths and territories, calculated as $2,206,440,396 (the total unexpended FY 2000 allotments, including the MOE amount) multiplied by 1.05 percent.

[4] $1,083,999,429 is the total redistribution to the states, calculated as $2,206,440,396 (total unexpended FY 2000 allotments including the MOE amount) reduced by $1,099,273,343 (the total FY 2000 retained allotments) and $23,167,624 (total redistribution for the commonwealths and territories).

5. Table of SCHIP FY 2001 Redistribution or Extended Availability of Unexpended FY 2001 Allotments

The formula used to determine the amount of the unexpended FY 2001 SCHIP allotments for redistribution or continued availability is described in detail below. The following is a description of Table 2, which presents each State's FY 2001 SCHIP allotment redistribution or retained amount.

A total of $4,249,200,000 was allotted nationally for FY 2001, representing $4,204,312,500 in allotments to the 50 States and the District of Columbia, and $44,887,500 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2003, 19 States fully expended their FY 2001 allotments, 32 States and the District of Columbia did not fully expend their FY 2001 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2001 allotments. For the States and the District of Columbia, that did not fully expend their FY 2001 allotments, their total FY 2001 allotments were $2,784,606,938, and the total expenditures applied against their FY 2001 allotments were $1,035,585,792. Therefore, the total amount of unexpended FY 2001 allotments at the end of FY 2003 equaled $1,749,021,146 ($2,784,606,938 minus $1,035,585,792).

In accordance with the redistribution calculation for FY 2001 described above, $874,510,573 (50 percent of $1,749,021,146) is retained by the 32 States that did not fully expend their FY 2001 allotments, $18,364,722 is redistributed to the five Commonwealths and Territories, and $856,145,851 is redistributed to the 19 redistribution States. Both the $856,145,851 redistributed allotment amounts and the $874,510,573 retained allotment amounts will remain available through the end of FY 2005.

Key to Table 2—CALCULATION OF THE SCHIP FY 2001 REDISTRIBUTION OF THE UNEXPENDED FY 2001 ALLOTMENTS

Column/Description

Column A = *STATE.* Name of State, District of Columbia, the Commonwealth or Territory.

Column B = *FY 2001 ALLOTMENT.* This column contains the FY 2001 SCHIP allotments for all States, which were published on January 22, 2001 in the **Federal Register** (66 FR 6630).

Column C = *EXPENDITURES APPLIED AGAINST FY 2001 ALLOTMENT.* This column contains the cumulative expenditures applied against the FY 2001 allotments, as reported and certified by all States through November 30, 2003.

Column D = *UNEXPENDED FY 2001 ALLOTMENTS OR "REDISTRIBUTION."* This column contains the amounts of unexpended FY 2001 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2001 (FYs 2001 through 2003), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2001 allotments during the period of availability, the entry in this column is "REDISTRIBUTION." The total amount of $1,749,021,146 represents the total amount available for redistribution and continued availability for FY 2001.

Column E = *FOR REDISTRIBUTION STATES ONLY FY 2001 Through 2003 EXPENDITURES.* For those States that have fully expended their FY 2001 allotments, this column contains the total amounts of the States' reported SCHIP related expenditures for each of the years FY 2001 through FY 2003, representing the FY 2001 3-year period of availability. For those States, Commonwealths, and Territories that did not fully expend their FY 2001 allotments during the period of availability, the entry in Column E is "NA."

Column F = *REDISTRIBUTION STATES ONLY FYs 2001 Through 2003 EXPENDITURES MINUS FY 2001 ALLOTMENT.* This column contains the amounts of States' reported SCHIP-related expenditures for each of the years FY 2001 through FY 2003 (Column E), minus the FY 2001 allotment (Column B).

Column G = *FOR REDISTRIBUTION STATES PERCENT OF TOTAL REDISTRIBUTION.* This column contains each State's redistribution percentage of the total amount available for redistribution, calculated as the entry in Column F divided by the total (for States only) in Column F.

Column H = *FY 2001 REDISTRIBUTED ALLOTMENT AMOUNTS.* This column contains the amounts of States' unexpended FY 2001 SCHIP allotments that are being redistributed to those States that have fully expended their FY 2001 allotments. For the States that have fully expended their FY 2001 SCHIP allotments, the amount in Column H is equal to the percentage in Column G multiplied by the total amount available for redistribution ($856,145,851). Therefore, for the 19 States that have fully expended their FY 2001 allotments, the FY 2001 redistribution amounts total $856,145,851. For the Commonwealths and Territories that have fully expended their FY 2001 allotments, the amounts in Column H represents their respective proportionate shares (based on their FY 2001 allotments) of $18,364,722 (representing 1.05 percent of the total amount for redistribution and continued availability of $1,749,021,146). For those States, Commonwealths, and Territories that did not fully expend their FY 2001 allotments during the period of availability, the entry in Column H is "NA."

Column I = *FY 2001 RETAINED ALLOTMENT AMOUNTS.* For the States that did not fully expend their FY 2001 allotments, this column contains the amounts of the States' FY 2001 unexpended allotments in Column D multiplied by 50 percent, the result is the amount of these States' unexpended FY 2001 allotments that the States will retain. As indicated at the bottom of Column I, the total FY 2001 retained allotment amounts are $874,510,573.

Column J = *UNEXPENDED FY 2001 ALLOTMENT AMOUNTS USED IN REDISTRIBUTION.* For the States that did not fully expend their FY 2001 allotments, this column reflects the amounts of such States' FY 2001 unexpended allotments (not including the MOE reduction amount) that were used in the redistribution in Column H; these amounts are no longer available to these States. The amount in Column J is equal to the difference between Column D, the unexpended FY 2001 Allotments, and Column I, the FY 2001 Retained Allotment Amounts. For States that did fully expend their FY 2001 allotments, the entry in Column J is "NA."

TABLE 2.—CALCULATION OF THE SCHIP FY 2001 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 2001 ALLOTMENTS

State	FY 2001 Allotment	Expenditures applied against FY 2001 allotment	Unexpended FY 2001 allotments or "redistribution"	For redistribution states only FY 2001–FY 2003 expenditures	Redist States only FY 2001–2003 expenditures minus FY 2001 allotment (col E–B)	For redist states percent of total redistribution (col F/sum of col F)	FY 2001 redistributed allotment amounts (col G x amount available for redistribution)	FY 2001 retained allotment amounts (col D x retained %)	Unexpended FY 2001 allotment amounts used in redistribution (col D–I)
A	B	C	D	E	F	G	H	I	J
Alabama	$69,311,033	$47,221,655	$22,089,378	NA	NA	NA	NA	$11,044,689	$11,044,689
Alaska	$8,987,100	$8,987,100	REDISTRIBUTION	$68,549,034	$59,561,934	1.5308%	$13,106,151	NA	NA
Arizona	$124,519,004	$124,519,004	REDISTRIBUTION	$361,415,726	$236,896,722	6.0886%	$52,127,325	NA	NA
Arkansas	$53,957,231	$0	$53,957,231	NA	NA	NA	NA	$26,978,616	$26,978,616
California	$704,930,926	$193,778,325	$511,152,601	NA	NA	NA	NA	$255,576,301	$255,576,301
Colorado	$44,648,659	$25,998,147	$18,650,412	NA	NA	NA	NA	$9,325,205	$9,325,206
Connecticut	$39,398,021	$0	$39,398,021	NA	NA	NA	NA	$19,699,011	$19,699,011
Delaware	$10,505,758	$0	$10,505,758	NA	NA	NA	NA	$5,252,879	$5,252,879
District of Columbia	$11,751,544	$1,142,796	$10,608,748	NA	NA	NA	NA	$5,304,374	$5,304,374
Florida	$220,217,905	$220,217,905	REDISTRIBUTION	$822,911,546	$602,693,641	15.4901%	$132,618,160	NA	NA
Georgia	$135,053,332	$135,053,332	REDISTRIBUTION	$362,649,585	$227,596,258	5.8496%	$50,080,828	NA	NA
Hawaii	$11,669,166	$0	$11,669,166	NA	NA	NA	NA	$5,834,583	$5,834,583
Idaho	$20,715,109	$9,411,471	$11,303,638	NA	NA	NA	NA	$5,651,819	$5,651,819
Illinois	$159,838,759	$0	$159,838,759	NA	NA	NA	NA	$79,919,379	$79,919,380
Indiana	$60,023,791	$0	$60,023,791	NA	NA	NA	NA	$30,011,896	$30,011,896
Iowa	$32,940,215	$28,662,733	$4,277,482	NA	NA	NA	NA	$2,138,741	$2,138,741
Kansas	$29,337,719	$29,337,719	REDISTRIBUTION	$97,424,891	$68,087,172	1.7499%	$14,982,065	NA	NA
Kentucky	$55,939,972	$55,939,972	REDISTRIBUTION	$209,288,363	$153,348,391	3.9413%	$33,743,149	NA	NA
Louisiana	$82,017,657	$42,625,805	$39,391,852	NA	NA	NA	NA	$19,695,925	$19,695,926
Maine	$13,444,691	$13,444,691	REDISTRIBUTION	$53,010,358	$39,565,667	1.0169%	$8,706,125	NA	NA
Maryland	$51,422,315	$51,422,315	REDISTRIBUTION	$349,768,834	$298,346,519	7.6680%	$65,648,887	NA	NA
Massachusetts	$55,879,948	$55,879,946	REDISTRIBUTION	$181,800,684	$125,920,738	3.2364%	$27,707,902	NA	NA
Michigan	$119,473,472	$12,588,968	$106,884,504	NA	NA	NA	NA	$53,442,252	$53,442,252
Minnesota	$37,042,610	$37,042,610	REDISTRIBUTION	$129,651,820	$92,609,210	2.3802%	$20,377,955	NA	NA
Mississippi	$55,987,988	$55,987,988	REDISTRIBUTION	$207,438,300	$151,450,312	3.8925%	$33,325,491	NA	NA
Missouri	$85,460,374	$43,219,476	$22,240,898	NA	NA	NA	NA	$11,120,449	$11,120,449
Montana	$15,169,315	$11,031,111	$4,138,204	NA	NA	NA	NA	$2,069,102	$2,069,102
Nebraska	$19,084,374	$19,084,374	REDISTRIBUTION	$46,196,710	$27,112,336	0.6968%	$5,965,864	NA	NA
Nevada	$31,344,200	$11,595,386	$19,748,814	NA	NA	NA	NA	$9,874,407	$9,874,407
New Hampshire	$11,932,994	$0	$11,932,994	NA	NA	NA	NA	$5,968,497	$5,966,497
New Jersey	$98,823,044	$98,823,044	REDISTRIBUTION	$643,980,744	$545,157,700	14.0114%	$119,957,813	NA	NA
New Mexico	$50,766,995	$0	$50,766,995	NA	NA	NA	NA	$25,383,498	$25,383,498
New York	$322,025,819	$322,025,819	REDISTRIBUTION	$1,067,477,303	$745,451,484	19.1592%	$164,030,940	NA	NA
North Carolina	$103,718,942	$103,718,942	REDISTRIBUTION	$287,610,824	$183,891,882	4.7263%	$40,464,013	NA	NA
North Dakota	$6,575,658	$3,222,774	$3,352,882	NA	NA	NA	NA	$1,676,441	$1,676,441
Ohio	$142,214,540	$132,497,208	$9,717,332	NA	NA	NA	NA	$4,858,666	$4,858,666
Oklahoma	$69,088,406	$0	$69,088,406	NA	NA	NA	NA	$34,544,202	$34,544,203
Oregon	$50,134,100	$0	$50,134,100	NA	NA	NA	NA	$25,067,050	$25,067,050
Pennsylvania*	$138,968,854	$105,117,471	$33,851,383	NA	NA	NA	NA	$16,925,692	$16,925,692
Rhode Island	$9,300,803	$9,300,803	REDISTRIBUTION	$91,503,795	$82,202,992	2.1127%	$18,088,144	NA	NA
South Carolina	$64,591,234	$44,893,470	$19,897,764	NA	NA	NA	NA	$9,848,882	$9,848,882
South Dakota	$8,177,039	$8,177,039	REDISTRIBUTION	$23,025,033	$14,847,994	0.3816%	$3,267,188	NA	NA
Tennessee	$86,298,823	$0	$86,296,823	NA	NA	NA	NA	$43,148,411	$43,148,412
Texas	$452,531,213	$281,964,250	$170,566,963	NA	NA	NA	NA	$85,283,482	$85,283,482
Utah	$30,184,401	$18,619,845	$11,564,556	NA	NA	NA	NA	$5,782,278	$5,782,278
Vermont	$4,811,995	$1,915,842	$2,898,153	NA	NA	NA	NA	$1,348,077	$1,348,077
Virginia	$75,491,290	$20,079,059	$55,412,231	NA	NA	NA	NA	$27,706,115	$27,706,116
Washington	$60,869,643	$0	$60,869,643	NA	NA	NA	NA	$30,434,822	$30,434,822
West Virginia	$21,144,989	$21,144,989	REDISTRIBUTION	$76,049,494	$54,904,505	1.4111%	$12,081,320	NA	NA
Wisconsin	$49,597,970	$49,597,970	REDISTRIBUTION	$230,774,551	$181,176,581	4.6565%	$39,866,531	NA	NA
Wyoming	$7,193,664	$0	$7,193,664	NA	NA	NA	NA	$3,596,832	$3,596,832
Total States Only	$4,204,312,500	$2,455,291,354	$1,749,021,146	$5,310,527,595	$3,890,822,033	100.0000%	$856,145,851	$874,510,573	$874,510,573
Commonwealths and Territories:									
Puerto Rico	$41,116,950	$41,116,950	REDISTRIBUTION	NA	NA	NA	$16,822,085	NA	NA
Guam	$1,571,062	$1,571,062	REDISTRIBUTION	NA	NA	NA	$642,765	NA	NA
Virgin Islands	$1,167,075	$1,167,075	REDISTRIBUTION	NA	NA	NA	$477,483	NA	NA
American Samoa	$538,650	$538,650	REDISTRIBUTION	NA	NA	NA	$220,377	NA	NA
N. Mariana Islands	$493,763	$493,763	REDISTRIBUTION	NA	NA	NA	$202,012	NA	NA
Total	$44,887,500	$44,887,500	$0	NA	NA	.....	$18,364,722	$0	$0
							(Totals to "1.05%" Amount)	.....	.....

TABLE 2.—CALCULATION OF THE SCHIP FY 2001 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 2001 ALLOTMENTS—Continued

State	FY 2001 Allotment	Expenditures applied against FY 2001 allotment	Unexpended FY 2001 allotments or "redistribution"	For redistribution states only FY 2001–FY 2003 expenditures	Redist States only FY 2001–2003 expenditures minus FY 2001 allotment (col E–B)	For redist states percent of total redistribution (col F/sum of col F)	FY 2001 redistributed allotment amounts (col G x amount available for redistribution)	FY 2001 retained allotment amounts (col D x retained %)	Unexpended FY 2001 allotment amounts used in redistribution (col D–I)
A	B	C	D	E	F	G	H	I	J
National Total	$4,249,200,000	$2,500,178,854	$1,749,021,146				$874,510,573 Total FY 2001 Redistributed Amounts	$874,510,573 Total FY 2001 Retained Amounts	$874,510,573
*FY 2001 MOE Amount	$0		$0						
Total With MOE Amount	$4,249,200,000	$2,500,178,854	$1,749,021,146						
					Total Unexpended FY 2001 Allotments (not including MOE):		$1,749,021,146		
					FY 2001 MOE Amount:		$0		
					Total Unexpended FY 2001 Allotments (including MOE): [1]		$1,749,021,146		
					Total Needed for Retained Allotments:		$874,510,573	Retained allotment percentage: 50%	
					Total Needed for Redistribution for Territories:		$18,364,722		
					Total:		$892,875,295		
					Total Available for Redistribution to States:		$856,145,851		

Footnotes:

[1] The total unexpended FY 2001 allotments are $1,749,021,146, calculated as $1,749,021,146 (the total unexpended FY 2000 allotments, not including the maintenance of effort (MOE) amount) plus $0,000 (the MOE amount).

[2] $874,510,573 is the total needed for retained allotments, calculated as $1,749,021,146 (the total unexpended FY 2001 allotments, not including $0,000 (the MOE amount)), multiplied by 50 percent.

[3] $18,364,722 is the total amount needed for redistribution to the commonwealths and territories, calculated as $1,749,021,146 (the total unexpended FY 2001 allotments, including the MOE amount) multiplied by 1.05 percent.

[4] $856,145,851 is the total redistribution to the states, calculated as $1,749,021,146 (total unexpended FY 2001 allotments including the MOE amount) reduced by $874,510,573 (the total FY 2001 retained allotments) and $18,364,722 (total redistribution).

B. Authority for Qualifying States To Elect To Receive Part of Available FY 1998 Through 2001 SCHIP Allotments for Certain Medicaid Expenditures

Pub. L. 108–74, as amended by Pub. L. 108–127 added a new section 2105(g) of the Act, under which a "Qualifying State" may elect to use not more than 20 percent of any of the State's available SCHIP allotments for FY 1998, 1999, 2000, or 2001 for payments under the State's Medicaid program, instead of expenditures under the State's SCHIP. Section 2105(g)(2) of the Act, as amended by Pub. L. 108–74 and Pub. L. 108–127, defines a "Qualifying State" as:

"a State that, on and after April 15, 1997, has an income eligibility standard that is at least 184 percent of the poverty line with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1902(a)(10)(A) or, in the case of a State that has a statewide waiver in effect under section 1115 with respect to title XIX that was first implemented on August 1, 1994, or July 1, 1995, has an income eligibility standard under such waiver for children that is at least 185 percent of the poverty line, or, in the case of a State that has a statewide waiver in effect under section 1115 with respect to title XIX that was first implemented on January 1, 1994, has an income eligibility standard under such waiver for children who lack health insurance that is at least 185 percent of the poverty line, or, in the case of a State that had a statewide waiver in effect under section 1115 with respect to title XIX that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1902(a)(10)(A) or a statewide waiver in effect under section 1115 with respect to title XIX that is at least 185 percent of the poverty line."

We have determined the States that meet the definition of "Qualifying State" in accordance with these statutory criteria.

1. Calculation of the 20 Percent Allowance Amount

Section 2105(g)(1)(A) of the Act provides that a Qualifying State may elect to use not more than 20 percent of any allotment under section 2104 for fiscal year 1998, 1999, 2000, or 2001 (*insofar as it is available* under sections 2104(e) and (g) of the Act). In this regard, sections 2104(e) and (g) of the Act refer to the periods of availability for allotments and redistributed/retained allotments, respectively. Furthermore, section 2105(g)(1)(B)(ii) of the Act refers to the 20 percent expenditures as "expenditures made *after the date of the enactment of this subsection* and during the period in which funds are available to the qualifying State * * *." (Emphasis supplied).

In this notice, we refer to the term "20 percent of any allotment," as referenced in the statute, as the "20 percent allowance." In accordance with section 2105(g) of the Act, a 20 percent allowance for each Qualified State must be determined with respect to each of only four fiscal year allotments, FY 1998, 1999, 2000, and 2001. Furthermore, Federal matching funds at the enhanced FMAP rate can only be available for the applicable Medicaid expenditures under the 20 percent allowances for the four fiscal years, only if the related specified fiscal year allotment amounts are "available," and only if there are any applicable Medicaid expenditures after the date of enactment of Pub. L. 108–74.

The only applicable FY 1998 through 2001 allotment funds that are available to States in FY *2003* (the year in which Pub. L. 108–74 was enacted), for purposes of providing enhanced funding for the applicable 20 percent allowance expenditures, are the *un*expended fiscal year allotment amounts for FYs 1998 through 2001. These unexpended allotment include allotments, redistributions, and retained allotment amounts that would be carried forward into FY 2003 for use by a Qualified State in FY 2003, and which have not been expended by the State through the date of enactment of Pub. L. 108–74. By definition, the *expended* amounts of these fiscal year allotment funds, through the date of enactment of Pub. L. 108–74, are no longer available in FY 2003 for use under the 20 percent allowance provision. That is, only the *un*expended (remaining) amounts of these fiscal year allotment funds can be considered to be "available" in FY 2003, FY 2004, and FY 2005.

The amounts of the FY 1998 through 2001 allotments that will be available during each of the applicable fiscal years (FY 2003 through 2005) are determined in accordance with the established rules for the application of all the Federal payments for the Qualifying State's expenditures against all of the State's available allotments. The amounts of the relevant 20 percent fiscal year allowances that a Qualifying State may use in FY 2003, and in the subsequent fiscal years (that is, FY 2004 and FY 2005), will be limited by the amounts of the related fiscal year allotments that are actually available.

The amount of the 20 percent allowances is determined, with respect to each of the original fiscal year allotments for FYs 1998 through 2001, under section 2105(g) of the Act. That is, we determined the 20 percent allowances for the Qualifying States for each of these fiscal years by multiplying *each* of the original fiscal year allotments for these years by 20 percent. Therefore, the 20 percent fiscal year allowances are determined and tracked individually, based on the Qualifying State expenditures that are applied against each of the related fiscal year 20 percent allowances and related fiscal year allotment amounts, as available. Note, even if there is a remaining 20 percent allowance for a particular fiscal year, the actual availability of the related fiscal year allotment amount is the ultimate determining factor as to whether any applicable Medicaid expenditures can be matched at the enhanced matching rate. That is, if the fiscal year allotment amount related to a particular fiscal year 20 percent allowance has been exhausted (is no longer available), the State would not be able to claim any expenditures against that fiscal year 20 percent allowance.

In FY 2003, representing the fiscal year in which the Qualifying State provision was enacted and the first fiscal year for which a Qualifying State may claim expenditures against its 20 percent allowances, the only fiscal year allotment amounts related to FYs 1998, 1999, and *2000* that may still be available are the redistributed and/or retained allotment amounts for those fiscal years. Furthermore, under section 2104(g) of the Act as amended by Pub. L. 108–74, these amounts will only be available to States until the end of FY 2004.

In FY 2003, the unexpended amounts of a Qualifying State's original fiscal year *2001* allotment may also be available for expenditure by the State. Initial State FY 2001 allotments are available only until the end of FY 2003 (the end of the 3-year period of availability for the FY 2001 fiscal year allotment). In FY 2004, there will be a reallotment of any unexpended FY 2001 allotments similar to the reallotment in FY 2003 of the States' unexpended FY 2000 allotments, which was described previously in this notice. The unexpended FY 2001 allotments reallotted in FY 2004 will only be available to States until the end of FY 2005.

The discussion in the following sections describes the determinations of the fiscal year 20 percent allowances for the Qualifying States for each of the FYs 1998 through 2001 as would be available during the FYs 2003 through 2005, and how they would be tracked through FY 2005, the last year for which

any of the related fiscal year allotment amounts are available.

Determination and Tracking of the Fiscal Year 20 Percent Allowances in FY 2003. In FY 2003, the 20 percent allowances for each Qualifying State would be calculated as 20 percent of each of the Qualifying State's original SCHIP allotments for FYs 1998, 1999, 2000, and 2001. Since Pub. L. 108–74 was enacted on August 15, 2003, only expenditures from August 16, 2003 on may be claimed against the related fiscal year allotment amounts that are available as of August 16. The actual availability of each Qualifying State's fiscal year allotment amounts for FYs 1998 through 2001 will be determined in accordance with the applicable requirements for the application of expenditures against the States' available allotments, which in FY 2003, include the extended availability of States' unexpended FY 1998 and 1999 allotment amounts and the redistribution and extended availability of States' unexpended FY 2000 allotments available beginning October 1, 2002. Therefore, as limited by the 20 percent allowances for each fiscal year, only to the extent that the fiscal year allotment amounts related to each of the 20 percent allowances are available to the Qualifying States can such allotment amounts be used for matching the States' applicable expenditures.

Example. A Qualifying State's original FY 1998 allotment was $50 million; therefore, the FY 1998 20 percent allowance would be $10 million (20 percent of $50 million). However, through the application of expenditures through the years of the SCHIP, at the end of FY 2002 there was only $16 million remaining in the State's FY 1998 "retained" allotment. Under the provisions of Pub. L. 108–74, the availability of this amount was extended until the end of FY 2004; this is the amount considered as initially available at the beginning of FY 2003. However, throughout FY 2003, the State's expenditures would be applied according to the established rules for that application; this would further limit the final availability of the FY 1998 retained allotment funds for enhanced payment in FY 2003. Although the 20 percent allowance was determined to be $10 million, any ultimate payments to be applied and tracked against this amount would be limited by the actual availability of the FY 1998 retained allotment. In this example, if the actual application of the State's expenditures in FY 2003 resulted in only $3 million of the FY 1998 retained allotment remaining in the fourth quarter of FY 2003, then that $3 million amount would be the most the Qualifying State could claim against the FY 1998 20 percent allowance of $10 million.

Continued Tracking of the Fiscal Year 20 Percent Allowances in FY 2004. The amounts of each Qualifying State's fiscal year 20 percent allowances, and the related fiscal year allotment amounts remaining at the end of FY 2003, will be carried over to FY 2004. However, the availability of the FY *2001* allotment amounts will differ from the availability of the FY 1998 through *2000* allotment amounts. In particular, the Qualifying States' fiscal year 20 percent allowances in FY 2004 that are carried over from FY 2003 will be limited by the actual available related fiscal year allotment amounts that are carried over from FY 2003. In FY 2003, the available fiscal years 1998, 1999, and 2000 allotment amounts are the retained allotments and/or the redistributed allotments for those fiscal years that were carried over from or reallotted in FY 2003.

In FY 2004, however, the FY 2001 reallotment process will occur. Similar to the FY 2000 reallotment process, as discussed earlier in this notice, the FY 2001 "retained allotment States" will carry-over from FY 2003 into FY 2004 only 50 percent of their unexpended FY 2001 allotments remaining at the end of FY 2003. Furthermore, the FY 2001 "redistribution States" by definition have fully expended their FY 2001 allotments by the end of FY 2003. Therefore, the FY 2001 redistribution States will not carry-over any of their own FY 2001 allotments; however, they will receive a redistribution of about 50 percent of the FY 2001 retained allotment States' unexpended FY 2001 allotments remaining at the end of FY 2003. In summary, the amounts of the available FY 2001 allotments in FY 2004 will be determined by the amounts of the FY 2001 retained or redistributed allotments a Qualifying State will receive in FY 2004.

Example 1. At the end of FY 2003, Qualifying State A's remaining FY 2001 20 percent allowance is $20 million, and the State's remaining unexpended FY 2001 allotment is $30 million. The State will carry over its FY 2001 20 percent allowance balance of $20 million into FY 2004. However, because Qualifying State A has not fully expended its FY 2001 allotment, it will be a FY 2001 *retained* allotment State in FY 2004, and in that regard, would only retain $15 million of its unexpended FY 2001 allotment (50 percent of $30 million) in FY 2004. Although the FY 2001 20 percent allowance carried into FY 2004 is $20 million, the State would only have available $15 million of its FY 2001 allotment amount for matching any of the State's applicable 20 percent allowance expenditures in FY 2004.

Example 2. At the end of FY 2003, Qualifying State B's remaining FY 2001 20 percent allowance is $20 million, and the State has fully expended its FY 2001 allotment. The State will carry over its FY 2001 20 percent allowance balance of $20 million into FY 2004. However, because the State has fully expended its FY 2001 allotment by the end of FY 2003, it will be a FY 2001 redistribution State in FY 2004. The State receives a FY 2001 redistribution of $25 million in FY 2004, and accordingly, it will be considered to have $25 million available in FY 2004 related to the FY 2001 allotment. Furthermore, in FY 2004 the States' remaining FY 2001 20 percent allowance is $20 million; this would be the limit on the States' claims for the applicable 20 percent expenditures in FY 2004.

Continued Tracking of the Fiscal Year 20 Percent Allowances in FY 2005. The availability of fiscal year (re)allotted amounts for FYs *1998* through *2000* was only extended until the end of FY 2004. Therefore, the only applicable fiscal year allotment amounts related to the 20 percent allowances that will be available in FY 2005 are the amounts of the unexpended FY *2001* retained or redistributed allotments that were carried over from FY 2004 into FY 2005. Furthermore, the only 20 percent allowances that will be available in FY 2005 are the amounts of the related FY 2001 20 percent allowances that remain at the end of FY 2004 and carried over into FY 2005. Therefore, in FY 2005, Qualifying States' claims for 20 percent allowance expenditures would be limited by such States' actual available FY 2001 redistributed or retained allotment amounts that remained at the end of FY 2004 and were carried over to FY 2005.

2. Amounts Applied Against the 20 Percent Allowance Amounts

Additional Amount Applied Against 20 Percent Allowance Amount. Under section 2105(g)(1)(B)(i) of the Act, as amended by Pub. L. 108–74, "subject to the availability of funds * * * the Secretary shall pay the State an amount each quarter equal to the *additional* amount that would have been paid to the State under title XIX" with respect to the 20 percent allowance expenditures, if the enhanced FMAP had been substituted for the FMAP. This provisions does not authorize the State to "double-bill" the SCHIP and/or the Medicaid program; rather, it allows the State with respect to an allowable

expenditure, to receive in total, a Federal share amount equal to the *enhanced* FMAP rate under title XXI instead of the (lower) FMAP rate that would otherwise have been applied under title XIX. However, only a portion of this total Federal share at the enhanced FMAP rate, equal to the difference between the enhanced FMAP rate under title XXI and the "regular" FMAP rate under title XIX, will be applied against the Qualifying States' available 20 percent allowance SCHIP fiscal year allotments. As indicated in the next paragraph and following example, for purposes of this calculation, the regular FMAP rate is equal to the "increased FMAP."

Relationship to the "Increased FMAP". With the passage of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (TRRA (Pub. L. 108–27)) on May 28, 2003, there are five Federal fiscal year quarters for which States' Medicaid expenditures are matched at an increased FMAP rate: The last two quarters of FY 2003 and the first three quarters of FY 2004. In implementing the Qualifying State provisions of Pub. L. 108–74, and in determining the additional amount that would be paid to States under section 2105(g)(1)(B)(i) of the Act, we will use the actual increased FMAP that is being used each quarter in a State for matching a State's Medicaid expenditures.

Example. The Qualifying State's enhanced FMAP is 65 percent, and its "increased FMAP" under TRRA is 52.95 percent. If the State has a $10,000 allowable expenditure, the total Federal share it could claim would be $6,500 (65 percent of $10,000). However, only $1,205, representing 12.05 percent (65 percent (the enhanced FMAP rate) minus 52.95 percent (the regular FMAP rate)) of the $10,000 expenditure, would be applied against the Qualifying State's available 20 percent allowance(s) under title XXI. $5,295 of the total $6,500 Federal share (52.95 percent of $10,000) would be charged against the title XIX appropriation.

Subject to the Availability of the FY 20 Percent Allowance. Section 2105(g)(1)(A) of the Act provides for States to elect to use up to 20 percent of the available allotments for FYs 1998 through 2001. The discussion above describes the determination of the amounts of the 20 percent allowances for each fiscal year. The calculated 20 percent allowances serve as an overall limit, against which the 20 percent allowance expenditures would be applied, and claims in excess of those amounts would not be payable. However, operationally, a Qualifying State's actual claims for expenditures (including *both* the 20 percent allowance expenditures *and* all the other SCHIP expenditures that a State may claim) will be applied against all the various allotments that would be available to the Qualifying State during the quarter for which the State is making the claim (including *both* the allotments upon which the 20 percent allowances are based *and* all the other SCHIP allotments). In the application of the State's various expenditures against all the available allotments, it is possible that any or all of the allotments upon which the 20 percent allowance is based may be reduced below the determined 20 percent allowance, for any or all of the 20 percent allotment(s). In that case, the payments to the States for the 20 percent allowance expenditures may be additionally limited.

Example. The Qualifying State's original FY 1998, 1999, 2000, and 2001 allotments were $10 million, $10 million, $12 million, and $12 million, respectively. At the beginning of FY 2003, the Qualifying State has the following unexpended allotments carried over from FY 2002: $0 in FY 1998 retained allotments; $2 million in FY 1999 retained allotments; $12 million in FY 2001 allotments; and finally, in FY 2003 the State retains $6 million of its unexpended FY 2000 allotments that remained at the end of FY 2002.

In FY 2003 the State's total 20 percent allowances are:

- *FY 1998:* $2 million (20 percent of the $10 million original allotment)
- *FY 1999:* $2 million (20 percent of the $10 million original allotment)
- *FY 2001:* $2.4 million (20 percent of the $12 million original allotment)
- *FY 2000:* $2.4 million (20 percent of the $12 million original allotment)

In this example, the four calculated 20 percent allowances total to $8.8 million ($2 million + $2 million + $2.4 million + $2.4 million). Therefore, the Qualifying State could *potentially* use up to $8.8 million from the four related fiscal year allotment amounts for matching the eligible 20 percent allowance expenditures, if those funds were available. As indicated, at the beginning of FY 2003 the State had $20 million ($0 + $2 million + $6 million + $12 million) in FY 1998 through 2001 allotment funds. However, with the submission of $6 million in other expenditures through the end of the third quarter of FY 2003 (June 30, 2003), there would be the following remaining allotment funds available at the beginning of the fourth quarter FY 2003: $0 in FY 1998 retained allotment; $0 in FY 1999 retained allotment; $2 million in FY 2000 retained allotments, and $12 million in FY 2001 allotments. Therefore, in the fourth quarter FY 2003 the States could potentially claim up to the following amounts as 20 percent allowance expenditures:

- *FY 1998: $0.* Although the FY 1998 20 percent allowance is $2 million, in the fourth quarter of FY 2003 there is $0 in FY 1998 retained allotment remaining.
- *FY 1999: $0.* Although the FY 1999 20 percent allowance is $2 million, in the fourth quarter of FY 2003 there is $0 in FY 1999 retained allotment remaining.
- *FY 2000: $2 million.* Although the FY 2000 20 percent allowance is $2.4 million, in the fourth quarter of FY 2003 there is only $2 million in FY 2000 retained allotment remaining.
- *FY 2001: $2.4 million.* The FY 2001 20 percent allowance is $2.4 million, and there is $12 million in FY 2001 allotment remaining.

In this example, through the end of the third quarter FY 2003, $6 million in SCHIP matching funds related to other expenditures were applied against the available four 20 percent allotment funds *before* any 20 percent allowance expenditures were submitted. Therefore, at the beginning of the fourth quarter FY 2003 only $4.4 million related to the available allotments and 20 percent allowances for FY 2000 and FY 2001 could potentially be claimed as 20 percent allowance expenditures.

3. Ordering of Allotments and Expenditures

In the SCHIP, the application of payments for a State's expenditures against the State's available SCHIP allotments follows an order specified by statute and regulation. In general, payments for expenditures are applied against a State's available allotments in the following priority order prescribed in section 2105(a) of the Act:

- Medicaid SCHIP expansion expenditures paid at the enhanced FMAP rate;
- Medicaid presumptive eligibility expenditures under section 1920A of the Act;
- SCHIP program expenditures; and
- SCHIP "10 percent fiscal year limit" expenditures (representing four categories of expenditures that are subject to the State's annual fiscal year 10 percent limit on those expenditures).

Furthermore, as specified by regulation, States' fiscal year allotments are also ordered in a certain priority. Typically, payments for expenditures are first applied against the oldest fiscal year allotment and the most recent fiscal year allotment is ordered last. A

retained allotment for a fiscal year is ordered in the same priority as the original allotment for that fiscal year. However, redistributed allotments for a fiscal year are ordered in the priority chosen by the redistribution States.

ORDERING OF ALLOTMENTS—Reopening of States' Elections for Ordering FY 1998 and FY 1999 Redistributed Allotments Ordering Elections. Before the passage of Pub. L. 108–74, the FY 1998 and FY 1999 reallotment amounts (referring to both redistributed and retained allotments) expired at the end of FY 2002. However, with the enactment of Pub. L. 108–74, the availability of these allotments was extended to the end of FY 2004. As indicated in the discussion above on the extension of the FYs 1998 through 2000 allotments, States with redistributed allotments have the option to reopen their ordering elections for FY 1998 and FY 1999 redistribution funds during FY 2003 (the first fiscal year in which these funds are restored).

ORDERING OF EXPENDITURES—Ordering of 20 Percent Allowance Expenditures. Section 2105(g)(1)(B)(ii) of the Act establishes a new expenditure under the Medicaid program for which certain amounts of payments would be applied against a State's available SCHIP allotments. However, Pub. L. 108–74 did *not* amend section 2105(a) of the Act to add these new 20 percent allowance expenditures to the list of recognized expenditures that are applied against the title XXI SCHIP allotments. The 20 percent allowance expenditures can only be applied against the allotment funds on which the 20 percent allowance amounts are based (that is, the available FY 1998, 1999, 2000, and 2001 allotment funds); they cannot be applied against any other available fiscal year allotment funds. Since the 20 percent allowance expenditures can only be applied against the FY 1998 through 2001 allotment funds, if a Qualifying State submits 20 percent allowance expenditures in a particular quarter, those expenditures must skip over other available fiscal year allotments in the otherwise required fiscal year allotment priority order.

If a Qualified State submits both 20 percent allowance expenditures and other "regular" SCHIP expenditures at the same time in a quarter (based on the allotment priority order, they both must apply against an available fiscal year allotment), the 20 percent allowance expenditures will be applied first.

This ordering of expenditures provides states with flexibility and administrative ease. Although the priority order of funding allows states to claim the 20 percent allowance expenditures first, this order does not negatively affect health coverage for children, which is the first priority in SCHIP, and was a primary consideration in determining the ordering of expenditures. CMS' analysis indicated that health coverage for children would not be affected by this ordering of expenditures. CMS would have revisited the priority order if the analysis had been different.

10 Percent Limit Calculation—Under the SCHIP program, Federal matching funds for certain expenditures (including but not limited to administrative expenditures), listed in section 2105(a)(1)(D) of the Act, is only available up to the "10 percent limit" referenced in section 2105(b)(2) of the Act. Under section 2105(b)(2) of the Act (and related regulations), the amount of the 10 percent limit, a dollar amount, is calculated based only on the following expenditures listed in section 2105(a)(1)(A) through (a)(1)(C) of the Act: Medicaid SCHIP expansion group expenditures, Medicaid section 1920A presumptive eligibility expenditures, and SCHIP title XXI program expenditures. Since the dollar amount of the 10 percent limit is calculated by taking a percentage of the total of these expenditures, the greater the amount of these expenditures, the higher a State's calculated 10 percent limit dollar amount would be.

Though Pub. L. 108–74 recognizes a new Medicaid 20 percent allowance expenditure, for which Qualifying States' specified SCHIP fiscal year allotment funds could be used, this legislation did not amend title XXI with respect to the calculation of the 10 percent limit. The new 20 percent allowance expenditures under title XIX were not added to the list of expenditures in section 2105(a)(1) of the Act upon which the 10 percent limit calculation is based. Therefore, the 20 percent allowance expenditures will not be used in calculating the 10 percent limit.

4. 20 Percent Allowance Expenditures Described

Section 2105(g)(1)(B)(ii) of the Act indicates that the 20 percent allowance "Expenditures Described" are those that are made after the date of enactment of Pub. L. 108–74 for "medical assistance under title XIX to individuals who have not attained age 19 and whose family income exceeds 150 percent of the poverty line." The date of enactment for Pub. L. 108–74 was August 15, 2003. Federal regulations at 45 CFR part 95 contain the rules on the timing of expenditures.

Generally, a Qualifying State can choose any eligible Medicaid program expenditures or subset of those expenditures. For example, the State can submit expenditures by category of medical assistance (for example, by physician services, hospital services, public agency services). Similarly, as long as the age and income criteria are met, the Qualifying State could submit expenditures by eligibility category (for example, medically needy children, disabled children).

In general, a Qualifying State may claim any category of Medicaid expenditures against their 20 percent allowance. However, the following expenditures *are precluded* from being applied against the 20 percent allowance expenditures:

- *Medicaid Expansion Population Expenditures.* The 20 percent allowance expenditures do *not* include medical assistance expenditures for individuals covered in a State's Medicaid program as the SCHIP Medicaid expansion population. Under the Medicaid statute, expenditures for the Medicaid expansion population are already claimed at the enhanced FMAP. Further, the *full* Federal share amount for those expenditures must be applied against the SCHIP allotments (not just the additional amount above the regular FMAP rate). Therefore, expenditures for the Medicaid expansion population would not be claimable under the 20 percent allowance provision.

III. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this rule is not a major rule for the reasons discussed below.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and

government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million or less annually. For purposes of the RFA, all hospices are considered to be small entities. Individuals and States are not included in the definition of a small entity. This notice is the result of a statutory formula that does not involve any agency discretion or policy. Therefore, we do not believe further regulatory analysis is necessary because there are no regulatory options to be considered.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal Government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice and have determined that it does not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 2000 and FY 2001 allotment's redistribution and retained amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: March 5, 2004.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: March 25, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–14580 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2202–PN]

RIN 0938–ZA52

Medicare and Medicaid Programs; Application by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc., for Continued Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of a renewal application by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. for approval as a national accreditation program for ambulatory surgical centers that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's written request, CMS publish a proposed notice that identifies the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: To be assured of consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 23, 2004.

ADDRESSES: In commenting, please refer to file code CMS–2202–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on the issues in this notice to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2202–PN, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Milonda H. Mitchell, (410) 786–3511.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2202–PN and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all

electronic comments received before the close of the comment period on its public web site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, Yolanda Hayes, (410) 786–7195.

This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: *http://www.gpoaccess.gov/fr/index.html.*

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC), provided the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes the authority for the Secretary to establish distinct criteria for a facility seeking designation as an ASC. Under this authority, the Secretary has set forth in regulations minimum requirements that an ASC must meet to participate in Medicare. The regulations at 42 CFR part 416 (Ambulatory Surgical Services) specify the conditions under which Medicare makes payments for covered services provided by an ASC. Types of Medicare payment for ASC services can be found at § 416.120. Applicable regulations concerning provider agreements are at part 489 (Provider Agreements and Supplier Approval) and those pertaining to the survey and certification of facilities are at part 488 (Survey Certification and Enforcement Procedures), subpart A (General Provisions) and subpart B (Special Requirements).

In order for ASC services to be covered under the Medicare program, the ASC must be licensed by a State agency as an ASC. The licensure must be in place at the time the ASC is certified by a State survey agency as complying with the conditions or requirements set forth in part 416 of our regulations. Then, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements (currently approved under OMB's #0938–0690 and 0938–0266). There is an alternative, however, to surveys by State agencies.

As it applies to ASCs, section 1865(b)(1) of the Act permits "accredited" provider entities to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions for coverage. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation. This section of the Act provides that, if a provider entity demonstrates through accreditation that all applicable Medicare conditions are met or exceeded, CMS shall "deem" it as having met the requirements.

If an accreditation organization is recognized in this manner with respect to a specific facility type (such as an ASC), any facility accredited by a national accrediting body's approved program is deemed to meet the Medicare conditions. A national accreditation organization applying for approval of "deeming authority" under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning renewal of an accreditation organizations' deeming authority are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every 6 years, or sooner if we so determine. Our recognition of the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF's) accreditation program for ASCs will terminate on December 2, 2004.

II. Approval of Deeming Organizations

[If you choose to comment on issues in this section, please include the caption "Approval of Deeming Organizations" at the beginning of your comments.]

Section 1865 (b)(2) of the Act requires that our findings concerning review of national accrediting organization's requirements consider, among other factors, the reapplying accreditation organization's requirements for accreditation, survey procedures, resources for conducting required surveys, capacity to furnish information for use in enforcement activities, monitoring procedures for provider entities found not in compliance with the conditions or requirements, and ability to provide us with the necessary data for validation (currently approved under OMB's #0938–0690 and 0938–0266).

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete reapplication, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from our receipt of a completed application to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of our consideration of AAAASF's request to review its "deeming authority" for ASCs. This notice also solicits public comment on the ability of AAAASF's requirements to meet or exceed the Medicare conditions for coverage for ASCs.

III. Evaluation of Deeming Authority Request

[If you choose to comment on issues in this section, please include the caption "Evaluation of Deeming Authority Request" at the beginning of your comments.]

On May 24, 2004, AAAASF submitted all the necessary materials concerning its request for renewal as a deeming organization for ASCs to enable us to make a determination. Under section 1865(b)(2) of the Act and regulations at § 488.8 (Federal review of accreditation organizations), our review and evaluation of AAAASF will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAAASF standards for an ASC as compared with our comparable ASC conditions for coverage.
- AAAASF's survey process to determine the following:

—The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

—The comparability of AAAASF's processes to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

—AAAASF's processes and procedures for monitoring providers or suppliers found out of compliance with AAAASF's program requirements. These monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).

—AAAASF's capacity to report deficiencies to the surveyed facilities

and respond to the facility's plan of correction in a timely manner.
—AAAASF's capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
—The adequacy of AAAASF's staff and other resources, and its financial viability.
—AAAASF's capacity to adequately fund required surveys.
—AAAASF's policies with respect to whether surveys are announced or unannounced.
—AAAASF's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Comments and Notice Upon Completion of Evaluation

[If you choose to comment on issues in this section, please include the caption "Response to Comments and Notice Upon Completion of Evaluation" at the beginning of your comments.]

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all public comments we receive by the date and time specified in the **DATES** section of this preamble, and when we proceed with a final notice, we will respond to the public comments in the preamble to the document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect the rights of States, local, or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 1, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 04–16431 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3112–NC2]

RIN 0938–ZA49

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with public comment period.

SUMMARY: This notice with public comment period acknowledges receipt of materials submitted by entities requesting review of the appropriateness of the Medicare payment amount for new technology lenses furnished by Ambulatory Surgical Centers (ASCs). In response to the February 27, 2004 **Federal Register** notice entitled "Medicare Program; Calendar Year 2004 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers" we received a total of three timely applications for review by the March 29, 2004 public comment due date. Of the three received, one application was withdrawn by the requester. In this notice we summarize timely applications received and solicit public comments on the two intraocular lenses (IOL) under review.

DATES: To be assured consideration, comments regarding the intraocular lenses specified in this notice must be received at one of the addresses provided below, no later than 5 p.m. on August 23, 2004.

ADDRESSES: In commenting, please refer to file code CMS–3112–NC2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3112–NC2, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Gay W. Burton, (410) 786–4564.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on the appropriateness of the Medicare payment amount for new technology intraocular lenses furnished by an ambulatory surgical center (ASC) listed in section II of this notice. You can assist us by referencing the file code CMS–3112–NC2.

Inspection of Public Comments: All public comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or

confidential business information that is included in a comment. After the close of the comment period, we post all electronic comments received before the close of the comment period on our public web-site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please telephone (410) 786–9994.

This **Federal Register** document is available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web-site address is: *http://www.gpoaccess.gov/fr/index.html.*

I. Regulatory Background

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b) of SSAA 1994 requires us to develop and implement a process under which interested parties may request, for a class of new technology intraocular lens (NTIOLs), a review of the appropriateness of the payment amount for intraocular lenses (IOLs) furnished by ASCs under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act).

On June 16, 1999, we published a final rule in the **Federal Register** entitled "Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers" (64 FR 32198), which added subpart F to 42 CFR part 416. The June 16, 1999 final rule established a process for adjusting payment amounts for NTIOLs furnished by ASCs; defined the terms relevant to the process; and established a flat rate payment adjustment of $50 for IOLs that we determine are NTIOLs. The payment adjustment applies for a 5-year period that begins when we recognize a payment adjustment for the first IOL in a new subset of an existing class of IOLs or a new class of technology, as explained below. Any subsequent IOLs with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized IOL. In accordance with the payment review process specified in § 416.185(f)(2), after July 16, 2002, the $50 adjustment amount can be modified through proposed and final rulemaking in connection with ambulatory surgical center services. To date however, we made no changes to the payment amount and have opted not to change the adjustment for calendar year 2004 (CY 2004).

II. Applications for New Technology Intraocular Lens (NTIOLs) for Calendar Year 2004

On February 27, 2004, we published a notice in the **Federal Register** entitled "Medicare Program; Calendar Year 2004 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)" (69 FR 9322) to solicit requests for review of NTIOL applications.

Three requests for review were submitted to us by the March 29, 2004 public comment due date. Of the three timely applications submitted, one requester withdrew the application. We declined to accept an additional request for review, which was received after the March 29, 2004 comment due date, and lacked the required supporting documentation. We received the following timely review requests:

1. Manufacturer: Alcon Laboratories, Inc. Model Numbers: ACRYSOF® Natural IOL; Models: SB30AL and SN60AT.

Reason for Requesting Review: The manufacturer, Alcon Laboratories, Inc. indicates that the specified lenses are the first FDA-approved IOLs that filter light in a manner that approximates the human crystalline lens in the 400 to 475 blue light wavelength range, thereby, mitigating the risk of blue light-mediated damage to the retina and may be considered as providing more stable postoperative vision.

2. Manufacturer: Pharmacia & Upjohn Co. (A Subsidiary of Pfizer Inc.) Model Numbers: Tecnis®, with Z-Sharp Optic Technology, Foldable Posterior Chamber IOL; Models Z9000 and Z9001.

Reason for Requesting Review: The manufacturer, Pharmacia & Upjohn Co. indicates that these lenses are the first FDA-approved IOLs to use a modified prolate anterior optic surface in place of a conventional spherical optic. The manufacturer has also indicated that the Technis® lens has demonstrated a significant reduction of ocular spherical aberration resulting in improved functional vision, particularly in low light conditions such as night driving, compared to conventional spherical optic IOLs.

III. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

V. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866, (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this notice is not a major rule because it merely summarizes the timely applications received and solicits comments on IOLs under review.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $8.5 million or less in any 1 year. We have determined that this notice will not affect small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a regulation may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to

the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice does not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this notice will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 13, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–16659 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3142–NC]

Medicare Program; Evaluation Criteria and Standards for Quality Improvement Program Contracts

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice describes the evaluation criteria we intend to use to evaluate the Quality Improvement Organizations (QIOs) under their contracts with CMS, for efficiency and effectiveness in accordance with the Social Security Act. These evaluation criteria are based on the tasks and related subtasks set forth in the QIO's Scope of Work (SOW). The current 7th SOW includes Tasks 1 through 4, with subtasks included under all tasks, excluding Task 4. QIOs were awarded contracts for the 7th SOW, or 7th Round, for three years, with staggered starting dates beginning August 2002, November 2002, and February 2003.

DATES: To be assured of consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 23, 2004.

ADDRESSES: In commenting, please refer to file code CMS–3142–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments or to www.regulations.gov* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3142–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Maria Hammel, (410) 786–1775.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3142–NC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of Pub. L. 97–

248) amended Part B of Title XI of the Social Security Act (the Act) to establish the Peer Review Organization (PRO) programs. The PRO program (now called the Quality Improvement Organization (QIO) program) was established to redirect, simplify and enhance the cost-effectiveness and efficiency of the medical peer review process. Sections 1152, 1153(b) and 1153(c) of the Act define the types of organizations eligible to become QIOs, and establish certain limitations and priorities regarding QIO contracting.

The Secretary enters into contracts with QIOs to perform three broad functions:

- Improve quality of care for beneficiaries by ensuring that beneficiary care meets professionally recognized standards of health care;
- Protect the integrity of the Medicare Trust Fund by ensuring that Medicare only pays for services and items that are reasonable and medically necessary and that are provided in the most economical setting;
- Protect beneficiaries by expeditiously addressing individual cases such as beneficiary quality of care complaints, contested hospital issued notices of noncoverage (HINNs), alleged Emergency Medical Treatment and Labor Act (EMTALA) violations (patient dumping), and other statutory responsibilities.

Section 1154 of the Act requires that QIOs review those services furnished by physicians; other health care practitioners; and institutional and non-institutional providers of health care services, including health maintenance organizations and competitive medical plans. Section 109 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, amended section 1154(a)(1) of the Social Security Act to expand the scope of review of QIOs to include Medicare Advantage Organizations, and prescription drug sponsors. Section 109 of the MMA also created a new section 1154(a)(17) of the Act, which requires QIOs to offer to providers, practitioners, Medicare Advantage Plans and prescription drug sponsors quality improvement assistance pertaining to prescription drug therapy. Because these provisions of sections 1154(a)(1) and (a)(17) are new, we will not evaluate QIOs on these provisions in the current SOW.

Section 1153(h)(2) of the Act requires the Secretary to publish in the **Federal Register** the general criteria and standards that would be used to evaluate the efficient and effective performance of contract obligations by QIOs and to provide the opportunity for public comment. The QIO contracts for the 7th SOW were awarded for 3 years with starting dates staggered into three approximately equal groups (rounds) starting August 2002, November 2002 and February 2003 respectively.

II. Measuring QIO Performance

[If you choose to comment on issues in this section, please include the caption "MEASURING QIO PERFORMANCE" at the beginning of your comments.]

Under the 7th Round contracts, QIOs are responsible for completing tasks in the following 4 areas, with additional subtasks contained in the first three areas:

Task 1—Improving Beneficiary Safety and Health Through Clinical Quality Improvement

a. Nursing Home
b. Home Health
c. Hospital
d. Physician Office
e. Underserved and Rural Beneficiaries
f. Medicare+Choice Organizations (M+COs), now called Medicare Advantage Organizations (MAs)

Task 2—Improving Beneficiary Safety and Health Through Information and Communications

a. Promoting the Use of Performance Data
b. Transitioning to Hospital-Generated Data
c. Other Mandated Communications Activities

Task 3—Improving Beneficiary Safety and Health Through Medicare Beneficiary Protection Activities

a. Beneficiary Complaint Response Program
b. Hospital Payment Monitoring Review Program
c. All Other Beneficiary Protection Activities

Task 4—Improving Beneficiary Safety and Health Through Developmental Activities

(Special Studies defined as work that CMS directs a QIO to perform or work that a QIO elects to perform with CMS approval which is not currently defined in the Tasks, but falls within the scope of the contract and section 1154 of the Act).

Under this contract, to merit having its contract renewed non-competitively, the QIO must meet the performance criteria (including a score of 1.0 or greater for Tasks 1a through 1e and 2b) on 10 of 12 subtasks (9 of 11 for states with no MA plans) of Tasks 1 through 3 of the 7th SOW, provided that for both of the subtasks which do not meet the criteria, the QIO has: (1) Achieved a score of 0.6 or better on all quantitative subtasks, and (2) for the remaining subtasks only, in the judgment of the Project Officer, the QIO expended a reasonable effort to address these subtasks, developed and implemented an appropriate initial work plan, which was assessed during the contract period to determine if it was achieving results likely to lead to success in meeting contractual performance expectations, and had made appropriate adjustments to its work plan based on these results.

To be considered successful (meeting the criteria outlined in the J–7 found at *www.cms.hhs.gov/qio/2.asp*), though not meriting a non-competitive renewal, the QIO shall meet the performance criteria (including a score of 1.0 or greater for Tasks 1a through 1e and 2b) on 9 of 12 subtasks (8 of 11 for states with no MA plans) of Tasks 1 through 3 of the 7th Round Contract, provided that for the subtasks that do not meet the criteria, the QIO must: (1) Achieve a score of 0.6 or better on all quantitative subtasks, (2) for the remaining subtasks only, in the judgment of the Project Officer, the QIO has expended a reasonable effort to address these subtasks, developed and implemented an appropriate initial work plan which was assessed during the contract period to determine if it was achieving results likely to lead to success in meeting contractual performance expectations, and had made appropriate adjustments to its work plan based on these results, and (3) failed to meet the criteria in no more than two subtasks of any one task. For Task 4, except as provided in Task 3b, all special studies approved under this task will be evaluated individually, based on study-specific evaluation criteria. The QIO's success or failure on a special study will not be factored into the evaluation of the QIO's work under Tasks 1–3.

However, meeting the minimum performance standards does not guarantee a noncompetitive renewal of its contract. For example, an organization within a particular State meeting the definition of a QIO may express interest in competing for a contract currently held by a QIO from outside that state, pursuant to section 1153(i). In this case, we will compete the contract despite acceptable performance by the current QIO. We will make a final decision on renewal/non-renewal by the end of the 30th month of the 7th Round contract. We will issue a "Notice of Intent to Non-renew the QIO Contract" letter to all

QIOs that do not meet the minimum performance standards no later than the end of the 33rd month of the contract. The QIO will be considered to have met minimum performance standards if the QIO had demonstrated acceptable performance in each Task area as specified in Section III of this Notice, Standards for Minimum Performance.

If the QIO has not met the criteria to merit a noncompetitive renewal, it shall be notified of CMS' intention not to renew its contract and will be informed of its right to request an opportunity to provide information pertinent to its performance under the contract to a CMS-wide panel. The panel will be made up of representatives from each of the 4 QIO Regional Offices and the Central Office. The QIO's Project Officer will not be eligible to represent the Regional Office on the panel when it reviews the work of his/her QIO. However, the Project Officer will be available to answer any questions the panel may have. The QIO will also be given the opportunity to provide additional information. The panel will have the right to create its own procedures, but must apply them consistently to all QIOs it reviews. At a minimum, the panel will use the criteria listed below for all Tasks:

- The degree of collaboration the QIO exhibited with the Quality Improvement Organization Support Centers (QIOSCs) and other QIOs, both by sharing the lessons and tools it developed and by adopting practices and tools developed by other QIOs;
- Whether the QIO was a new contractor in the 7th SOW;
- Whether specific identifiable circumstances uniquely interfered with the QIO's efforts;
- Evidence suggesting that the QIO has done exceptional work in one or more of the other Task areas; and
- Any other issues which the panel may deem relevant. Upon completion of its review, the panel will make a recommendation for a final disposition to the Director of CMS' Office of Clinical Standards and Quality (OCSQ).

III. Standards for Minimum Performance

[If you choose to comment on issues in this section, please include the caption "STANDARDS FOR MINIMUM PERFORMANCE" at the beginning of your comments.]

General Criteria

CMS will evaluate the QIO's performance on each sub-task by some combination of the following elements:

- Statewide improvement on the quality measure(s);
- Improvement on the quality of care measure(s) among a group of identified participants as defined within each subtask;
- Satisfaction among providers and practitioners regarding their interaction with the QIO.

Satisfaction will be assessed using a survey, the purpose of which will be to:

- Measure satisfaction as one component of the QIO's evaluation.
- Identify opportunities where the QIO can improve satisfaction.

Task 1 (including subtasks a through e) and subtask 2b will be evaluated quantitatively. Their success will be measured by assessing the QIO's relative improvement on each evaluation criterion. The term "improvement" as used in the 7th Round Contract shall be defined mathematically to mean the relative reduction in the failure rate. The expected minimum improvement level will serve as the reference point for each calculated relative improvement.

In a number of the Task 1 subtasks, statewide improvement will be averaged with the improvement among a set of identified participant providers. In these cases CMS has set a target percentage of identified participant providers, and the relative weights of the statewide improvement and of identified participants' improvement will combine to equal 80 percent and will be a function of the percentage of the target (up to 150 percent) that the QIO identifies as participants. Tasks 1f, 2a, 2c and all of Task 3 will be evaluated by the Project Officer using qualitative measures based on information provided in reports developed from data provided by the QIOs on the QIO's status to date.

Task Specific Standards

Task 1—Improving Beneficiary Safety and Health Through Clinical Quality Improvement

Task 1a—Nursing Home Quality Improvement—The QIO will be held accountable for improvement in the quality of care measure rates for all nursing homes in the state and for identified participant nursing homes. QIOs will be evaluated based on the following components: statewide improvement on the set of 3 to 5 publicly reported quality of care measures which the QIO has selected in consultation with stakeholders, improvement for the selected CMS nursing home publicly reported quality of care measures for identified participants, and nursing home satisfaction based on a survey of identified participating nursing homes. To view the weighting criteria for each component, go to *www.cms.hhs.gov/qio/2.asp* for a copy of the J–7.

Task 1b—Home Health Quality Improvement—the QIO will be held accountable for improvement in the Outcome Based Quality Improvement (OBQI) quality of care measure rates for a set of home health agencies that are identified participants. The QIOs will be evaluated based on the following components: The extent to which the number of participating home health agencies, with significant improvement in a targeted outcome, equals or exceeds 30 percent of the total number of home health agencies in the state, and the identified participant satisfaction which will be measured by a survey of identified participant home health agencies using a composite measure of satisfaction that reflects the type of activities that QIOs are expected to have undertaken with these providers.

Task 1c—Hospital Quality Improvement—QIOs will be evaluated on the following criteria: statewide improvement on the quality of care measures listed in the 7th Round Contract, and hospital satisfaction based on feedback from the hospitals in the state. To view the specific criteria, go to *www.cms.hhs.gov/qio/2.asp* for a copy of the J–7.

Task 1d—Physician Office Quality Improvement—QIOs will be evaluated based on the following general criteria: statewide improvement of quality of care measures, improvement on diabetes and cancer screening quality of care measures for identified participant physicians, and physician satisfaction based on feedback from physician designees in the state who participated with the QIO. To view the specific criteria for this task, go to *www.cms.hhs.gov/qio/2.asp* for a copy of the J–7.

Task 1e—Underserved and Rural Beneficiaries Quality Improvement—The QIO's work on this task will be primarily evaluated on the success of the QIO's efforts to reduce disparity between the targeted underserved group and their geographically relevant non-underserved reference group from baseline to re-measurement. To be judged to have performed minimally successful on this task, the QIO must demonstrate disparity reduction. QIOs will also be evaluated on three factors that collectively demonstrate knowledge generated by the QIO about the underserved target group, the interventions planned upon the basis of that knowledge, the use of literature on effective interventions, and by demonstrating the effectiveness of their interventions through analyses

comparing the intervention group and a contrast group. To view the specific criteria for this task, go to *www.cms.hhs.gov/qio/2.asp* for a copy of the J–7.

Task 1f—Medicare + Choice Organizations (M+COs) (now called Medicare Advantage Organizations (MAs) Quality Improvement—QIOs will be expected to have demonstrated appropriate activity to include MAs in Tasks 1a to 1e as determined by the Project Officer. CMS will survey MAs that have worked with the QIO using a composite measure of satisfaction that reflects the types of activities that QIOs are expected to have undertaken with these organizations. CMS will further use the results of the Medicare+Choice Quality Review Organizations (M+CQRO) or accreditation organization evaluation of the Quality Assessment and Performance Improvement (QAPI) projects to determine if expected improvement was demonstrated.

Task 2—Improving Beneficiary Safety and Health Through Information and Communications

Task 2a—Promoting the Use of Performance Data—QIO success will be assessed on the timely completion and submission of a project work plan, timely completion and submission of all required reports and deliverables, and the extent to which the QIO uses information provided by CMS as well as any other feedback the QIO receives to refine its project activities to achieve the desired outcome.

Task 2b—Transitioning to Hospital-Generated Data—The evaluation for this task will be based on the following. CMS will determine the completeness of the assessment survey information for each hospital. CMS will review hospital data submitted to the national repository via QualityNet Exchange to determine the proportion of hospitals within the State that have implemented a data abstraction system to abstract quality of care measures. CMS will review hospital satisfaction with the QIO data abstraction support. To view specific criteria for this task, go to *www.cms.hhs.gov/qio/2.asp* for a copy of the J–7.

Task 2c—Other Mandated Communication Activities—QIO success on this task will be assessed on the following elements: The establishment and use of a Consumer Advisory Council to advise and provide guidance regarding consumer related activities, the QIO's success at broadening consumer representation on the QIO Board of Directors, the successful operation of a Beneficiary helpline, and the publication and distribution of an annual report.

Task 3—Improving Beneficiary Safety and Health Through Medicare Beneficiary Protection Activities

Task 3a—Beneficiary Complaint Response Program—QIO success will be assessed by the timeliness of completed reviews, quality improvement activities as the result of beneficiary complaints, reliability of the review, and beneficiary satisfaction with the complaint process.

Task 3b—Hospital Payment Monitoring Review Program—The QIO must complete reviews within the prescribed timeframes. The QIO must also meet one of the following criteria: With respect to the absolute payment error rate, the follow-up payment error rate must be no greater than 1.5 standard errors above the baseline error rate, or the QIO must have made acceptable progress in improving provider performance in relation to any and all projects approved or directed by CMS.

Task 3c—Other Beneficiary Protection Activities—The QIO will be assessed on the timeliness of reviews for HINN/NODMAR, EMTALA review, other case review activities and post review activities.

In accordance with the provisions of Executive Order 12866, this notice with comment period was not reviewed by the Office of Management and Budget.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–16432 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4074–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education—September 9, 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education on September 9, 2004. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for September 9, 2004 from 9 a.m. to 4 p.m., e.d.t.

Deadline for Presentations and Comments: September 2, 2004, 12 noon, e.d.t.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Lynne Johnson by e-mail at *ljohnson3@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing the Advisory Panel on Medicare Education (the Panel) on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 21, 2003. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.

• To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.

• To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.

• To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: James L. Bildner, Chairman and Chief Executive Officer, New Horizons Partners, LLC; and Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging. A list of new members will be announced in the **Federal Register** on August 27, 2004.

The agenda for the September 9, 2004 meeting will include the following:

• Recap of the previous meeting (May 11, 2004).

• Centers for Medicare & Medicaid Services Update.

• Medicare Program Overview.

• Medicare Modernization Act Outreach and Education.

• Public Comment.

• Listening Session with CMS Leadership.

• Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic must submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by e-mail at *ljohnson3@cms.hhs.gov* no later than 12 noon, e.d.t., September 2, 2004. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Lynne Johnson by 12 noon, (e.d.t.), September 2, 2004. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations must contact Lynne Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–16433 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1364–N]

Medicare Program; August 30, 2004, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council) and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2005. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: The meeting is scheduled for Monday, August 30, 2004, from 8:30 a.m. until 5 p.m. e.d.t.

ADDRESSES: The meeting will be held in Room 800, 8th floor, in the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Meeting Registration: Persons wishing to attend this meeting must contact John Lanigan, the Designated Federal Official (DFO) by e-mail at *Jlanigan@cms.hhs.gov* or by telephone at (410) 786–2312, at least 72 hours in advance of the meeting to register. Persons not registered in advance will not be permitted into the Humphrey Building and will not be permitted to attend the Council meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

Nominations: Nominations to fill vacancies on the Council will be considered if received at the appropriate address, no later than 5 p.m. e.d.t., September 15, 2004. Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: John Lanigan, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C4–10–07, Baltimore, MD 21244–1850, telephone (410) 786–2312, or e-mail *Ksimon@cms.hhs.gov*. News media representatives must contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: The Secretary is mandated by section 1868 (a) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a)(1) of the

Act provides that nominations for Council membership must be made to the Secretary by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: Jose Azocar, M.D.; James Bergeron, M.D.; Ronald Castellanos, M.D.; Rebecca Gaughan, M.D.; Peter Grimm, D.O.; Carlos R. Hamilton, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Christopher Leggett, M.D.; Barbara McAneny, M.D.; Geraldine O'Shea, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D. (Chairperson); Anthony Senagore, M.D.; and Robert L. Urata, M.D.

The meeting will commence with a status report and our response to recommendations made by the Council at the May 17, 2004 meeting and prior meeting recommendations. Additionally, updates will be provided on the Physician Fee Schedule, Evaluation and Management (E & M) Documentation Guidelines, Medical Economics Index and Proxy Indicators, 2005 Medicare Modernization Act issues and activities, Average Sales Price, and Physician Regulatory Issues Team. In accordance with the Council charter we are requesting assistance with the following agenda topics:

- Enrollment and Pecos.
- Chronic Care Improvement Program.
- Efforts to Improve the Accuracy of Call Center Information.

For additional information and clarification on these topics, contact the Executive Director, listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues must contact the Executive Director by 12 noon, August 17, 2004, to be scheduled. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to John Lanigan, Designated Federal Official, no later than 12 noon, August 17, 2004, for distribution to Council members for review prior to the meeting. Physicians and medical organizations not scheduled to speak may also submit written comments to the Designated Federal Officer for distribution. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodations: Individuals requiring sign language interpretation or other special accommodation must contact John Lanigan by e-mail at *Jlanigan@cms.hhs.gov* or by telephone at (410) 786–2312 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(a)(3) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, we provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of the Council's membership.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2004.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–16526 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1334–N]

Medicare Program; Public Meeting in Calendar Year 2004 for Coding and Payment Determinations for Power Wheelchairs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to be held on September 1, 2004 to discuss coding and payment for power wheelchairs. This meeting provides a forum for interested parties to hear various proposals presented to us regarding changes to wheelchair coding. This meeting will provide an opportunity for the public to make oral presentations or to submit written comments in response to preliminary coding and pricing recommendations presented by CMS at this meeting. Discussion will be directed toward response to alternative coding recommendations, and will be limited to discussions of the proposed recommendations presented at the meeting on coding and payment of power wheelchairs.

DATES: This public meeting is scheduled for Wednesday, September 1, 2004 from 1 p.m. to 5 p.m. e.d.t.

ADDRESSES: This public meeting will be held in the Centers for Medicare & Medicaid Services Auditorium, located at 7500 Security Boulevard, Baltimore, MD 21244.

Web site: Additional details regarding the public meeting process and details on the public meeting on the power wheelchair coding and payment proposals will be posted at least two weeks before the date of the meeting on the official Healthcare Common Procedure Coding System (HCPCS) Web site, and can be accessed at *http://cms.hhs.gov/medicare/hcpcs/default.asp.*

Individuals who intend to provide a presentation at the public meeting for coding and payment of power wheelchairs need to familiarize themselves with this information. This Web site also includes a description of the HCPCS coding process, along with a detailed explanation of the procedures used to make coding and payment determinations for Durable Medical Equipment (DME) and other items and services that are coded in the HCPCS.

A summary of each public meeting for DME will be posted on the Web site

listed in this section within one month after the meeting.

FOR FURTHER INFORMATION CONTACT: Lorrie Ballantine, (410) 786–7543 or Jennifer Carver, (410) 786–6610.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106–554. Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new DME under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice are in response to the mandate of section 531(b) of BIPA.

As part of "Operation Wheeler Dealer", we stated in testimony before the Senate Finance Committee that we will work to make changes to the HCPCs coding for power wheelchairs that better describe the power wheelchairs currently on the market and thus assure that wheelchair payments are accurate.

We published a notice in the **Federal Register** (66 FR 58743) on November 23, 2001 with information regarding the establishment of the public meeting process for DME.

II. Registration

Registration Procedures: Registration may be completed online at *http://cms.hhs.gov/medicare/hcpcs/default.asp*, or you may contact the Power Wheelchair Public Meeting Coordinator, Lorrie Ballantine, (410) 786–7543, or Jennifer Carver, (410) 786–6610, to register by phone. The following information must be provided when registering: name, company name and address, telephone and fax numbers, e-mail address and special needs information. A CMS staff member will confirm your registration by mail, e-mail or fax.

Registration Deadline: Individuals must register by August 20, 2004.

III. Presentations and Comment Format

A. Primary Speaker Presentations

The entity that has requested to speak at the Public Meeting may designate one person to be the "Primary Speaker" and make a presentation at the meeting. We will post guidelines regarding the amount of time allotted to the speaker, as well as other presentation guidelines, on the official HCPCS Web site by August 27, 2004. Persons designated to be a Primary Speaker must register to attend the meeting using the registration procedures described in section II of this notice by August 20, 2004, contact the DME Public Meeting Coordinator, Lorrie Ballantine or Jennifer Carver.

At the time of registration, Primary Speakers must provide a brief, written statement regarding the nature of the information they intend to provide, and advise the meeting coordinator regarding needs for audio/visual support. In order to avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accommodate tapes and disk files that are received by the DME Public Meeting Coordinator by August 27, 2004. In addition, on the day of the meeting, Primary Speakers must provide a written summary of their comments to the DME Public Meeting Coordinator.

B. Speaker Declaration

The Primary Speakers must declare, at the meeting as well as in their written summary, whether or not they have any financial involvement with the manufacturers, suppliers or competitors of power wheelchairs. This includes any payment, salary, remuneration, or benefit provided to the speaker by the manufacturer.

C. Written Comments From Meeting Attendees

We welcome written comments from persons in attendance at a public meeting, whether or not they had the opportunity to make an oral presentation. Written comments may be submitted at the meeting, or prior to the meeting via e-mail to *http://cms.hhs.gov/medicare/hcpcs/default.asp* or by regular mail to Lorrie Ballantine, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244.

IV. General Information

The meetings are held in a Federal government building; therefore, Federal measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government-issued photo identification and a copy of their confirmation of pre-registration for the meeting. Access may be denied to persons without proper identification.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Special Accommodations: Persons attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information upon registering for the meeting.

Authority: Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh) (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–16527 Filed 7–22–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0269]

Agency Information Collection Activities; Proposed Collection; Comment Request; Radioactive Drugs for Certain Uses Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements related to radioactive drugs used in research.

DATES: Submit written or electronic comments on the collection of information by September 21, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/*

dockets/ecomments. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Radioactive Drugs for Certain Research Uses—21 CFR 361.1 (OMB Control Number 0910–0053)—Extension

Under sections 201, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 355, and 371), FDA has the authority to issue regulations governing the use of radioactive drugs for basic informational research. Section 361.1 (21 CFR 361.1) sets forth specific regulations regarding the establishment and composition of Radioactive Drug Research Committees and their role in approving and monitoring basic research studies utilizing radiopharmaceuticals. No basic research study involving any administration of a radioactive drug to research subjects is permitted without the authorization of an FDA-approved Radioactive Drug Research Committee (§ 361.1(d)(7)). The type of research that may be undertaken with a radiopharmaceutical drug must be intended to obtain basic information and not to carry out a clinical trial. The types of basic research permitted are specified in the regulation, and include studies of metabolism, human physiology, pathophysiology, or biochemistry.

Section 361.1(c)(2) requires that each Radioactive Drug Research Committee shall select a chairman, who shall sign all applications, minutes, and reports of the committee. Each committee shall meet at least once each quarter in which research activity has been authorized or conducted. Minutes shall be kept and shall include the numerical results of votes on protocols involving use in human subjects. Under § 361.1(c)(3), each Radioactive Drug Research Committee shall submit an annual report to FDA. The annual report shall include the names and qualifications of the members of, and of any consultants used by, the Radioactive Drug Research Committee, using FDA Form 2914, and a summary of each study conducted during the proceeding year, using FDA Form 2915.

Under § 361.1(d)(5), each investigator shall obtain the proper consent required under the regulations. Each female research subject of childbearing potential must state in writing that she is not pregnant, or on the basis of a pregnancy test be confirmed as not pregnant.

Under § 361.1(d)(8), the investigator shall immediately report to the Radioactive Drug Research Committee all adverse effects associated with use of the drug, and the committee shall then report to FDA all adverse reactions probably attributed to the use of the radioactive drug.

Section 361.1(f) sets forth labeling requirements for radioactive drugs. These requirements are not in the reporting burden estimate because they are information supplied by the Federal Government to the recipient for the purposes of disclosure to the public (5 CFR 1320.3 (c)(2)).

Types of research studies not permitted under this regulation are also specified, and include those intended for immediate therapeutic, diagnostic, or similar purposes or to determine the safety and effectiveness of the drug in humans for such purposes (i.e., to carry out a clinical trial). These studies require filing of an investigational new drug application (IND) under 21 CFR 312.1, and the associated information collections are covered under OMB control number 0910–0014.

The primary purpose of this collection of information is to determine if the research studies are being conducted in accordance with required regulations. If these studies were not reviewed, human subjects could be subjected to inappropriate radiation and/or safety risks. Respondents to this information collection are the chairperson(s) of each individual Radioactive Drug Research Committee, investigators, and participants in the studies.

The source of the burden estimates was a phone survey of three chairpersons who were selected from Radioactive Drug Research Committees of different geographical areas and of varying levels of activity. These chairpersons were asked for their assessment of time expended, cost and views on completing the necessary reporting forms.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Forms	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
361.1(c)(3)	FDA 2914	80	1	80	1	80

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Forms	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
361.1(c)(3)	FDA 2915	50	6.8	340	3.5	1190
361.1(d)(8)		50	6.8	340	0.1	34
Total						1304

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Forms	No. of Recordkeepers	Annual Frequency per Recordkeeping	Hours per Record-Keeper	Total Hours
361.1(c)(2)		80	1 per qtr = 4 per year	10	800
361.1(d)(5)		50	6.8	0.75	38
Total					838

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16824 Filed 7–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0582]

Guidance for Industry on Available Therapy; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Available Therapy." The document is intended to provide guidance to industry on the meaning of the term "available therapy" as used by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

For information regarding human drug products: Janet Jones, Center for Drug Evaluation and Research (HFD–040), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5445.

For information regarding biological products: Robert Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1148, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Available Therapy." The term "available therapy" and related terms, such as "existing treatments" and "existing therapy," appear in a number of regulations and policy statements issued by CDER and CBER, but these terms have never been formally defined by the agency. Some confusion has arisen about, for example, whether "available therapy" refers only to products approved by FDA for the use in question, or whether the term could also refer to products used off-label or to treatments not regulated by FDA, such as surgery. The guidance document is intended to inform the public of the agency's interpretation of the term "available therapy."

In the **Federal Register** of February 7, 2002 (67 FR 5831), FDA announced the availability of a draft guidance entitled "Available Therapy." The document provided interested persons an opportunity to submit comments by April 8, 2002. On October 17, 2002, the United States District Court for the District of Columbia invalidated the "Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients" (the pediatric rule) and enjoined FDA from enforcing the rule. (See *Association of Am. Physicians and Surgeons, Inc.* v. *United States Food and Drug Admin.*, 2002 U.S. Dist. LEXIS 19689 (Oct. 17, 2002).) As a result, FDA has deleted all references to the pediatric rule in the guidance.

In addition, FDA has revised the definition of "available therapy." The revised definition seeks to resolve issues raised in comments requesting clarification of the proposed definition and confusion about situations where the only available therapy has been approved under the accelerated approval regulations (21 CFR 314.500 and 601.40). The term "available therapy" has been revised to explain

that the existence of a therapy already approved under the accelerated approval regulations will not necessarily preclude additional therapies for the same specific indication from being approved under the accelerated approval regulations or designated for the Fast Track drug development programs.

The revisions to the definition of "available therapy" affect FDA's Fast Track drug development programs. As a result, FDA has similarly revised its guidance for industry on Fast Track Drug Development Programs—Designation, Development and Application Review to discuss situations where the only available therapy is approved under the accelerated approval regulations.

This Level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). It represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: July 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16761 Filed 7–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0281]

Medical Devices: A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures; Final Guidance for Industry and FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised final guidance entitled "A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures; Guidance for Industry and FDA Staff." This revised guidance extends by 1 year a voluntary pilot premarket review program that may reduce the burden on manufacturers who face conflicting premarket submission format and content requirements in different countries. The pilot program is intended to evaluate the utility of an alternative submission procedure as described in the document entitled "Summary Technical Documentation for Demonstrating Conformity to the Essential Principles of Safety and Performance of Medical Devices" (draft STED document). The draft STED document was developed by Study Group 1 (SG1) of the Global Harmonization Task Force (GHTF) and issued as a working draft in December 2000. The GHTF is a voluntary group comprised of medical device regulatory officials and industry representatives from the United States, Canada, Australia, the European Union, and Japan. Each of these member countries will participate in the pilot program and will provide specific directions for implementing the program within their respective jurisdictions.

DATES: Submit written comments at any time. The pilot program is extended until June 25, 2005.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures; Guidance for Industry and FDA Staff" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/opacom/backgrounder/voice.html*. Comments are to be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–4879, e-mail: *hrs@cdrh.fda.gov*; or Eric J. Rechen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186, e-mail: *ejr@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 26, 2003 (68 FR 38068), FDA announced the availability of a guidance document entitled "A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures; Guidance for Industry and FDA Staff." The guidance document announced a pilot premarket review program and solicited participation from the medical device industry. The pilot program is intended to evaluate the utility of an alternative submission procedure as described in the draft STED document prepared by SG1 of the GHTF. The document seeks to harmonize the different requirements for premarket submissions in various countries.

The June 26, 2003, guidance and notice of availability announced that the pilot program would be in effect for 1 year from the date of publication of the notice of availability. In this revised guidance, FDA is extending the pilot program for 1 more year. Other than updated contact information, there are no other changes to the guidance document. FDA received no comments on the guidance document. The revised guidance is a level 2 guidance under FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). As such, FDA made the guidance available on its Web site on July 6, 2004.

The GHTF is a voluntary group comprised of medical device regulatory officials and industry representatives from the United States, Canada, Australia, the European Union, and Japan. The goals of the GHTF include

the following items: (1) Encourage convergence in regulatory practices with respect to ensuring the safety, effectiveness, performance, and quality of medical devices; (2) promote technological innovation; and (3) facilitate international trade. The GHTF's Web site can be accessed at *http://www.ghtf.org*. It provides further information concerning the organization's structure, goals, and procedures.

The pilot premarket review program (STED pilot program), as implemented in the United States by FDA, will rely on the FDA final guidance that is the subject of this notice, and four related documents that are appended to the guidance. These documents are: (1) A letter to the global medical device industry announcing the pilot program (Appendix 1); (2) the draft STED document created by SG1 of GHTF (Appendix 2); (3) the GHTF SG1 final document entitled "Essential Principles of Safety and Performance of Medical Devices," known as "Essential Principles" (Appendix 3); and (4) the document entitled "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles; Final Guidance for FDA and Industry," issued in October 2002 (Appendix 4).

The FDA guidance document is intended to assist the medical device industry in making submissions to FDA that use the draft STED document format and are consistent with U.S. requirements. The announcement letter provides useful background and summary information regarding the proposed pilot premarket review program. The draft STED document describes a proposed internationally harmonized format and content for premarket submissions, e.g., PMA applications and 510(k) submissions in the United States, based on conformity to the Essential Principles. The Essential Principles are general and specific safety and performance recommendations for medical devices. They were developed by GHTF and are listed in the third document appended to the guidance. A discussion of the least burdensome provisions is provided in the fourth document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on a way to apply GHTF recommendations as related to premarket submission to FDA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

You may obtain a copy of "A Pilot Program to Evaluate a Proposed Globally Harmonized Alternative for Premarket Procedures; Guidance for Industry and FDA Staff," via fax machine by calling the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1347) followed by the pound sign. Follow the remaining voice prompts to complete your request.

You may also obtain a copy of the guidance through the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. The CDRH home page is updated on a regular basis and includes: Civil money penalty guidance documents, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), assistance for small manufacturers, information on video conferencing, electronic submissions, mammography devices, and other device-related information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16825 Filed 7–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trades secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 2, 2004.

Open: 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Deborah P Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page:

www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16780 Filed 7–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Member SEP: Synaptogenesis and Synaptic Transmission.

Date: July 23. 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Science Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle:

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanism of Vascular Calcification.

Date: July 23, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214, *pinkusl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle:

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sensory Motor Integration.

Date: July 27, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Neurotechnology Developmental Special Emphasis Panel.

Date: July 28, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radioimmunotherapy.

Date: July 28, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892. (301) 435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiomyocytes and Human Embryonic Stem Cells.

Date: July 29, 2004.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214, *pinkusl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Member SEP: Synaptic Functions and Prions.

Date: July 29, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Replication and Repair.

Date: July 29, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892. (301) 435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Bioengineering.

Date: August 2, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. (301) 435–2506, *tangd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1:SBMI 14 B: Medical Imaging: MRI/PET.

Date: August 2, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Robert J. Nordstrom PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892. (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vibrio Cholerae Porin Function amd Modulation of Pathogenesis.

Date: August 9, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. (301) 435–0903, *millsm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAED Reviewer Conflicts.

Date: August 9, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892. (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro-Tech Meeting.

Date: August 11, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892. (301) 435–1251, *bannerc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry/Biophysics SBIR/STTR Panel.

Date: August 11, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethanol, FAS, and Oxidative Stress.

Date: August 11, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. (301) 435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AIDS Applications.

Date: August 11, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892. (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Clinical and Epidemiology Studies.

Date: August 12, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Abraham P. Bautista, MS, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Melatonin Receptors and Cocaine Sensitization.

Date: August 12, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dendritic Cell Tolerance.

Date: August 12, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooper@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAED Review Conflict 2.

Date: August 12, 2004.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892. (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology/Immunotherapy.

Date: August 16, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooper@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transplantation Cell Biology.

Date: August 17, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AMCB Member Conflicts.

Date: August 18, 2004.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892. (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology.

Date: August 20, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooperc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16779 Filed 7–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2316–04]

Supplemental Information Regarding the H–1B Numerical Limitation for Fiscal Year 2004 Affecting F and J Nonimmigrants

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: On February 25, 2004, the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (CIS) published a notice in the **Federal Register** informing the public of the procedures DHS would follow as the fiscal year 2004 (FY 2004) numerical cap for the H–1B nonimmigrant category would be reached. This notice supplements that information and informs the public that as part of those H–1B cap procedures the Secretary of Homeland Security will exercise his authority to extend the status of certain F and J nonimmigrant students if DHS has received from their prospective employer a timely filed request for change of nonimmigrant status to that of an H–1B nonimmigrant no later than July 30, 2004 and the employment start date on the petition is no later than October 1, 2004.

DATES: This notice is effective July 23, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Business and Trade Services Branch/Program and Regulation Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., ULLB 3rd Floor, Washington, DC 20536, telephone (202) 305–3175.

SUPPLEMENTARY INFORMATION: Section 214(g) of the Immigration and Nationality Act (Act) provides that the total number of aliens who may be issued H–1B visas or otherwise granted H–1B status during FY 2004 may not exceed 65,000. On February 25, 2004, CIS published a notice in the **Federal Register** at 69 FR 8675 informing the public that the H–1B numerical limitation would be reached and that CIS would not process any additional petitions with an employment start date on or before September 30, 2004. The notice contained the procedures that CIS would follow as the cap was reached. This notice supplements the information in the February 25, 2004 notice and informs the public that the Secretary of Homeland Security is exercising his authority under 8 CFR 214.2(f)(5)(vi) and 8 CFR part 214.2(j)(1)(vi) for this fiscal year to extend the duration of status for certain F and J students if their prospective employer has timely filed a request for change of nonimmigrant status to that of an H–1B nonimmigrant alien that is received by DHS on or before July 30, 2004 and contains an employment start date of no later than October 1, 2004. This measure will prevent a lapse of status for aliens who have maintained their status and would otherwise be eligible for a change to H–1B status if the annual H–1B numerical limitation had not been reached.

Background

The former U.S. Immigration and Naturalization Service (Legacy INS) published an interim rule in the **Federal Register** on June 15, 1999, at 64 FR 32146, that amended its regulations to expand the definition of duration of status for an F and J nonimmigrant alien whose prospective employer timely files an application for change of status to H–1B nonimmigrant classification.

The rule, codified at 8 CFR part 214.2(f)(5)(vi) and 8 CFR part 214.2(j)(1)(vi), provides that the Secretary of Homeland Security may extend the duration of status, by notice in the **Federal Register**, of an F or J nonimmigrant on whose behalf a prospective employer has timely filed a petition for change of nonimmigrant status to that of an H–1B nonimmigrant pursuant to 8 CFR part 248, provided the alien has not violated the terms of his or her admission to the United States. This extension can be accomplished at any time the Secretary of Homeland Security determines that the H–1B cap will be reached prior to the end of the fiscal year. The regulation provides that the extension shall continue for such time as is necessary to complete adjudication of an application for change of nonimmigrant status to H–1B. An alien whose duration of status has been extended by the Secretary of Homeland Security and who continues to adhere to the other terms of the alien's status is considered to be maintaining lawful nonimmigrant status for all purposes under the Act.

Will the Secretary of Homeland Security exercise his authority to extend the status of F–1 and J–1 students on whose behalf employers have timely filed applications to change status to H–1B, but who are unable to obtain that status because the Fiscal Year 2004 H–1B numerical limitation has been reached?

Yes, if the H–1B petition meets certain requirements. This notice informs the public that the Secretary of Homeland Security will exercise his discretionary authority under 8 CFR part 214.2(f)(5)(vi) and 8 CFR part 214.2(j)(1)(vi) for petitions affected by the reaching of the FY 2004 cap. Accordingly, any F–1 or J–1 student (as defined at 22 CFR part 62.4(a)) nonimmigrant continuing to maintain status whose prospective employer timely files an H–1B petition on his or her behalf prior to July 30, 2004, that contains an employment start date of no later than October 1, 2004, will continue to be in valid F–1 or J–1 status until October 1, 2004. Additionally, in the case of a J–1 student, the alien must not be subject to the two-year home residence requirement under section 212(e) of the Act. The duration of status for dependents of affected F–1 or J–1 nonimmigrant aliens is also extended under this notice until October 1, 2004. This notice applies only to J–1 exchange visitor students (defined at 22 CFR part 62.4(a)), and does not apply to other categories of exchange visitors.

Pursuant to 8 CFR 248.1(b) and 214.1(c)(4), the term "timely filed" refers to an application for a change of nonimmigrant status filed prior to the expiration of the alien's period of

authorized stay in the United States. As stated above, the application must also be filed by July 30, 2004, and contain an employment start date of no later than October 1, 2004. "Filing" means receipt by CIS as indicated by the receipt date on Form I–797.

Will the Student and Exchange Visitor Information System (SEVIS) maintain records of F–1 and J–1 nonimmigrants whose stays are extended?

Yes. SEVIS will continue to maintain the record of an F–1 or J–1 nonimmigrant whose stay is extended.

How does this notice affect F–1 and J–1 students who are entitled to an extension of their status?

This extension is in fact an extension of the ordinary 60-day or 30-day "grace period" already accorded an F–1 or J–1 nonimmigrant at the completion of his or her program and approved training. As a result, an alien benefiting from this extension of the "grace period" may not work for the petitioning employer or otherwise engage in activities inconsistent with those that would be allowed during the ordinary 60-day or 30-day grace period. Dependents of an F–1 or J–1 nonimmigrant benefiting from an extended grace period must follow the same rules as those that apply to the F–1 or J–1 principal alien during the grace period.

Nonimmigrants affected by this notice, and all aliens in the United States, are reminded that they have an obligation under 8 CFR part 265.1 to report each change of address and new address to DHS during their stay in the United States. An alien who fails to comply with the change of address requirements may be removable under section 237(a)(3)(A) of the Act and subject to criminal or monetary penalties under section 266(b) of the Act.

What is the status of an F–1 or J–1 nonimmigrant if their H–1B petition filed is approved prior to October 1, 2004?

In accordance with 8 CFR 214.2(f)(5)(vi) and 8 CFR part 214.2(j)(1)(vi), the Secretary of Homeland Security may extend the duration of the status of certain F–1 and J–1 nonimmigrant aliens for such time as is deemed necessary to complete the adjudication of the change of status. DHS believes that the extension until October 1, 2004 provides it with sufficient time to adjudicate H–1B petitions filed on or before July 30, 2004. If the alien's H–1B petition is approved before October 1, 2004, the alien will continue in the extended grace period as an F–1 or J–1 student until October 1, 2004 (*i.e.*, the date an H–1B visa will become available and the employment start date). On October 1, 2004, the alien's change of status from F–1 or J–1 to H–1B nonimmigrant status will become effective.

What is the status of an F–1 or J–1 nonimmigrant if the H–1B petition remains pending beyond October 1, 2004?

In the unlikely event that the application to change nonimmigrant status to H–1B remains pending beyond October 1, 2004, an individual whose application remains pending will not be in valid nonimmigrant status as of October 1, 2004. However, because an extension of stay application was timely filed, the individual (and dependent(s) included on the application) will be considered as being in a period of stay authorized by the Secretary of Homeland Security until the date CIS adjudicates the H–1B petition and effectuates the change to H–1B status. As a result, such individuals will not be accruing unlawful presence as described in section 212(a)(9)(B) of the Act.

If an H–1B petition filed on behalf of an F–1 or J–1 nonimmigrant is denied, what is the status of the alien and his or her dependents?

Under 8 CFR part 214.2(f)(5), an F–1 student who has completed a course of study and any authorized practical training following completion of studies is allowed an additional 60-day period to prepare for departure or to transfer schools. Similarly, under 8 CFR part 214.2(j)(1)(ii), a J–1 student may be entitled to an additional 30-day period to prepare for travel. This notice simply extends that grace period. If the application to change status to H–1B is denied within 60 days (for an F–1) or 30 days (for a J–1) of the alien's completion of studies, program or optional practical training, the alien and any dependents may finish his or her respective 60-day or 30-day grace period. If the H–1B petition is denied after the 60-day or 30-day grace period, the alien's F–1 or J–1 status is terminated as of the date of the decision and he or she, as well as any dependents, must immediately depart the U.S.

Can an F–1 or J–1 nonimmigrant with a pending H–1B petition travel during the extended grace period under this notice?

No. DHS has issued this notice to allow certain qualifying F–1 and J–1 students and their dependents to remain in the United States in lawful status while their H–1B petitions are pending, so that these aliens are not required to depart the United States and consular process. However, if a nonimmigrant alien is planning to or does depart the United States, that alien will be in a position to consular process, and therefore will not benefit from the extended grace period.

Dated: July 20, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–16937 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–18]

Notice of Proposed Information Collection for Public Comment; Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 21, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection.

OMB Control Number: 2577–0029.

Description of the need for the information and proposed use: Section 9(f) of the United States Housing Act of 1937 establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) which assistance is determined using a formula approach called the Performance Funding System (PFS). PHAs compute their operating subsidy eligibility by completing the following HUD prescribed forms, as applicable, each fiscal year: Operating Fund Data Collection (HUD–52720–A); Operating Fund Calculation of Formula and Delta (HUD–52720–B); Range Test and Determination of Base Year Expense Level (HUD–52720–C); Calculation of Allowable Utilities Expense Level (HUD–52722–A); Adjustment for Utility Consumption and Rates (HUD–52722–B); Operating Fund Calculation of Operating Subsidy (HUD–52723); and Calculation of Subsidies for Operation (HUD–53087). HUD uses the information on these forms to determine the operating subsidy obligation and proration level for each PHA.

Agency form number: HUD–52720–A, HUD–52720–B, HUD–52720–C, HUD–52722–A, HUD 52722–B, HUD–52723, and HUD–53087.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 3200 respondents annually with 1 response per respondent (seven forms) for a total of 22,400 responses; .45 average time per response and 10,080 hours total reporting burden hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 16, 2004.

William O. Russell,

Deputy Ass't Sec'y for Public Housing and Voucher Programs.

[FR Doc. 04–16855 Filed 7–22–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–23]

Notice of Proposed Information Collection: Comment Request; Preauthorization Debit (PAD) Authorization

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 21, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, 52 Corporate Circle Albany, NY 12203 telephone (518) 464–4200 x4206 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Preauthorization Debit (PAD) Authorization.

OMB Control Number, if applicable: 2502–0424.

Description of the need for the information and proposed use: The information is used to establish a direct electronic transfer of payment from a financial institution to HUD when debtors have established a repayment plan and desire an automated transfer of funds.

Agency form numbers, if applicable: 92090.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 10.50; the number of respondents is 42 generating approximately 42 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 15 mins.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 16, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–16856 Filed 7–22–04; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–51]

Notice of Submission of Proposed Information Collection to OMB; Neighborhood Networks Management and Tracking Data Collection

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0553) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Networks Management and Tracking Data Collection.

OMB Approval Number: 2502–0553.

Description of the Need for the Information and Its Proposed Use: Neighborhood Networks is a community-based initiative that encourages the development of resource and community technology centers in HUD insured and assisted housing. In 2003, HUD conducted a national survey of Neighborhood Networks center directors to document center characteristics and identify commonalities and trends to guide the direction of the Neighborhood Networks initiative.

HUD is requesting clearance for a more comprehensive data collection instrument in 2004. The data collection is designed with the objective of merging information currently captured in a paper business plan with data currently collected through the survey of center directors. This approach will be a multi-step iterative process as the business plan is evolving from a paper submission to an enhanced and more comprehensive online tool known as START—the Strategic Tracking and Reporting Tool. Once the transition is complete, START will be the mechanism by which all center data are collected.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	House per response	=	Burden hours
Reporting Burden	840	1		1.17		980

Total Estimated Burden Hours: 980.

Status: Reinstatement with Revision.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 16, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–16857 Filed 7–22–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Reporters Building, 300 7th Street, SW., Rm 310B, Washington, DC 20250: (202) 720–4335; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–4548; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 15, 2004.

Mark R. Johnston,

Director, Office of Special Needs, Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 7/23/04

Suitable/Available Properties

Buildings (by State)

California

Bldg. YLS–002
Yosemite National Park
Yosemite Lodge
Mariosa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430021
Status: Unutilized
Comment: 1000 sq. ft., most recent use—bike storage, off-site use only

Bldg. YLS–003
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430022
Status: Unutilized
Comment: 1000 sq. ft., most recent use—storage, off-site use only

Bldg. YLV–007
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430023
Status: Unutilized
Comment: 957 sq. ft., most recent use—bike storage, off-site use only

Bldg. YLL173
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430024
Status: Unutilized
Comment: 7020 sq. ft., most recent use—guest accomodations, off-site use only

Bldg. 1000 E & F
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430025
Status: Unutilized
Comment: 3600 sq. ft., most recent use—housing, off-site use only

Mississippi

Communication Tower
Mt. Pleasant VHF
Mt. Pleasant Co: Jackson MS
Landholding Agency: GSA
Property Number: 54200430002
Status: Excess
Comment: 300 ft. tower w/guy wires and equipment bldg., subject to existing easements
GSA Number: 4–D–MS–0564

Tennessee

Federal Building
204 North Second Street
Clarksville Co: Montgomery TN 37040–
Landholding Agency: GSA
Property Number: 54200430003
Status: Excess
Comment: 13429 gross sq. ft., presence of asbestos, possible lead paint, most recent use—office, historic preservation covenants
GSA Number: 4–G–TN–0654

Unsuitable Properties

Buildings (by State)

California

Bldgs. 412–414
Yosemite National Park
Lower Pines
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 416
Yosemite National Park
Lower Pines
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 421–424
Yosemite National Park
Upper River
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430003
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 428–432
Yosemite National Park
Lower River
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430004

Status: Unutilized
Reason: Extensive deterioration

Bldgs. 451, 452
Yosemite National Park
Group Campgrounds
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 490
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430013
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 666A, 666B
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 690
Golden Gate Natl Rec
Camino Del Canyon
Mill Valley Co: Marin CA 94941–
Landholding Agency: Interior
Property Number: 61200430015
Status: Unutilized
Reason: Extensive deterioration

Tract 113–65
Santa Monica Mountains
National Recreation
Malibu Co: Los Angeles CA 90265–
Landholding Agency: Interior
Property Number: 61200430018
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLS–001
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430026
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLS-004
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430027
Status: Unutilized
Reason: Extensive deterioration

Bldg. YLE069
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1000 A & B
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430029
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1000C, 1000D
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430030
Status: Unutilized
Reason: Extensive deterioration

Post Office
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430031
Status: Unutilized
Reason: Extensive deterioration

Boiler Room
Yosemite National Park
Yosemite Lodge
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430032
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4177
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4153
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4205
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430038
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4730
Yosemite National Park
Mariposa Co: CA 95389–
Landholding Agency: Interior
Property Number: 61200430039
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4176, 4183
Yosemite National Park
Wawona Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200430040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 652
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200430001
Status: Excess
Reason: Extensive deterioration

Bldg. 2486
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430002
Status: Excess
Reason: Extensive deterioration

Bldg. 13140
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430003
Status: Excess
Reason: Extensive deterioration

Bldgs. 22141, 22142
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430004
Status: Excess
Reason: Extensive deterioration

Bldg. 25170
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430005
Status: Excess
Reason: Extensive deterioration

Bldgs. 31340, 31341
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430006
Status: Excess
Reason: Extensive deterioration

Bldg. 52652
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200430007
Status: Excess
Reason: Extensive deterioration

Colorado

Bldg. 833
Rocky Mountain Natl Park
Estes Park Co: Larimer CO 80517–
Landholding Agency: Interior
Property Number: 61200430016
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldgs. 1559, 1963
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200430008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Hawaii

Bldg. X–10
Navy Public Works
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430009
Status: Excess
Reason: Extensive deterioration

Bldg. 517
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430010

Status: Excess
Reason: Extensive deterioration
Bldg. 41NS
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430011
Status: Excess
Reason: Extensive deterioration
Bldg. 57NS
Naval Station
Beckoning Point
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430012
Status: Excess
Reason: Extensive deterioration
Bldg. 1G
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430013
Status: Excess
Reason: Extensive deterioration
Bldg. 5293
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200430014
Status: Excess
Reason: Extensive deterioration

Indiana

Bldg. 2780
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 2893
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldgs. 113, 114
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 181
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 2109
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 2777
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 2889
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 2926
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration
Bldg. 3207
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200430023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Maryland

Tract 399–24
Appalachian Trail
Cascade Co: Washington MD 21719–
Landholding Agency: Interior
Property Number: 61200430019
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Jaquith House
National Seashore
Eastham Co: Barnstable MA
Landholding Agency: Interior
Property Number: 61200430017
Status: Unutilized
Reason: Extensive deterioration
Tract 13T–2613
National Seashore
Truro Co: Barnstable MA
Landholding Agency: Interior
Property Number: 61200430033
Status: Unutilized
Reason: Extensive deterioration
Bldg. E236
National Seashore
Eastham Co: Barnstable MA
Landholding Agency: Interior
Property Number: 61200430034
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldgs. 001A, 001B, 001C
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430006
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 002A, 002B, 002C
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430007
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 002D, 002F
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430008
Status: Unutilized
Reason: Extensive deterioration
Bldg. 003A
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430009
Status: Unutilized
Reason: Extensive deterioration
Blgs. 004A, 004B
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430010
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 006A, 006B
Pigeon's Ranch
Glorieta Co: Santa Fe NM 87535–
Landholding Agency: Interior
Property Number: 61200430011
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 18
Appalachian Watershed Rsch
Coshocton Co: OH 43812–
Landholding Agency: Agriculture
Property Number: 15200430001
Status: Unutilized
Reason: Secured Area

South Carolina

Bldg. 704–002N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430001
Status: Excess
Reason: Secured Area
Bldg. 710–015N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reason: Secured Area
Bldg. 713–000N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reason: Secured Area
Bldg. 717–000C
Savannah River Operations
Aiken Co: SC 29802–

Landholding Agency: Energy
Property Number: 41200430004
Status: Excess
Reason: Secured Area

Bldg. 717–011N
Savannah River Opeations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430005
Status: Excess
Reason: Secured Area

Bldgs. 80–9G, 10G
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reason: Secured Area

Bldgs. 105–P, 105–R
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430007
Status: Excess
Reason: Secured Area

Bldg. 183–002P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430008
Status: Excess
Reason: Secured Area

Bldg. 183–003L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reason: Secured Area

Bldgs. 183–004K, 004L, 004P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430010
Status: Excess
Reason: Secured Area

6 Bldgs.
Savannah River Operations
Aiken Co: SC 29802
Location: 185–000K, 607–020K, 110–000L, 107–000P, 607–024P, 109–000R
Landholding Agency: Energy
Property Number: 41200430011
Status: Excess
Reason: Secured Area

Bldg. 191–000L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430012
Status: Excess
Reason: Secured Area

Bldgs. 211–005F, 008F, 042F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430013
Status: Excess
Reason: Secured Area

Bldg. 221–016F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reason: Secured Area

Bldgs. 221–034F, 035F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430015
Status: Excess
Reason: Secured Area

Bldgs. 221–053F, 054F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reason: Secured Area

Bldgs. 252–003F, 005F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reason: Secured Area

Bldg. 607–022P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430018
Status: Excess
Reason: Secured Area

Bldg. 614–002P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430019
Status: Excess
Reason: Secured Area

Bldg. 647–000G
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430020
Status: Excess
Reason: Secured Area

Bldgs. 701–002P, 012A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430021
Status: Excess
Reason: Secured Area

Bldg. 704–000P
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430022
Status: Excess
Reason: Secured Area

Bldg. 709–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430023
Status: Excess
Reason: Secured Area

Bldg. 710–000N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430024
Status: Excess
Reason: Secured Area

Bldgs. 723–001L, 002L, 003L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430025
Status: Excess
Reason: Secured Area

Bldg. 725–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430026
Status: Excess
Reason: Secured Area

Bldg. 763–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430027
Status: Excess
Reason: Secured Area

Bldg. 221–013F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430028
Status: Excess
Reason: Secured Area

Bldg. 278–002N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430029
Status: Excess
Reason: Secured Area

Bldg. 315–M
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430030
Status: Excess
Reason: Secured Area

Bldg. 607–001A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430031
Status: Excess
Reason: Secured Area

Bldg. 607–009C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430032
Status: Excess
Reason: Secured Area

Bldg. 607–016A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430033
Status: Excess
Reason: Secured Area

Bldg. 607–038N
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430034
Status: Excess
Reason: Secured Area

Bldg. 614–002C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430035
Status: Excess

Reason: Secured Area
Bldg. 614–002K
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430036
Status: Excess
Reason: Secured Area
Bldg. 614–002L
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430037
Status: Excess
Reason: Secured Area
Bldg. 701–001F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430038
Status: Excess
Reason: Secured Area
Bldg. 701–002C
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430039
Status: Excess
Reason: Secured Area
Bldg. 716–002A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430040
Status: Excess
Reason: Secured Area
Bldg. 901–001K
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430041
Status: Excess
Reason: Secured Area
Bldgs. 221–21F, 22F
Savannah River Operations
Aiken Co: SC 29802
Landholding Agency: Energy
Property Number: 41200430042
Status: Excess
Reason: Secured Area
Bldg. 221–033F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430043
Status: Excess
Reason: Secured Area
Bldg. 254–007F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430044
Status: Excess
Reason: Secured Area
Bldg. 281–001F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430045
Status: Excess
Reason: Secured Area
Bldg. 281–004F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430046
Status: Excess
Reason: Secured Area
Bldg. 281–006F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430047
Status: Excess
Reason: Secured Area
Bldg. 305–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430048
Status: Excess
Reason: Secured Area
Bldg. 701–012A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430049
Status: Excess
Reason: Secured Area
Bldg. 703–045A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430050
Status: Excess
Reason: Secured Area
Bldg. 703–071A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430051
Status: Excess
Reason: Secured Area
Bldg. 709–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430052
Status: Excess
Reason: Secured Area
Bldg. 710–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430053
Status: Excess
Reason: Secured Area
Bldg. 713–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430054
Status: Excess
Reason: Secured Area
Bldg. 716-A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430055
Status: Excess
Reason: Secured Area
Bldg. 719–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430056
Status: Excess
Reason: Secured Area
Bldg. 720–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430057
Status: Excess
Reason: Secured Area
Bldg. 754–008A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430058
Status: Excess
Reason: Secured Area
Bldg. 763–000A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430059
Status: Excess
Reason: Secured Area
Bldgs. 772–008G, 009G, 010G
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430060
Status: Excess
Reason: Secured Area
Bldg. 777–010A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430061
Status: Excess
Reason: Secured Area
Bldgs. 709–005F, 004F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430062
Status: Excess
Reason: Secured Area

Tennessee

Tract 01–166
Stones River
National Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200430020
Status: Excess
Reason: Extensive deterioration
25 Bldgs.
Naval Support Activity
Millington Co: TN 38054–
Location: 2032, 2037, 2041, 2043, 2056, 2072, 2085–2086, 2089–2090, 2099, 2103, 2105–2106, 501, 596, 429, 431–433, 1045, 570–573
Landholding Agency: Navy
Property Number: 77200430024
Status: Excess
Reason: Secured Area

Washington

Bldg. 96
Cascades National Park
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200430035
Status: Unutilized
Reason: Extensive deterioration
Bldg. 8
Naval Reserve Center
Spokane Co: WA 99205–

Landholding Agency: Navy
Property Number: 77200430025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 10, 11
Naval Reserve Center
Spokane Co: WA 99205–
Landholding Agency: Navy
Property Number: 77200430026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 2656–2658
Naval Air Station
Lake Hancock
Coupeville Co: Island WA 98239–
Landholding Agency: Navy
Property Number: 77200430027
Status: Unutilized
Reason: Secured Area

Land (by State)

Kentucky

Tracts 111, 112 (Partial)
Dyer Creek Access Site
Smithland Locks & Dam
Smithland Co: Livingston KY
Landholding Agency: GSA
Property Number: 54200430001
Status: Surplus
Reason: Flooding
GSA Number: 4–D–KY–568–B

[FR Doc. 04–16519 Filed 7–22–04; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the John H. Chaffee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 16, 2004.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on September 16, 2004, at 7 p.m. at the Worcester Historical Museum located at 30 Elm Street, Worcester, MA 01609 for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about 25 people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895. Tel: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 04–16811 Filed 7–22–04; 8:45 am]
BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Impact Statement for Caspian Tern Management To Reduce Predation of Juvenile Salmonids in the Columbia River Estuary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Environmental Impact Statement (Draft EIS) for Caspian Tern (*Sterna caspia*) Management to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary is available for review and comment. This Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) and evaluates the environmental impacts of the proposed action of redistributing the Caspian tern colony on East Sand Island, Columbia River estuary, and reasonable alternatives. The U.S. Army Corps of Engineers (Corps) and National Marine Fisheries Service (NOAA Fisheries) are cooperating agencies in the preparation of this Draft EIS.

DATES: Written comments must be received no later than 5 p.m. pacific time on September 21, 2004. Interested parties may contact the Service for more information at the address below.

ADDRESSES: Address comments, requests for copies, or more information related to the Draft EIS to: Nanette Seto, Migratory Birds and Habitat Programs, 911 NE. 11th Avenue, Portland, OR 97232, telephone (503) 231–6164, facsimile (503) 231–2019 or *cateeis@r1.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Nanette Seto or Tara Zimmerman, Migratory Birds and Habitat Programs, 911 NE 11th Avenue, Portland, OR 97232, telephone (503) 231–6164, facsimile (503) 231–2019.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS will be available for viewing and downloading online at:

1. *http://migratorybirds.pacific.fws.gov/CATE.htm,*
2. *http://www.nwp.usace.army.mil/pm/e/,* and
3. *http://nwr.noaa.gov*

Printed documents will also be available for review at the following libraries:

1. North Olympic Library System, Port Angeles Branch, Port Angeles, WA,
2. North Olympic Library System, Sequim Branch, Sequim, WA,
3. Astoria Public Library, Astoria, OR,
4. Multnomah County Central Library, Portland, OR,
5. Eugene Public Library, Eugene, OR,
6. Lake County Library, Lakeview, OR,
7. San Francisco Public Library, San Francisco, CA, and
8. Oakland Main Public Library, Oakland, CA.

Copies of the Draft EIS may be obtained by writing to U.S. Fish and Wildlife Service, Migratory Birds and Habitat Programs, Attn: Nanette Seto, 911 NE. 11th Avenue, Portland, OR 97232.

Background

Recent increases in the number of Caspian terns nesting in the Columbia River estuary, Oregon, have led to concerns over their potential impact on the recovery of threatened and endangered Columbia River salmon. In 1999, the Corps initiated a pilot project to relocate a large tern colony from Rice Island to East Sand Island, near the mouth of the estuary, where more marine fish are abundant, for the purpose of reducing tern predation on juvenile salmonids.

In 2000, Seattle Audubon, National Audubon, American Bird Conservancy, and Defenders of Wildlife filed a lawsuit against the Corps alleging that compliance with NEPA for the proposed action of relocating the large colony of Caspian terns from Rice Island to East Sand Island was insufficient, and against the Service in objection to the potential take of eggs as a means to prevent nesting on Rice Island. In 2002, all parties reached a settlement agreement. The settlement agreement stipulates that the Service, Corps, and

NOAA Fisheries prepare an EIS to address Caspian tern management in the Columbia River estuary and juvenile salmonid predation.

In the April 7, 2003 **Federal Register** (68 FR 16826), the Service published a Notice of Intent (NOI) to prepare an EIS for the proposed project. The NOI informed the public of the proposed scope of the EIS, solicited public participation in the scoping process, and announced public scoping meetings that were held in Washington, Oregon, and California in April and May 2003. The public scoping period closed on May 22, 2003. Comments received during the public scoping process were used in preparing the Draft EIS.

Purpose of and Need for Action

The purpose of the proposed action is to comply with the 2002 Settlement Agreement by identifying a management plan for Caspian terns in the Columbia River estuary that reduces resource management conflicts with ESA-listed salmonids while ensuring the conservation of Caspian terns in the Pacific Coast/Western region.

Alternatives Considered

The four alternatives considered in the Draft EIS are briefly described below, followed by features common to all alternatives.

Alternative A, the "No Action" alternative, assumes no change from the current management program on East Sand Island and is the baseline from which to compare the other alternatives. Under this alternative, six acres of nesting habitat would be prepared annually for Caspian terns on East Sand Island.

Alternative B would provide no management actions on East Sand Island. No habitat would be prepared for Caspian terns, most likely resulting in the elimination of tern nesting habitat on East Sand Island within 3 years.

Alternative C (Preferred Alternative) would reduce tern predation on juvenile salmonids in the Columbia River estuary by redistributing the tern colony on East Sand Island throughout the Pacific Coast/Western region. This would be achieved by reducing the tern nesting site on East Sand Island to approximately 1 to 1.5 acres and managing sites in Washington, Oregon, and California specifically for displaced Caspian terns. Potential management sites considered in this alternative include Dungeness National Wildlife Refuge, Washington; Summer, Crump, and Fern Ridge lakes, Oregon; and San Francisco Bay (three sites), California.

Alternative D would also reduce tern predation on juvenile salmonids by redistributing the tern colony on East Sand Island as proposed in Alternative C, with the only difference being implementation of a lethal control program if the redistribution efforts described in Alternative C are not successful in reducing the number of nesting terns on East Sand Island.

Action Common to All Alternatives

The following components are proposed to be implemented under all alternatives (A through D): (1) The Corps would continue efforts, such as hazing, to prevent Caspian tern nesting on upper estuary islands (*e.g.*, Rice Island, Miller Sands Spit, Pillar Rock Island) of the Columbia River estuary to prevent high tern predation rates of juvenile salmonids and comply with the 1999 Corps Columbia River Channel Operation and Maintenance Program Biological Opinion; (2) the Service would issue an egg take permit to the Corps for upper estuary islands (not including East Sand Island) if the efforts to prevent tern nesting at these sites fail; and (3) the Corps would resume dredged material (*e.g.*, sand) disposal on the downstream end of Rice Island, on the former Caspian tern nesting site.

Public Comments

Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address. All comments received from individuals on Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policies and procedures. When requested, the Service generally provides comment letters with the names and addresses of the individuals who wrote the comments. However, if the commenter requests that his or her telephone number be withheld, we will honor such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: June 23, 2004.

William F. Shake,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 04–16490 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Ranch View Terrace Project, University of California, Santa Cruz County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Regents of the University of California at Santa Cruz (UCSC) have applied to the U.S. Fish and Wildlife Service (Service or "we") for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 60-year permit to the applicant that would authorize take for the federally listed Ohlone tiger beetle (*Cicendela ohlone*) and the California red-legged frog (*Rana aurora draytonii*) incidental to otherwise lawful activities associated with the proposed Ranch View Terrace faculty housing development and Emergency Response Center. The proposed take would occur within the southwestern portion of the UCSC campus through the construction and occupation/operation of the proposed Ranch View Terrace faculty housing development, a portion of the proposed Emergency Response Center, and implementation of the habitat conservation plan (HCP).

We request comments from the public on the permit application and an Environmental Assessment, both of which are available for review. The permit application includes the proposed HCP and an accompanying Implementing Agreement. The HCP describes the proposed action and the measures that the applicant will undertake to minimize and mitigate take of the red-legged frog and the tiger beetle. To review the permit application or Environmental Assessment, see "Availability of Documents" in the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments should be received on or before September 21, 2004.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, (*see* **ADDRESSES**) telephone: (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the draft documents by contacting the Assistant Field Supervisor (*see* **ADDRESSES**). Copies of the draft documents are also available for public inspection and review at the following locations: (1) U.S. Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003; (2) City of Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060; (3) UCSC McHenry Library, 1156 High Street, Santa Cruz, California 95064; and (4) Ventura Fish and Wildlife Office Internet site: *http://ventura.fws.gov.*

Background

Section 9 of the Act and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act as including to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22.

In 1989, a long-range development plan (LRDP) was prepared for the UCSC, to provide a plan for anticipated campus growth through the year 2005. The Ranch View Terrace project is consistent with the LRDP and is necessary because the current supply of affordable on-campus housing for faculty is inadequate to meet current and future demands. The proposed Ranch View Terrace development and Emergency Response Center would partially implement the LRDP's program for campus growth to an enrollment of 15,000 students by 2005 by providing additional faculty housing and emergency response services to support the campus population. The tiger beetle and red-legged frog may be affected by the construction, occupation and operation of the Ranch View Terrace development and a portion of the Emergency Response Center, and the long-term monitoring and management of mitigation lands under the HCP.

The activities that would be covered by the proposed permit include the construction, occupation, and operation of a 13-acre faculty housing development and a 0.2-acre equipment storage site and building to support the Emergency Response Center. In addition, the long-term monitoring and management of mitigation lands under the HCP, developed to fulfill the requirements of the section 10(a)(1)(B) permit, would be covered by the proposed permit.

Our Environmental Assessment considers the environmental consequences of four alternatives, including: (1) The No Action Alternative, which consists of no development and no permit issuance; (2) the Proposed Action Alternative which consists of development of Ranch View Terrace and the Emergency Response Center with the issuance of the ITP and implementation of the HCP and Implementing Agreement; (3) the Off-Campus Housing Alternative, which consists of relocation of the project to an off-campus location known as the Swenson Site; and (4) the Reduced Project on Inclusion Area D Site which would cover a reduced area for the Ranch View Terrace development. Under the third alternative, the 11-acre site is located on Shaffer Road, adjacent to the UCSC Long Marine Laboratory; this alternative would require the development of a separate HCP and issuance of a separate ITP by the Service due to the presence of suitable red-legged frog and tiger beetle habitat. Under the fourth alternative, the housing development would still be located on Inclusion Area D, but would be located on the northwest area of the site and encompass approximately half the number of housing units, reduced landscaping, and fewer community-related amenities; the 0.2-acre equipment storage facility for the Emergency Response Center would still be constructed.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). Pursuant to an order issued on June 10, 2004, by the District Court for the District of Columbia in *Spirit of the Sage Council* v. *Norton* Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from issuing new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances, as defined by the Service's "No Surprises" rule published at 63 FR 8859 (February 23, 1998), until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedures Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the June 10, 2004, order has been rescinded or the Service's authority to issue permits with "No Surprises" assurances has been otherwise reinstated, the Service will not approve any incidental take permits or related documents that contain "No Surprises" assurances.

All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of red-legged frog and tiger beetle. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: July 19, 2004.

Paul Henson,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 04–16812 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Restoration Compensation Determination Plan/ Environmental Assessment for the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 60-day comment period.

SUMMARY: Notice is given that the document entitled: "Restoration and Compensation Determination Plan/ Environmental Assessment Grand

Calumet River, Indiana Harbor Ship Canal, Indiana Harbor Canal Natural Resource Damage Assessment" will be available for public review and comment on the date of publication in the **Federal Register**.

DATES: Written comments on the Plan must be submitted within 60 days of the date of this Notice.

ADDRESSES: Written comments may be mailed to: Supervisor, Ecological Services Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, Indiana 47403; faxed to (812) 334–4273; or: Natural Resource Trustee, Office of Legal Counsel, Indiana Department of Environmental Management, 100 N. Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015; faxed to (317) 233–5517.

FOR FURTHER INFORMATION CONTACT: This RCDP/EA is available on our Web site at: *http://midwest.fws.gov/GrandCalumetRiver*. For further information, contact Dan Sparks, Telephone 812–334–4261, extension 219; e-mail *Daniel_Sparks@fws.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this restoration compensation determination plan/environmental assessment is to aid in the development of restoration options for natural resources that have been injured in the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments resulting from exposure to hazardous substances released by area steel mills, refineries and other sources. This plan has been developed to address natural resource injury and resultant damages under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended.

Charles Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–16774 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

California District Advisory Council Meeting; Cancellation Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of cancellation for a meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, has cancelled the two-day public meeting scheduled Friday, August 27 from 8 a.m. to 5 p.m. and Saturday, August 28 from 8 a.m. to 1 p.m., at the Needles City Council Chambers, 1111 Bailey, Needles, California. The public will be notified when the meeting has been rescheduled.

FOR FURTHER INFORMATION CONTACT: Mr. Doran Sanchez, BLM California Desert District External Affairs (909) 697–5220.

Dated: July 19, 2004.

Linda Hansen,

District Manager.

[FR Doc. 04–16814 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, August 9, 2004, from 8 a.m. to 5 p.m., local time, and on Tuesday, August 10, 2004, from 8 a.m. to 12 p.m., local time.

ADDRESSES: The Advisory Board will meet at the Best Western Airport Plaza, 1981 Terminal Way, Reno, Nevada 89502, (775) 348–6370.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business August 4, 2004. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, August 9, 2004 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions
8:15 a.m. Old Business
Approval of May Minutes
Charter and 2005 Nominations Update
FY 04–FY 05 Updates
9:30 a.m. Break
9:45 a.m. Program Updates
Gathers
Facilities
12:30 p.m. Lunch
1:30 p.m. Old Business
Forest Service Update
Research and Census Update
2:30 p.m. Break
2:45 p.m. Old Business
USDA/BLM MOU
4 p.m. Public Comments
4:45 p.m. Recap/Summary
5–6 p.m. Adjourn: Roundtable Discussion

Tuesday, August 10, 2004 (8 a.m.–12 p.m.)

8 a.m. New Business
8:45 a.m. Board Recommendations
9:45 a.m. Break
10 a.m. Next Meeting/Date/Site Proposed Agenda Items
12 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on August 9, 2004, at the appropriate point

in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on August 9, 2004, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: July 16, 2004.

Ed Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 04–16919 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–34–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–2810–HT; GP4–0227]

Notice of Regulated Fire Closure for Bureau of Land Management Public Lands in the State of Washington

AGENCY: Bureau of Land Management, Spokane District, Interior.

SUMMARY: This fire closure, pursuant to 43 Code of Federal Regulations (CFR) 9212.2, prohibits building, maintaining, attending or using a campfire, stove fire, or charcoal fire on all BLM lands, including dispersed areas and all unimproved campgrounds. However, campfires are permissible in designated and improved campgrounds with steel fire rings, such as those at Coffeepot, Pacific Lake, and Twin Lakes. Liquified and bottled gas stoves and heaters are also allowed, provided they are within designated campground or picnic areas. This remains in effect beginning at 12:01 a.m. July 22, 2004 until further notice.

Specific prohibited actions include:

- Building, maintaining, attending or using a fire, campfire or stove fire, including charcoal briquette fire (43 CFR 9212.2).

Note: Liquified and bottled gas stoves and heaters are permitted provided that they are within an area at least 10 feet in diameter that is barren or clear of all flammable material.

- Smoking while traveling in timber, brush or grass areas, except in vehicles on roads, on barren or cleared areas at least 3 feet in diameter or boats on rivers and lakes.
- Operating any type of motorized vehicle off developed roadways. Parking of vehicles off roadways must be done in an area barren of flammable materials [43 CFR 9212.2(b)(1)].

Note: Developed roadways are those that are clear of flammable debris, berm to berm. Juniper Dunes Recreation Area is Exempt.

Pursuant to 43 CFR 9212.3(a), the following persons are exempt from this order:

- Persons with a permit that specifically authorized the otherwise prohibited act or omission.
- Any federal, state or local officer or a member of an organized rescue or firefighting force in the performance of an official duty.

Violation of these prohibitions is punishable by a fine of not more than $1,000 or to imprisonment of not more than 12 months, or both.

FOR FURTHER INFORMATION CONTACT: Scott Boyd, Fire Management Officer, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call (509) 536–1200.

Dated: July 19, 2004.

Joseph K. Buesing,

District Manager.

[FR Doc. 04–16813 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–04–1610–DR–241E]

Notice of Availability of Record of Decision for the NTTR Resource Management Plan (RMP)/ Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) management policies and Public Law 106–65, the BLM announces the availability of the RMP/ROD for the Nevada Test and Training Range (NTTR) Resource Management Plan (RMP)/ Environmental Impact Statement (EIS), located in the Las Vegas Field Office area of administration. The Nevada State Director will sign the RMP/ROD, which becomes effective immediately.

ADDRESSES: Copies of the NTTR RMP/ ROD are available upon request from the Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 North Torrey Pines Drive, Las Vegas, Nevada, 89130 or via the Internet at *http://www.nv.blm.gov/vegas*, provided Internet access is available.

FOR FURTHER INFORMATION CONTACT: Jeffrey G. Steinmetz at 4701 North Torrey Pines Drive, Las Vegas, NV 89130, 702–515–5097, *jsteinme@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: The NTTR RMP/ROD was developed with broad public participation through a 3 year collaborative planning process. BLM completed six scoping meetings and four public comment meetings prior to

releasing the Proposed RMP/FEIS. In addition, BLM extensively coordinated with the Military to ensure all safety and mission operation concerns were resolved. After this coordination was completed the Military and BLM supported the Proposed RMP/FEIS, as written. This RMP/ROD addresses management on approximately 1.5 million acres of withdrawn public land in the planning area. The NTTR RMP/ROD is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, wild horse management, livestock grazing, limited hunting recreation and military mission and safety objectives.

The approved NTTR RMP is essentially the same as Alternative B in the Proposed NTTR RMP/Final Environmental Impact Statement (PRMP/FEIS), published in May 2003. The primary difference being, the Military and BLM agreed to an Appropriate Management Level (AML) of 300–500 for wild horses. The Military felt comfortable that this lower number of horses would significantly reduce mission and safety concerns and still allow management of wild horses on the NTTR. BLM received 1 protest to the PRMP/FEIS. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the PRMP/FEIS. As a result, only minor editorial modifications were made in preparing the RMP/ROD. These modifications corrected errors that were noted during review of the PRMP/FEIS and provide further clarification for some of the decisions. An errata sheet is included with the RMP/ROD that identifies the location of the corrections in the PRMP/FEIS.

Dated: March 29, 2004.

Mark T. Morse,

Field Manager Las Vegas.

[FR Doc. 04–16854 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–HK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[31¼% to CO–956–1420–BJ–0000–241A, 25% to CO–956–1420–BJ–SUPP–241A, 6¼% to CO–956–1910–BJ–4198–241A, 6¼% to CO–956–1420–BJ–CAPD–241A, 18¾% to CO–956–1420–BJ–TRST–241A, 12½% to-CO–956–9820–BJ–CO01–241A]

Colorado: Filing of Plats of Survey

July 14, 2004.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., July 14, 2004. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurveys and survey in Township 3 South, Range 87 West, Sixth Principal Meridian, Group 1246, Colorado, was accepted April 7, 2004.

The plat, of the entire record, representing the dependent resurvey and survey in Township 46 North, Range 12 East, New Mexico Principal Meridian, Group 1362, Colorado, was accepted April 13, 2004.

The plat (in 2 sheets), representing the dependent resurveys and surveys in Township 44 North, Range 7 East, New Mexico Principal Meridian, Group 1292, Colorado, was accepted May 27, 2004.

The plat, of the entire record, representing the dependent resurvey of certain mineral surveys in Suspended Township 43 North, Range 6 West, New Mexico Principal Meridian, Group 1238, Colorado, was accepted June 22, 2004.

The plat representing the dependent resurveys and surveys in Township 1 North, Range 81 West, Sixth Principal Meridian, Group 1328, Colorado, was accepted June 23, 2004.

The supplement plat amending Lot 13 to Lot 15in the SW¼SW¼ of Section 32, Township 41 North, Range 11 West, New Mexico Principal Meridian, Colorado, was accepted May 13, 2004.

The supplemental plat cancelling Tracts 37, 38, and 39, in Township 6 South, Range 95 West, Sixth Principal Meridian, Colorado, was accepted June 17, 2004. (Group 719)

The supplemental plat cancelling Tracts 37, in Township 7 South, Range 95 West, Sixth Principal Meridian, Colorado, was accepted June 17, 2004. (Group 719)

The supplemental plat cancelling Tracts 37, 39, 40, and 41, in Township 8 South, Range 96 West, Sixth Principal Meridian, Colorado, was accepted June 17, 2004. (Group 719)

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat (in 2 sheets), representing the dependent resurveys, in Township 33 North, Range 2 West, New Mexico Principal Meridian, Group 1307, Colorado, was accepted April 20, 2004.

The plat representing the dependent resurvey, corrective dependent resurvey and survey, in Township 33 North, Range 7 West, New Mexico Principal Meridian, Group 980, Colorado, was accepted May 10, 2004.

The plat representing the corrective dependent resurvey in Township 33 North, Range 11 West, New Mexico Principal Meridian, Group 856, Colorado, was accepted May 13, 2004.

These surveys and plats were requested by the Bureau of Indian Affairs for administrative and management purposes.

The plat, of the entire record, representing the dependent resurvey and survey in Section 30, Township 27 South, Range 56 West, Sixth Principal Meridian, Group 1268, Colorado, was accepted June 3, 2004.

The plat, of the entire record, representing the dependent resurvey and survey in Section 25, Township 26 South, Range 55 West, Sixth Principal Meridian, Group 1269, Colorado, was accepted June 3, 2004.

The plat representing Amended Protraction Diagram Number 40, covering Township 1 South, Range 90 West, Sixth Principal Meridian, Colorado, was accepted June 22. 2004.

These surveys and plats were requested by the U.S. Forest Service for administrative and management purposes.

The supplemental plat portraying the location of three parcels of land acquired by the Bureau of Reclamation, in Township 5 South, Range 92 West, Sixth Principal Meridian, Colorado, was accepted May 5, 2004.

This plat was requested by the Bureau of Reclamation for administrative and management purposes.

Randy Bloom,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 04–16775 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–04–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David J. Clark, Acting Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION: 1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on May 6, 2004: The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 13, Township 47 North, Range 58 East, Mount Diablo Meridian, Nevada, under Group No. 812, was accepted May 4, 2004.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on June 10, 2004: The supplemental plat, showing a subdivision of lot 1, sec. 12, T. 19 S., R. 60 E., Mount Diablo Meridian, Nevada, was accepted June 8, 2004.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

3. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on June 24, 2004: The supplemental plat, showing a subdivision of lots 7 and 8, sec. 11, T. 21 S., R. 62 E., Mount Diablo Meridian, Nevada, was accepted June 22, 2004.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: July 14, 2004.

David J. Clark,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 04–16776 Filed 7–22–04; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Second Review)]

Barium Chloride From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (the Act),[2] that revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 2, 2004 (69 FR 4979), and determined on May 7, 2004, that it would conduct an expedited review (69 FR 28947, May 19, 2004).

The Commission transmitted its determination in this review to the Secretary of Commerce on July 1, 2004. The views of the Commission are contained in USITC Publication 3702 (July 2004), entitled *Barium Chloride From China: Investigation No. 731–TA–149 (Second Review).*

Issued: July 20. 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16905 Filed 7–22–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–437 (Final) and 731–TA–1060 and 1061 (Final)]

Carbazole Violet Pigment 23 From China and India

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–437 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–1060 and 1061 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from India and less-than-fair-value imports from China and India of carbazole violet pigment 23 provided for in subheading 3207.17.90 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor ((202) 205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of carbazole violet pigment 23, and that such products from China and India are being sold in the United States

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 19 U.S.C. 1675(c).

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-;dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$. The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of these investigations."

at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 21, 2003, by Nation Ford Chemical Co., Fort Mill, SC, and Sun Chemical Corp., Fort Lee, NJ.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 27, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 10, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 29, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 3, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 3, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 17, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 17, 2004. On December 3, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 7, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16867 Filed 7–22–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–326 (Second Review)]

Frozen Concentrated Orange Juice from Brazil

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on frozen concentrated orange juice from Brazil.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On July 6, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (69 FR 17230, April 1, 2004) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: July 20, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16868 Filed 7–22–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Second Review)]

Sorbitol From France

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930,[3] that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 2, 2004 (69 FR 4981), and determined on May 7, 2004, that it would conduct an expedited review (69 FR 28949, May 19, 2004).

July 16, 2004.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioners Charlotte R. Lane and Daniel R. Pearson dissenting.

[3] 19 U.S.C. 1675(c).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16652 Filed 7–22–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes; Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit information for 2004 monitoring reports and notice that future reports will be made available only in electronic format.

SUMMARY: Pursuant to statute (*see* below), the Commission monitors U.S. imports of fresh or chilled tomatoes and fresh or chilled peppers, and gathers data on such imports. The Commission has made this data series available to the public on an annual basis. The Commission is in the process of preparing its data series for the period ending June 30, 2004, and is seeking input from interested members of the public for the reports it plans to publish in November. The Commission is also giving notice that, beginning with the November 2004 reports, it will make such reports available only in electronic format, posted on the Commission's Web site.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* July 15, 2004.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324, *mccarty@usitc.gov*) or Cathy Jabara (202–205–3309, *jabara@usitc.gov*), Agriculture and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, for general information, or William Gearhart (202–205–3091, *wgearhart@usitc.gov*), Office of the General Counsel, U.S. International Trade Commission, for information on legal aspects. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Background.—Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act (19 U.S.C. 3881)) requires that the Commission monitor U.S. imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. It does not require that the Commission publish reports on this monitoring activity or otherwise make the information available to the public. However, the Commission maintains current data files on tomatoes and peppers in order to conduct an expedited 21-day investigation should a request be received.[1] In response to the monitoring directive, the Commission instituted investigation No. 332–350, *Monitoring of U.S. Imports of Tomatoes* (59 FR 1763) and investigation No. 332–351, *Monitoring of U.S. Imports of Peppers* (59 FR 1762).

Under this proposal, data files will be stored electronically and will be maintained and made available to the public on the Commission's Web site until one year after the monitoring requirement expires on January 1, 2009. The most recent monitoring reports were published in November 2003 for tomatoes and peppers.

Written submissions.—The Commission does not plan to hold a public hearing in connection with these investigations. However, interested persons are invited to submit written statements concerning the manner in which these reports will be made available or matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting

[1] The domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its decision and to transmit any provisional relief recommendation to the President.

confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. The Commission will not include any confidential business information in its monitoring reports, but may include such information in a report to the President under section 202 or 302 if a request for such an investigation were received. To be assured of consideration by the Commission, written statements relating to the Commission's reports should be submitted to the Commission in accordance with section 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on August 27, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Person with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Issued: July 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16869 Filed 7–22–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on April 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aurora Cable TV, Ltd., Aurora, Ontario, Canada; Mountain Cablevision Limited, Hamilton, Ontario, Canada; and Cable Bahamas Ltd., Nassau, the Bahamas, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notification disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 29, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 22, 2003 (68 FR 60416).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–16863 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on June 24, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Citrix Systems, Inc., Fort Lauderdale, FL; Everypath, Santa Clara, CA; Fiberlink Communications, Blue Bell, PA; Inmarsat Ltd., London, United Kingdom; Intel Corporation, Santa Clara, CA; Symbian Ltd., London, United Kingdom; and Telefonica Data USA, Inc., Miami, FL.

The nature and objectives of the venture are (a) to promote the use, sale and adoption of mobile computing and communications technologies, architectures, methodologies, services and solutions ("Mobile Enterprise Products") in business, government and enterprise markets ("Enterprise Markets"); (b) to provide education to Enterprise Markets about Mobile Enterprise Products; to promote such Mobile Enterprise Products and other solutions worldwide; (c) to develop and implement a Communications Plan to provide this education on a worldwide basis; (d) to develop and promote third-party information and events focused on Mobile Enterprise Products and their use in Enterprise Markets; (e) to operate an awards program recognizing individual enterprise organizations for successful adaptation of Mobile Enterprise Products to business processes; and (f) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–16862 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative ("OSCI")

Notice is hereby given that, on June 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Calypto Design Systems, Inc., Santa Clara, CA; Eklectic Ally, Inc., Austin, TX; Fraunhofer Institute for Integrated Circuits, Erlangen, Germany; SpiraTech Ltd., Manchester, United Kingdom; STMicroelectronics, Geneva, Switzerland; and Verisity Design, Inc., Mountain View, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notification disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on January 12, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 12, 2004 (69 FR 7013).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–16860 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—USB Flash Drive Alliance ("UFDA")

Notice is hereby given that, on June 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), USB Flash Drive Alliance ("UFDA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Memory Expert International, Montreal, Quebec, CANADA; and Infineon Technologies Flash GmbH & Co. KG, Munich, GERMANY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and USB Flash Drive Alliance ("UFDA") intends to file additional written notification disclosing all changes in membership.

On November 12, 2003, UFDA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 12, 2003 (68 FR 69423).

The last notification was filed with the Department on January 12, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 12, 2004 (69 FR 7014).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–16861 Filed 7–22–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,972]

CBCA Administrator, a Division of CBCA, Inc., Fort Worth, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at CBCA Administrators, a division of CBCA, Inc., Fort Worth, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,972; CBCA Administrator, a division of CBCA, Inc., Fort Worth, Texas (July 16, 2004).

Signed at Washington, DC, this 16th day of July 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–16766 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,196]

Celanese, Bishop, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 2004, in response to a petition filed by a company official on behalf of workers at Celanese, Bishop, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of July 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16765 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,746]

Eureka Security Printing, Jessup, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Eureka Security Printing, Jessup, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,746; Eureka Security Printing Jessup, Pennsylvania (July 16, 2004)

Signed at Washington, DC, this 16th day of July, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–16768 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 2, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 2, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of July 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/28/2004 and 06/30/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,148	FAG Interamericana (Wkrs)	Miami FL	06/28/2004	06/25/2004
55,149	Oregon Panel Products (OR)	Lebanon, OR	06/28/2004	06/28/2004
55,150	T.L. Care, Inc. (Wkrs)	San Francisco, CA	06/28/2004	06/24/2004
55,151	Charleston Hosiery (Wkrs)	Ft. Payne, AL	06/28/2004	06/18/2004
55,152	Dresser Inc. (Wkrs)	Houston, TX	06/28/2004	06/18/2004
55,153	Industrial Engraving and Mfg. Corp. (Comp)	Putaski, WI	06/28/2004	06/24/2004
55,154	Apollo Knitwear, Inc. (Wkrs)	LaFayette, GA	06/28/2004	06/17/2004
55,155	Prince Mfg. (Comp)	Greenville, NC	06/28/2004	06/25/2004
55,156	Georgia Pacific (Wkrs)	Green Bay, WI	06/28/2004	06/07/2004
55,157	Crediteck (Wkrs)	Wilkes-Barre, PA	06/28/2004	06/22/2004
55,158	GlobalWare Solutions (Wkrs)	Haverhill, MA	06/28/2004	06/09/2004
55,159	Alexander-Harris Co. (Comp)	Pelham, GA	06/28/2004	06/25/2004
55,160	A.H. Schreiber Co. (Comp)	Bristol, TN	06/29/2004	06/29/2004
55,161	Chattanooga General Services, Inc. (Comp)	Chattanooga, TN	06/29/2004	06/10/2004
55,162	Vaughan-Bassett Furniture Co., Inc. (Comp)	Sumter, SC	06/29/2004	06/29/2004
55,163	Shure Inc. (Wkrs)	El Paso, TX	06/29/2004	06/10/2004
55,164	TITMUS Optical, Inc. (Comp)	Petersburg, VA	06/29/2004	06/24/2004
55,165	Creo Seattle (Creo America, Inc.) (WA)	Lynnwood, WA	06/29/2004	06/28/2004
55,166	E–Z–GO Textron (GA)	Augusta, GA	06/29/2004	06/29/2004
55,167	Textron Fastening Systems (UAW)	Warren, MI	06/29/2004	06/25/2004
55,168	Dell World Trade LP (TX)	Round Rock, TX	06/29/2004	06/29/2004
55,169	Ciprico (MN)	Plymouth, MN	06/29/2004	06/29/2004
55,170	Solvay Fluorides, Inc. (Comp)	Alorton, IL	06/30/2004	06/23/2004
55,171	TW Metals (Wkrs)	Cambridge, OH	06/30/2004	06/29/2004
55,172	Cardinal Health/Medical Products and Ser (Comp)	El Paso, TX	06/30/2004	06/24/2004
55,173	Facemake Corp. (Wkrs)	Greenwood, SC	06/30/2004	06/29/2004
55,174	Melling Forging Co. (MI)	Lansing, MI	06/30/2004	06/29/2004
55,175	Levi Strauss and Co. (Wkrs)	Knoxville, TN	06/30/2004	06/22/2004
55,176	Tooling Unlimited, Inc. (Comp)	Linolakes, MN	06/30/2004	06/28/2004
55,177	Angus Consulting Management, Inc. (Comp)	Oklahoma City, OK	06/30/2004	05/31/2004
55,178	Wellington Cordage LLC (Comp)	Leesville, SC	06/30/2004	06/18/2004
55,179	MCI (NPW)	Springfield, MO	06/30/2004	06/10/2004
55,180	Rainbow Swimwear, Inc. (Wkrs)	Brooklyn, NY	06/30/2004	05/26/2004

[FR Doc. 04–16764 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,434]

Gale Group, a Division of The Thomson Corp., Belmont, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Gale Group, a division of The Thomson Corporation, Belmont, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,434; Gale Group, A division of The Thomson Corporation, Belmont, California (July 13, 2004).

Signed in Washington, DC, this 16th day of July, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–16770 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,375]

International Paper Company, Atlantic Region Forest Division, Georgetown, South Carolina; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 3, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA).

The denial notice applicable to workers of International Paper Company, Atlantic Region Forest Division, Georgetown, South Carolina was signed on May 12, 2004, and published in the **Federal Register** on June 2, 2004 (69 FR 31135).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at International Paper Company, Atlantic Region Forest Division, Georgetown, South Carolina engaged in administrative and staff support functions associated with the management of forest lands. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

In the request for reconsideration a petitioner contends that the Department erred in its interpretation of work performed at the subject facility and alleges that the petitioning workers performed administrative and procurement activities for several mills in North Carolina and Georgia, which were impacted by the Canadian and European imports.

A company official was contacted in regards to these allegations. It was revealed upon further investigation that the petitioning workers were engaged in land sales, environmental activities and GIS development for the Forest Resources Division of the International Paper Company. Furthermore, the nature of work that the workers performed had no direct relationship with the production within the Forest Resources Division, nor did they support production at any of the International Paper Company mills. The official further stated that the establishment of a new business strategy to lower operating cost through the elimination, consolidation and reorganization of a number of managerial and administrative job functions within the Forest Resources Division caused the workers separations at the subject firm during the relevant time period.

The petitioner further alleges that because workers of the International Paper, Augusta, Maine were granted certification in December of 2003, workers of the subject firm should be also eligible for TAA.

A review of the case concerning International Paper, Augusta, Maine (TA-W–53,534) revealed that the displaced workers of the Augusta facility were engaged in activities directly related to the production of light-weight coated paper for the publishing industry insofar as they procured logs from company woodlands and provided them to an affiliated TAA certified International Paper, Bucksport, Maine (TA–W–53,533).

The current investigation did not establish any relationship between the production facilities and dislocated workers of the International Paper Company, Atlantic Region Forest Division, Georgetown, South Carolina.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16771 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 54,444]

Irving Forest Products, inc., Pinkham Lumber Mili, Ashland, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 8, 2004, in response to a petition filed by a representative of the Paper, Allied-Industrial, Chemical & Energy Workers International Union, Local 1–1310 on behalf of workers at Irving Forest Products, Inc., Pinkham Lumber Mill, Ashland, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of July, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16769 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,772]

Metzeler Automotive Profile Systems, Iowa Division, Keokuk, IA; Notice of Revised Determination on Reconsideration Regarding Alternative Trade Adjustment Assistance

By letter dated June 16, 2004, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification was signed on May 21, 2004. The notice was published in the **Federal Register** on June 17, 2004 (69 FR 33942).

The initial investigation determined that the workers possess skills that are easily transferable within the local commuting area.

The petitioner provided new information to show that there are no comparable jobs available in the local commuting area. Additional investigation has determined that a significant number of workers in the workers' firm are fifty years of age or older. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

"All workers of Metzeler Automotive Profile System, Iowa Division, Keokuk, Iowa, who became totally or partially separated from employment on or after April 19, 2003, through May 21, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Signed in Washington, DC, this 13th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16767 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,938]

Oshkosh B'Gosh, Inc., Oshkosh, Wisconsin; Notice of Determination Regarding Application for Reconsideration

By application of February 3, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on January 12, 2004 and published in the **Federal Register** on February 6, 2004 (69 FR 5866).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Oshkosh B'Gosh, Inc., Oshkosh, Wisconsin engaged in activities related to information technology and administrative services at the Corporate Headquarters, was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner alleges that the petitioning group of workers were in direct contact with and solely responsible in supplying communications support to Oshkosh B'Gosh manufacturing facilities in Albany and Liberty, Kentucky. The workers of these facilities were certified eligible for TAA on November 24, 2003.

A company official was contacted to verify whether workers at the subject facility were performing services for Oshkosh B'Gosh manufacturing plants during the relevant period. The company official stated that only workers of the Computer Marking Department and Information Technology Department of the subject firm were in support of production at the manufacturing facilities within Oshkosh B'Gosh, Inc. Workers of these departments performed information technologies functions and prepared computerized instructions for production affiliates and were separately identifiable from all other workers at the subject facility. It was further revealed that the worker separations from Computer Marking and Information Technology Departments were caused by a reduced demand for their services from several manufacturing subdivisions which shifted production to foreign countries during the relevant period. The official further reported that the rest of the employees separated from the subject firm during the relevant time period did not support production at the manufacturing facilities and were not affected by their closures.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers of the Oshkosh B'Gosh, Inc., Computer Marking Department and Information Technology Department, Oshkosh, Wisconsin.

The group eligibility criteria for the ATAA program that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The Department has determined that criterion 1 has not been met. The investigation revealed that less than three workers of the affected group of workers are age 50 of over.

Conclusion

After careful review of the facts obtained in the investigation, I determine that increases of imports of articles like or directly competitive with articles produced by Oshkosh B'Gosh, Inc. contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of the Oshkosh B'Gosh, Inc., Computer Marking Department and Information Technology Department, Oshkosh, Wisconsin, who became totally or partially separated from employment on or after December 29, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974 and;

I further determine that all other workers at Oshkosh B'Gosh, Inc., Oshkosh, Wisconsin are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–16772 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delaying the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of July 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–16484 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0103 (2004)]

Ionizing Radiation Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information-collection requirements contained in the Ionizing Radiation Standard (29 CFR 1910.1096).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by September 21, 2004.

Facsimile and electronic transmission: Your comments must be received by September 21, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0103 (2004), by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov/*. Follow instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Webpage at *http://OSHA.gov*. Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage.

Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95)(44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for

enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The information-collection requirements specified in the Ionizing Radiation Standard protect employees from the adverse health effects that may result from their exposure to ionizing radiation. The requirements of the Ionizing Radiation Standard include monitoring of employee exposure to ionizing radiation, instruction employees on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting of caution signs at radiation areas, reporting of employee overexposure to OSHA, maintaining exposure records, and providing exposure records to current and former employees.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements contained in the Ionizing Radiation Standard (29 CFR 1910.1096). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information-collection requirement contained in the Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Ionizing Radiation (29 CFR 1910.1096).

OMB Number: 1218–0103.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 12,113.

Frequency of Response: Occasionally/Quarterly/Annually/Immediately/Within 24-hours/Within 30 days.

Total Responses: 196,844.

Average Time Per Response: Time per response varies from 5 minutes to maintain radiation-exposure records to 30 minutes (.5 hours) for employers to gather and prepare training materials and to provide training to employees.

Estimated Total Burden Hours: 37,398 hours.

Estimated Cost (Operation and Maintenance): $2,022,648.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 15, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–16823 Filed 7–22–04; 8:45 am]

BILLING CODE 4510–26–M

MILLENNIUM CHALLENGE CORPORATION

Section 614 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D); FR 04–09; Notice of July 27, 2004, MCC Public Outreach Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10:30–11:30 a.m., July 27, 2004.

PLACE: General Services Administration, main auditorium, 1800 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Cassandra Jastrow at 202–521–3854.

STATUS: Meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Millennium Challenge Corporation (MCC) will hold a public outreach meeting on July 27, 2004. The MCC CEO and MCC staff will update interested members of the public on MCC operations to date, including the MCC staff visits to MCC eligible countries for FY '04, and the selection of the MCC candidate countries for FY '05.

Due to security requirements at the meeting location, all individuals wishing to attend the meeting are encouraged to arrive at least 20 minutes before the meeting begins and must comply with all relevant security requirements of the General Services Administration. Seating will be available on a first come, first served basis.

Dated: July 21, 2004.

John C. Mantini,

Assistant General Counsel, Millennium Challenge Corporation.

[FR Doc. 04–16961 Filed 7–21–04; 2:04 pm]

BILLING CODE 9210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, July 22, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2004.
3. Proposed Rule: Part 708b of NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.
4. Proposed Rule: Part 708a of NCUA's Rules and Regulations, Conversion of Insured Credit Unions to Mutual Savings Banks.
5. Final Rule: Part 705 of NCUA's Rules and Regulations, Community Development Revolving Loan Program for Credit Unions.
6. Final Rule: Parts 721 and 724 of NCUA's Rules and Regulations, Health Savings Accounts.
7. Final Rule: Part 745 of NCUA's Rules and Regulations, Share Insurance Coverage for Living Trust Accounts.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 22, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Insurance Appeal. Closed pursuant to Exemption (6).
2. One (1) Personnel Matter. Closed pursuant to Exemptions (2) and (6).

Becky Baker,

Secretary of the Board.

[FR Doc. 04–16925 Filed 7–21–04; 8:45 am]

BILLING CODE 7535–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pay Rate Report.

(2) *Form(s) submitted:* UI–1e.

(3) *OMB Number:* 3220–0097.

(4) *Expiration date of current OMB clearance:* 10/31/2004.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 350.

(8) *Total annual responses:* 350.

(9) *Total annual reporting hours:* 29.

(10) *Collection description:* Under the Railroad Unemployment Insurance Act, the daily benefit rate for unemployment and sickness benefits depends on the employee's last daily rate of pay. The report obtains information from the employee and verification from the employer of the claimed rate of pay for use in determining whether an increase in the daily benefit rate is due.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–16777 Filed 7–22–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8443; 34–50033; IC–26497; File No. S7–28–03]

RIN 3235–AI95

Disclosure of Breakpoint Discounts by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB Approval of Collections of Information.

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has approved the collection of information requirements contained in Disclosure of Breakpoint Discounts by Mutual Funds,[1] titled "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies" (OMB Control No. 3235–0307).

Dated: July 16, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16786 Filed 7–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IA–2265; IC–26498; File No. S7–03–03]

RIN 3235–AI77

Compliance Programs of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

FOR FURTHER INFORMATION CONTACT: Jamey Basham, Branch Chief, Office of Investment Adviser Regulation, Division of Investment Management, (202) 942–0719, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has approved the collection of information requirements contained in Compliance Programs of Investment Companies and Investment Advisers,[1] titled "Rule 206(4)–7," (OMB Control No. 3235–0585); "Rule 204–2," (OMB Control No. 3235–0278); and "Rule 38a–1," (OMB Control No. 3235–0586).

Dated: July 19, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16787 Filed 7–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 26, 2004:

A closed meeting will be held on Thursday, July 29, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, July 29, 2004, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Litigation matter;

Amicus; and

Regulatory matter regarding a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

[1] Investment Company Act Release No. 26464 (June 7, 2004) [69 FR 33262 (June 14, 2004)].

[1] Investment Advisers Act Rel. No. 2204 (Dec. 17, 2003) (68 FR 74714 (Dec. 24, 2003)).

Dated: July 20, 2004.
Jonathan G. Katz,
Secretary.
[FR Doc. 04–16887 Filed 7–20–04; 4:44 pm]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50036; File No. SR–NASD–2004–039]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Reduce the Time for Chairperson Selection

July 19, 2004.

I. Introduction

On March 4, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NASD Rule 10308 to reduce the time allotted the parties to an arbitration for chairperson selection.[3] On May 13, 2004, NASD filed Amendment No. 1 to the proposed rule change.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on June 18, 2004.[5] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change would reduce the time allotted the parties to arbitration for chairperson selection from fifteen days to seven days. Parties can have up to eight additional days provided they notify NASD prior to the expiration of the original deadline that they need more time in which to reach agreement.

III. Discussion

For the following reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In its filing, NASD states that under current NASD Rule 10308, under which parties are given fifteen days in which to select a chairperson, in a majority of cases the parties fail to agree on a chairperson. As a result, NASD contends that the current fifteen-day selection period unnecessarily delays the arbitration process.[7] The Commission believes the NASD's goal of streamlining the arbitration process is appropriate and believes that the current proposal will help NASD achieve that goal while assuring parties of an adequate opportunity to participate in the selection of the chairperson. In particular, the proposal gives the parties seven days in which to select a chairperson while allowing the parties to apply for an additional eight days when they require more time to reach agreement. The Commission anticipates that in the great majority of cases the parties will either agree on a chairperson or agree to disagree and thereby permit NASD to select the chairperson within the time allotted under the proposed rule. As a result, the Commission believes the proposal should remove an unnecessary delay from the arbitration process while giving parties the flexibility to apply for additional time when they are negotiation in good faith to reach an agreement on a chairperson.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2004–039) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 04–16788 Filed 7–22–04; 8:45 am]
BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated March 3, 2004.

[4] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2004.

[5] *See* Securities Exchange Act Release No. 49852 (June 14, 2004), 69 FR 34205.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] Securities Exchange Act Release No. 49852 (June 14, 2004), 69 FR 34205, 34206 (June 18, 2004).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 4785]

60-Day Notice of Proposed Information Collection: DS 4053, Department of State Mentor-Protégé Program Application, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Mentor-Protégé Program Application.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New collection.

Originating Office: Bureau of Administration, Office of Small and Disadvantaged Business Utilization—A/SDBU.

- *Form Number:* DS 4053.
- *Respondents:* Small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts.
- *Estimated Number of Respondents:* 20 respondents per year.
- *Estimated Number of Responses:* 10 per year.
- *Average Hours Per Response:* 21.
- *Total Estimated Burden:* 210.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from July 23, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *culbrethpb@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): A/SDBU, Patricia Culbreth, SA–6, Room L–500, Washington, DC 20522–0602.
- Fax: 703–875–6825.
- Hand Delivery or Courier: 1701 North Ft. Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information

collection and supporting documents, to Patricia Culbreth, A/SDBU, SA–6, Room L–500, Washington, DC 20522–0602 who may be reached on 703–875–6881. E-mail: *culbrethpb@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

- This information collection facilitates implementation of a mentor-protégé program that encourages business agreements between small and large for-profit companies planning to team together in an official mentor-protégé capacity to improve the likelihood of winning DOS contracts. Such a program should assist the State Department OSDBU office in reaching its small business goals.

Methodology:

- Respondents may submit the information by e-mail using DS–4053, or by letter using fax or postal mail.

Additional Information: None.

Dated: June 21, 2004.

Durie N. White,

Operations Director, Office of Small and Disadvantaged Business Utilization, Department of State.

[FR Doc. 04–16859 Filed 7–22–04; 8:45 am]

BILLING CODE 4710–24–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Federally Obligated Property Release at Scott County Municipal Airport, Oneida, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Chairman, Scott County Airport Authority to waive the requirement that a 2.11-acre parcel of federally obligated property, located at Scott County Municipal Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Bldg. G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Floyd H. (Brom) Shoemaker, II, Chairman, Scott County Airport Authority, at the following address: Scott County Airport, 2260 Airport Road, Oneida, TN 37841.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8186. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Scott County Airport Authority to release a parcel of land, containing 2.11 acres of federally obligated property at Scott County Municipal Airport. The property will be sold for expansion of an existing business. The land to be released is located on the far side of a much larger tract that was purchased for aviation related development on the northwest side of the airfield. The entire tract had to be purchased to avoid leaving an uneconomic remnant. The land proposed for release is not needed for aviation development and the proceeds from the sale can be used to assist in replacing an existing hangar that is in the OFA.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Scott Airport Authority.

Issued in Memphis, Tennessee, on July 16, 2004.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 04–16847 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, Wood County Regional Airport, Bowling Green, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of one parcel of land described as Wood County Parcel ID#B07511180301029001 consisting of a 2.15 acre triangle of vacant land lying northeast of North College Road. The land was acquired under FAA Project No. 88–1–3–39–0010–0690. There are no impacts to the airport by allowing the airport to dispose of the property. The Wood County Regional Airport Authority is proposing to sell the property to the Bowling Green Recycling Center, Inc. The revenue made from the sale will be used toward Airport Capital Improvement.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with § 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Hodges, Airport Manager, Wood County Regional Airport, 1255 East Poe Road, Bowling Green, Ohio 43402. Telephone Number ((419) 354–2908)/ Fax Number ((419–352–5075). Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Bowling Green, Wood County, Ohio, and described as follows:

Situated in the City of Bowling Green, Center Township, Wood County, Ohio,

and being a part of the southwest fractional quarters of Section eighteen (18), Town five (5) North, Range eleven (11) East, also being a part of a tract of land as conveyed to Armco, Inc. by deed recorded in Volume 547, page 881, Wood County Deed Records, and being more particularly described as follows:

Commencing, for reference, at a found pony spike at the south quarter post of Section eighteen (18); thence north eighty-eight (88) degrees, thirty-three (33) minutes, fifty-three (53) seconds west, six hundred sixty-five (665) feet on and along the south line of Section eighteen (18) and the center of East Poe Road to the southeast corner of aforesaid Armco tract of land; thence north zero (00) degrees, forty (40) minutes, twenty-nine (29) seconds east, six hundred eighty-six and fifty-seven hundredths (686.57) feet along the east line of aforesaid Armco tract of land to a point, forty-five (45) feet easterly of the centerline of right of way for North College Extension, said point being the principle place of beginning for the tract herein to be described; thence north twenty-five (25) degrees, forty-two (42) minutes, thirteen (13) seconds west, three hundred eighty-one and thirty-four hundredths (381.34) feet to a point, forty-five (45) feet easterly of the centerline of right of way for North College Extension and the beginning of a non-tangent curve concave to the southwest having a radius of two thousand eight hundred nineteen and seventy-nine hundredths (2819.79) feet; thence northwesterly along said curve three hundred five and eighty-nine hundredths (305.89) feet to a point, at the beginning of a non-tangent line, said point being at the intersection of the north line of said Armco tract and said easterly right of way line, and being forty-five (45) feet easterly of the centerline of right of way for North College Extension, (a chord-three hundred five and seventy-four hundredths (305.74) feet north, twenty-one degrees, fourteen (14) minutes, twenty-nine (29) seconds west); thence south eighty-eight (88) degrees, forty-two (42) minutes, thirty-one (31) seconds east, two hundred eighty-three and fifty-six hundredths (283.56) feet on and along said north line to a found concrete monument with iron pin at the northeast corner of said Armco tract; thence south zero (00) degrees, forty (40) minutes, twenty-nine (29) second west, six hundred twenty-two and twenty-three hundredth (622.23) feet on and along the east line of said Armco tract to the point of beginning enclosing an area of two and fifteen hundredths (2.15) acres of land, more or less. The bearings referred to herein are based upon an assumed meridian and are used only for the purpose of angular measurement.

Issued in Romulus, Michigan, on July 7, 2004.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 04–16849 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of a Finding of No Significant Impact (FONSI) and Record of Decision (ROD) on a Final Environmental Assessment (FEA) for the Proposed Federal Action at Covington Municipal Airport, Covington, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of the approval of a FONSI/ROD on an FEA for a proposed Federal action Covington Municipal Airport, Covington, GA. The FONSI/ROD states that the proposed projects are consistent with the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

The FEA evaluated Covington Municipal Airport's proposal to extend Runway 10/28 1,300 feet to a total length of 5,500 feet, widen Runway 10/28 25 feet to a total width of 100 feet, extend existing parallel taxiways, relocation of the visual approach descent indicators, install an Airport Weather Observation System, and install a Medium Intensity Approach Lighting System (MALSF).

After reviewing the FEA, the FAA has determined that project would not significantly affect the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required.

The FEA and the FONSI/ROD are available for review at:

FAA Southern Region, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337.

Covington City Hall, 2194 Emory Street, NW., Covington, GA 30014.

Oxford City Hall, 110 W. Clark Street, Oxford, GA 30054.

Newton County Library, 7116 Floyd Street, Covington, GA 30014.

FOR FURTHER INFORMATION CONTACT: Parks Preston, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avee., Campus Bldg., Suite 2–260, College Park, FA 30337. (404) 305–7149.

Issued in College Park, Georgia, on June 30, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 04–16850 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–56]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 28, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 19, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2003–16491.
Petitioner: Joint Special Operations Command.
Section of 14 CFR Affected: 14 CFR 105.19(a) and (b).
Description of Relief Sought: To permit the Joint Special Operations Command an amendment to Exemption No. 8255 by increasing the maximum altitude at which operations may be conducted, from 800 feet above ground level (AGL) to 1,500 feet AGL.

[FR Doc. 04–16844 Filed 7–22–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–58]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 12, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

• *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
• *Fax:* 1–202–493–2251.
• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 19, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–17905.
Petitioner: Cherry-Air, Inc.
Section of 14 CFR Affected: 14 CFR appendix G to part 91.
Description of Relief Sought: To permit Cherry-Air to operate its aircraft in reduced vertical separation minimum airspace without Cherry-Air or its aircraft complying with appendix G to part 91.

Docket No.: FAA–2004–18368.
Petitioner: Pacific Wings, L.L.C.
Section of 14 CFR Affected: 14 CFR 135.183(a).
Description of Relief Sought: To permit Pacific Wings, L.L.C., to conduct scheduled passenger operations in American Samoa and Samoa beyond gliding distance from land.

[FR Doc. 04–16845 Filed 7–22–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–59]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 19, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2004–18461.
Petitioner: Carlin Air.
Section of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/Disposition: To permit Carlin Air to conduct operations under visual flight rules outside controlled airspace, over water, at an altitude below 500 feet above the surface. *Grant, 6/30/2004, Exemption No. 8358.*

Docket No.: FAA–2004–18470.
Petitioner: Wildlife Research and Management.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Wildlife Research and Management to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 7/02/ 2004, Exemption No. 8359.*

Docket No.: FAA–2000–8063.

Petitioner: Eagle Canyon Airlines, Inc., d.b.a. Scenic Airlines.

Section of 14 CFR Affected: 14 CFR 121.345(c)(2).

Description of Relief Sought/ Disposition: To permit Eagle Canyon Airlines, Inc., an amendment to Exemption No. 6839B by extending its November 30, 2004 termination date to December 31, 2004, unless sooner superseded or rescinded. *Grant, 7/02/ 2004, Exemption No. 6839C.*

Docket No.: FAA–2002–13151.

Petitioner: Elliott Aviation Flight Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Elliott Aviation Flight Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 7/2/2004, Exemption No. 7347B.*

Docket No.: FAA–2004–18524.

Petitioner: Plainwell Pilot's Association.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Plainwell Pilot's Association to conduct local sightseeing flights at the Plainwell Airport, Plainwell, Michigan, on or about July 4, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations. *Grant, 7/1/2004, Exemption No. 8357.*

Docket No.: FAA–2004–18513.

Petitioner: Allegheny Airlines, Inc., and Piedmont Airlines, Inc.

Section of 14 CFR Affected: 14 CFR V, paragraph A.1, and section IX, paragraph A.1 of appendix I to part 121.

Description of Relief Sought/ Disposition: To permit employees performing safety-sensitive functions for Allegheny to perform identical functions for Piedmont Airlines, Inc., without being subject to additional pre-employment drug testing. *Grant, 7/1/ 2004, Exemption No. 8356.*

Docket No.: FAA–2004–17728.

Petitioner: Mr. LeRoy Kruid.

Section of 14 CFR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit Mr. LeRoy Kruid to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, 6/30/2004, Exemption No. 8355.*

Docket No.: FAA–2001–9708.

Petitioner: Frontier Flying Service, Inc.

Section of 14 CFR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit Frontier Flying Service, Inc., an amendment to Exemption No. 7606 by extending its August 17, 2004, termination date only as it pertains to the two Beech 1900C airplanes with Serial Nos. UC–95 and UC–136. *Grant, 7/2/2004, Exemption No. 7606A.*

[FR Doc. 04–16846 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196: Night Vision Goggle (NVG) Appliances and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 196 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 196: Night Vision Goggle (NVG) Appliances and Equipment.

DATES: The meeting will be held August 10–11, 2004 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, 1818 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 196 meeting. The agenda will include:

- August 10–11:
- Opening Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting)
- Approval of the Summary of the Eleventh Meeting
- RTCA Paper No. 102–04/SC196–031
- Overview SC–196 Working Group Activities
- Working Group 5—Training Guidelines/Considerations
- Review/Approval Final Draft—NVG Training Guidelines
- RTCA Paper No. 103–04/SC–196–032
- Closing Session (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 14, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–16851 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement PS–ACE100–2004–10024, Installation of Electronic Engine Control for Reciprocating Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed policy statement and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed policy statement. Proposed Policy Statement, PS–ACE100–2004–10024, is to help identify appropriate certification requirements for installation of an Electronic Engine Control (EEC) into a small airplane with a reciprocating engine. It includes guidance related to methods of compliance as well as identifying when equivalent level of safety findings (ELOS) and special conditions may be necessary.

This policy statement addresses the certification requirements for the installation of an EEC that has been approved for use on a part 33 engine into a part 23 airplane. Material in this policy statement is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before September 21, 2004.

ADDRESSES: Send all comments on the proposed policy statement to: Federal

Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations and Policy (ACE–111), 901 Locust Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Rouse, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4135, fax (816) 329–4090; e-mail *peter.rouse@faa.gov*.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed policy statement by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** A copy of the policy statement will also be available on the Internet at *http://www.airweb.faa.gov/* Policy within a few days.

Comments Invited: We invite interested parties to submit comments on the proposed policy statement. Commenters must identify PS–ACE100–2004–10024 and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final policy statement. The proposed policy statement and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: Installation of an EEC into part 23 airplanes may include design features not envisioned when 14 CFR, part 23 was created. This policy highlights areas where special conditions may be appropriate for these installations. However, appropriate special conditions for each installation must be determined on a case-by-case basis in accordance with 14 CFR, part 21, § 21.16, § 21.17, and 14 CFR, part 11.

Installing an EEC in a small certificated airplane design is not considered a design change so substantial that it would require a new airplane Type Certificate (TC) under 14 CFR, part 21, § 21.19. Therefore, it is considered appropriate to install an approved EEC into a certificated airplane using the STC or ATC process.

Proposed EEC installations, whether supplemental, amended, or new TC projects will be considered significant as defined in Order 8100.5, paragraph 103j. Accordingly, the FAA is proposing and requesting comments on PS–ACE100–2004–10024.

Issued in Kansas City, Missouri, on July 7, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16853 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. PS–ANM100–2003–10019]

Evaluating a Seat Armrest Cavity for a Potential Fire Hazard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on evaluating a seat armrest cavity for a potential fire hazard.

DATES: This final policy was issued by the Transport Airplane Directorate on July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1232; e-mail: *michael.t.thompson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on February 3, 2004 (69 FR 5242). Two (2) commenters responded to the request for comments, and indicated their concurrence with the proposed policy.

Background

Due to concerns about trapped waste material being a potential fire hazard, the FAA requested seat armrest cavities be either completely enclosed or have an open bottom. Subsequent FAA research determined that for typical armrest cavities, these conditions do not need to be met to prevent a fire hazard. The policy proposed on February 3, 2004, would change the earlier FAA position that armrest cavities be enclosed or open at the bottom.

The final policy as well as the disposition of comments received is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy be contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on July 14, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16848 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2004–18671]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Charter Service Operations.

DATES: Comments must be submitted before September 21, 2004.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Martineau, Office of the Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Charter Service Operations (*OMB Number: 2132–0543*).

Background: All applicants for financial assistance from FTA are required by 49 U.S.C. Section 5323(d) to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR Section 1.51(a)). This statute provides protections for private intercity charter bus operators from unfair competition by FTA recipients. The Comptroller General interpreted the statutory definition of "mass transportation" [49 U.S.C. Section 5302(a)(7)] to permit FTA recipients to provide charter bus service with FTA–funded facilities and equipment if the service is "incidental" to the provision of mass transportation service. The Comptroller General's interpretation regarding "incidental use" is implemented in FTA's charter service regulation, 49 CFR Part 604.

All applicants for financial assistance under 49 U.S.C. Sections 5309, 5336, or 5311 are required by 49 CFR Section 604.7 to include two copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. The applicant signs the agreement, but FTA executes it only upon approval of the application. This is a one-time submission with incorporation by reference in subsequent grant applications. If a recipient desires to provide charter service, 49 CFR Section 604.11 requires recipients to provide notice to all private charter operators to submit written evidence demonstrating that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published annually in a newspaper and sent to all private charter operators in the proposed geographic area, to any private charter operator that requests notice, and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. Recipients are required by 49 CFR Section 604.13 to review the evidence submitted.

Respondents: State and local government, business or other for-profit institutions, and non-profit institutions.

Estimated Annual Burden on Respondents: 1.2 hours for each of the 1,656 respondents.

Estimated Total Annual Burden: 1,984 hours.

Frequency: Annual.

Issued: July 19, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 04–16843 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18667; Notice 1]

Reports, Forms and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget ("OMB"). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before September 21, 2004.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by also addressing its OMB Clearance Number. You may also submit your comments to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

Comments may also be submitted by fax at 202–493–2251.

For further assistance, you may call Docket Management at 202–366–1918. You may also visit the Docket and submit comments by hand delivery from 9 a.m. to 5 p.m., Monday through Friday, except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For questions contact Michael Kido in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366–5263. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following extension of clearance for a currently approved collection of information:

Confidential Business Information

Type of Request—Extension of clearance.

OMB Clearance Number—2127–0025.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Each person who submits information to the agency and seeks to have the agency withhold some or all of that information from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, must provide the agency with sufficient support that justifies the confidential treatment of that information. In addition, a request for confidential treatment must be accompanied by: (1) A complete copy of

the submission; (2) a copy of the submission containing only those portions for which confidentiality is not sought with the confidential portions redacted; and (3) either a second complete copy of the submission or alternatively those portions of the submission that contain the information for which confidentiality is sought. Furthermore, the requestor must submit a completed certification as provided in 49 CFR Part 512, Appendix A. See generally 49 CFR Part 512 (NHTSA Confidential Business Information regulations).

Part 512 ensures that information submitted under a claim of confidentiality is properly evaluated in an efficient manner under prevailing legal standards and, where appropriate, accorded confidential treatment. To facilitate the evaluation process, in their requests for confidential treatment, submitters of information may make reference to certain limited classes of information that are presumptively treated as confidential, such as blueprints and engineering drawings, future specific model plans (under limited conditions), and future vehicle production or sales figures for specific models (under limited conditions). Certain other information that the agency collects pursuant to the Early Warning Reporting rule (49 CFR Part 579) is treated confidentially by rule under 49 CFR Part 512, Appendix C and submitters need not provide a request for confidential treatment these classes of information.

Description of the Need for the Information and Use of the Information—NHTSA receives confidential information for use in its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The information is needed to ensure the agency has sufficient relevant information for decision-making in connection with these activities. Some of this information is submitted voluntarily, as in rulemaking, and some is submitted in response to compulsory information requests, as in investigations.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to any entity that submits to the agency information that the entity wishes to have withheld from disclosure under the FOIA. Thus, the collection of information applies to any entity that is subject to laws administered by the agency or agency regulations and is under an obligation to provide information to the agency. It also includes entities that voluntarily submit information to the agency. Such entities would include manufacturers of motor vehicles and of motor vehicle equipment. Importers are considered to be manufacturers. It may also include other entities that are involved with motor vehicles or motor vehicle equipment but are not manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting from the Collection of Information—3,600 hours.

The agency receives requests for confidential treatment that vary in size from requests that ask the agency to withhold as little as a portion of one page to multiple boxes of documents. NHTSA estimates that it will take on average approximately eight (8) hours for an entity to prepare a submission requesting confidential treatment. This estimate will vary based on the size of the submission, with smaller and voluntary submissions taking considerably less time to prepare. This estimate of the average amount of time per submission is higher than the four hours estimated for the existing information clearance and reflects the volume of documents in some submissions in complex investigations, the amendments to the agency's rules in 2003 and the improved justifications for confidential treatment that followed.

NHTSA estimates that it will receive approximately 450 requests for confidential treatment annually. This figure is based on the number of requests received in the first six months of 2004 (225) multiplied by two (2). We selected this period because in the last year, we have received more requests than in previous years and believe that the most recent data is the most representative of the number of requests that will be submitted. The agency estimates that the total burden for this information collection will be approximately 3,600 hours, which is based on the number of requests (450) multiplied by the estimated number of hours to prepare each submission (8 hours).

Since nothing in the rule requires those persons who request confidential treatment pursuant to Part 512 to keep copies of any records or requests submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. § 3506; delegation of authority at 49 CFR 1.50.

Issued on: July 19, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–16841 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17903; Notice 2]

Kumho Tire Co., Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Kumho Tire Co, Inc. (Kumho) has determined that certain tires it produced in 2003 and 2004 do not comply with S4.3(d) and S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Kumho Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30-day comment period, on May 25, 2004, in the **Federal Register** (69 FR 29781). NHTSA received no comments.

A total of approximately 2656 tires are involved. These include 324 size 255/50R17 tires and 2332 size 255/45R17 tires. The tires are marked "Tread: Rayon 2 + Steel 2 + Nylon 2, Sidewall: Rayon 2," when the correct stamping would be "Tread: Polyester 2 + Steel 2 + Nylon 2, Sidewall: Polyester 2." Paragraph S4.3 of FMVSS No. 109 requires "each tire shall have permanently molded into or onto both sidewalls * * * (d) The generic name of each cord material used in the plies * * * of the tire; and (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different."

Kumho stated that it uses rayon and polyester body ply construction to meet the preferences of the North American and European markets, and that rayon is popular in the European market while polyester is more popular in the North American market. Kumho explained that for sizes sold in both markets, either material may be used, and the two sizes which are the subject of this petition have North American construction and European stamping.

Kumho stated that the tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires

are mounted. Therefore, Kumho believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR sections 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Kumho's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109 and all other informational markings as required by FMVSS No. 109 are present. Kumho has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Kumho's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: July 15, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–16840 Filed 7–22–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Operating Subsidiaries

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 21, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Operating Subsidiaries.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Regulation requirement: 12 CFR Part 559.

Description: 12 CFR Part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify OTS or obtain the prior approval of OTS. The regulation also requires a savings association to create and maintain certain documents.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 68.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 14 hours.

Estimated Total Burden: 952 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New

Executive Office Building, Washington, DC 20503.

Dated: July 20, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–16873 Filed 7–22–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 23, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0546" in any correspondence.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to "OMB Control No. 2900–0546" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Gravesite Reservation Survey (2 Year), VA Form 40–40.

OMB Control Number: 2900–0546.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 40–40 is sent biennially to individuals holding gravesite set-asides to ascertain their wish to retain their set-aside, or relinquish it. Gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside. The survey is conducted to assure that gravesite set-asides do not go unused.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 5, 2004, at page 25174.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 2,750.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents; 16,500.

Dated: July 14, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16796 Filed 7–22–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0249." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0249" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Loan Service Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6808 is used when servicing delinquent guaranteed and insured loans and loans sold under 38 CFR 36.4600. With the respect to the servicing of guaranteed and insured loans and loans sold under 38 CFR 36.4600, the holder has the primary servicing responsibility. However, VA has the responsibility to see that the servicing efforts of holders are consistent with VA policies and guidelines. In those cases in which early payment of the delinquency appears unlikely, supplemental servicing by VA will be conducted to determine whether the holder may have overlooked any relief measures. Since there are ordinarily financial losses to both the borrower and the Government resulting from the foreclosure of a guaranteed loan, supplemental servicing can protect the interest of each by assuring that appropriate relief is extended to those borrowers whose loans can be reinstated within a reasonable period of time. VA Loan Service Representatives complete VA Form 26–6808 during the course of personal contacts with delinquent obligors. The information acquired may form the basis of VA's intercession with the holder for the acceptance of specially arranged repayment plans or other forbearance aimed at assisting the obligor in retaining his or her home.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 5, 2004, at page 25173.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,667 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

Dated: July 14, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16797 Filed 7–22–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 69, No. 141
Friday, July 23, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Undertakings of the Department of Homeland Security Bureau of Customs and Border Protection Regarding the Handling of Passenger Name Record Data

Correction

In notice document 04–15642 beginning on page 41543 in the issue of Friday, July 9, 2004, make the following correction:

On page 41546, in the third column, under footnote 11, the fifth line should read "manner that complies with relevant laws (see footnote 13). The determinations of the Chief Privacy Officer shall be binding on the Department and may not be overturned on political grounds."

[FR Doc. C4–15642 Filed 7–22–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
July 23, 2004

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Parts 1190 and 1191
Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

[Docket No. 99–1]

RIN 3014–AA20

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). These guidelines cover new construction and alterations and serve as the basis for enforceable standards issued by other Federal agencies. The ADA applies to places of public accommodation, commercial facilities, and State and local government facilities. The ABA covers facilities designed, built, altered with Federal funds or leased by Federal agencies. As a result of this revision and update, the guidelines for the ADA and ABA are consolidated in one Code of Federal Regulations part.

DATES: The guidelines are effective September 21, 2004. The incorporation by reference of certain publications listed in the guidelines is approved by the Director of the Federal Register as of September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone numbers (202) 272–0020 (voice); (202) 272–0082 (TTY). These are not toll free numbers. E-mail address: *ta@access-board.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S–50 (ADA and ABA Accessibility Guidelines Final Rule). Please record your name, address, telephone number and publication code. Persons using a TTY should call (202) 272–0082. This document is available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, braille, large print, or ASCII disk). This document is also available on the Board's Web site (*http://www.access-board.gov*).

Statutory Background

The Access Board is responsible for developing and maintaining accessibility guidelines for the construction and alteration of facilities covered by the Americans with Disabilities Act (ADA) of 1990.[1] The Board holds a similar responsibility under the Architectural Barriers Act (ABA) of 1968.[2] The Board's guidelines provide a minimum baseline for other Federal departments responsible for issuing enforceable standards.

The ADA recognizes and protects the civil rights of people with disabilities and is modeled after earlier landmark laws prohibiting discrimination on the basis of race and gender. To ensure that buildings and facilities are accessible to and usable by people with disabilities, the ADA establishes accessibility requirements for State and local government facilities under title II and places of public accommodation and commercial facilities under title III. The law requires that the Board issue minimum guidelines to assist the Department of Justice (DOJ) and the Department of Transportation (DOT) in establishing accessibility standards under these titles. Those standards must be consistent with the Board's guidelines.

The ABA requires access to facilities designed, built, altered, or leased with Federal funds. Similar to its responsibility under the ADA, the Board is charged with developing and maintaining minimum guidelines for accessible facilities that serve as the basis for enforceable standards issued by four standard-setting agencies. The standard-setting agencies are the Department of Defense (DOD), the General Services Administration (GSA), the Department of Housing and Urban Development (HUD), and the U.S. Postal Service (USPS).

Each Federal department responsible for standards based on the Board's guidelines under the ADA or the ABA is represented on the Board. These departments have been closely involved in the development of this rule. Through this process, the Board and the standard-setting agencies coordinated extensively to minimize any differences between the Board's guidelines and their eventual updated standards.

Rulemaking History

ADA Accessibility Guidelines

On July 26, 1991, one year after the ADA was signed into law, the Board published the ADA Accessibility Guidelines (ADAAG).[3] The Board supplemented ADAAG to include additional requirements specific to transportation facilities on September 6, 1991.[4] The Department of Justice (DOJ) and the Department of Transportation (DOT) incorporated ADAAG into their ADA implementing regulations, thus making ADAAG the enforceable standard under titles II and III of the ADA.[5]

In developing the original ADAAG, the Board identified subjects for further rulemaking based on information it received through public comments. Some addressed areas that had not been specifically covered by an access standard or code before. The Board initiated a long-term agenda of rulemaking a year after ADAAG was first published. It proceeded with this agenda independently from its update of the original document. On separate tracks, the Board developed ADAAG supplements covering:

- State and local government facilities (1998)[6]
- building elements designed for children's use (1998)[7]
- play areas (2000)[8]
- recreation facilities (2002)[9]

These supplementary guidelines have not yet been adopted by the DOJ as enforceable standards under the ADA.

In 1994, the Board initiated an effort to update the original ADAAG by establishing an advisory committee to thoroughly review the document and to recommend changes. The ADAAG Review Advisory Committee consisted of 22 members representing the design and construction industry, the building codes community, State and local government entities, and people with disabilities.[10] The committee was

[1] 42 U.S.C. 12101 *et seq.*

[2] 42 U.S.C. 4151 *et seq.*

[3] 56 FR 35408, 36 CFR Part 1191.

[4] 56 FR 45500.

[5] 56 FR 35544, 28 CFR Part 36 (DOJ's ADA regulation implementing title III); 56 FR 45584, 49 CFR Parts 37 and 38 (DOT's ADA regulation implementing titles II and III).

[6] 63 FR 2000 (January 13, 1998).

[7] 63 FR 2060 (January 13, 1998).

[8] 65 FR 62498 (October 18, 2000).

[9] 67 FR 56352 (September 3, 2002).

[10] The American Council of the Blind, the American Institute of Architects, the American Society of Interior Designers, the Arc, Builders Hardware Manufacturers Association, Building Officials and Code Administrators International,

charged with reviewing ADAAG in its entirety and making recommendations to the Board on improving ADAAG's format and usability, reconciling differences between ADAAG and national consensus standards, and updating its requirements so that they continue to meet the needs of persons with disabilities.

Following a consensus-based process for the adoption of recommendations, the committee met extensively over a two-year period and fulfilled its mission with the issuance of a report, "Recommendations for a New ADAAG," in September, 1996.

The advisory committee's report recommended significant changes to the format and style of ADAAG. In fact, its recommendations reorganize much of the document. The changes were recommended to provide a guideline that is organized and written in a manner that can be more readily understood, interpreted, and applied. The recommended changes would also make the arrangement and format of ADAAG more consistent with model building codes and industry standards. The advisory committee coordinated closely with the American National Standards Institute (ANSI) A117 Committee, which was in the process of updating its standard. The ANSI A117.1 standard is a national consensus standard that provides technical requirements for accessible buildings and facilities. The A117.1 standard is referenced by the International Building Code and various state codes, among others. While ADAAG requirements derive in large part from an earlier version of the ANSI standard, there are considerable differences between them. Both the advisory committee and the ANSI committee sought to reconcile differences between ADAAG and the ANSI A117.1–1998 standard.

ABA Accessibility Guidelines

The Board issued minimum guidelines for federally funded facilities under the ABA in 1982. These guidelines served as the basis for enforceable standards known as the Uniform Federal Accessibility Standards (UFAS). The Board has coordinated the update of its ABA guidelines with its review of ADAAG in order to reconcile differences between them and to establish a more consistent level of accessibility between facilities covered by the ADA and those subject to the ABA.

ADA and ABA Accessibility Guidelines

On November 16, 1999, the Board published a proposed rule to jointly update and revise its ADA and ABA accessibility guidelines. This proposal was largely based on the ADAAG Review Advisory Committee's report. In preparing the proposed rule, the Board had reviewed all of the committee's recommendations and adopted most of them with some changes of its own. Additionally, the Board developed new figures to illustrate various provisions and provided updated advisory information. In an accompanying discussion of the proposed revisions, the Board posed a number of questions to the public on a variety of issues to solicit information for its use in finalizing the rule. The proposed rule contained three parts:

- Application and scoping requirements for facilities covered by the ADA.
- Application and scoping requirements for facilities covered by the ABA.
- A common set of technical provisions referenced by both scoping documents.

The proposed rule also incorporated supplements to ADAAG that the Board developed independently from its review of ADAAG. In 1998, the Board issued a supplement to ADAAG covering State and local government facilities, including courthouses and prisons. At the same time, the Board published specifications for building elements designed for children's use as amendments to ADAAG, which, as originally published, only contained requirements based on adult dimensions. The Board also incorporated into the proposed rule requirements for residential housing which were based on those developed by the ANSI A117 Committee in 1998.

The proposed rule was made available for public comment for six months. During this comment period, which ended May 15, 2000, the Board held public hearings in Los Angeles, CA (January 31, 2000) and in the Washington, DC area (March 13, 2000), which provided an additional forum for people to provide comment, either orally or in writing. About 140 persons provided testimony at these hearings.

More than 2,500 comments on the proposed rule were submitted to the Board by mail, e-mail, or fax. Almost three quarters of the comments were submitted by individuals, primarily persons with disabilities. Most of these comments addressed reach range requirements for people of short stature, access for people with multiple chemical sensitivities, movie theater captioning for persons who are deaf or hard of hearing, and access to certain elements, such as automatic teller machines (ATMs) for people with vision impairments. Comments were also submitted by trade associations and manufacturers, disability groups, design and codes professionals, government agencies, and building owners and operators, among others. Some of the most common topics included alarms, handrails, assembly areas, van spaces and ATMs. Comments received after the deadline were entered into the docket as the Board has a policy of considering late comments to the extent practicable.

The Board has finalized the guidelines according to its review and analysis of the comments to the proposed rule. Comments and resulting changes in the rule are discussed below in the Section-by-Section Analysis.

From the outset of this rulemaking, the Board has sought to harmonize the ADA and ABA Accessibility Guidelines with industry standards, particularly the ANSI A117.1 standard and the International Building Code (IBC). On April 2, 2002, the Board placed in the rulemaking docket for public review a draft of the final guidelines to further promote such harmonization.[11] The ANSI A117 Committee and the International Code Council (ICC) were in the process of updating the ANSI A117.1–1998 standard and the IBC, respectively. The Board proposed changes to these documents based on the draft final guidelines, some of which were approved. In addition, the Board made revisions to the guidelines for consistency with proposed changes to the ANSI A117.1 standard and the IBC. As a result, some of the remaining differences between the draft final guidelines and these documents were reconciled. Changes to the guidelines as a result of this harmonization, as well as public comments received on the draft final guidelines, are noted in the Section-by-Section Analysis.

General Issues

Comments were received on the organization and format of the revised guidelines. The final rule has been structurally reorganized in several

Building Owners and Managers Association International, Council of American Building Officials, Disability Rights Education and Defense Fund, Eastern Paralyzed Veterans Association, International Conference of Building Officials, International Facility Management Association, Maryland Association of the Deaf, National Conference of States on Building Codes and Standards, National Easter Seal Society, National Fire Protection Association, National Institute of Building Sciences, Regional Disability and Business Technical Assistance Centers, Southern Building Code Congress International, Texas Department of Licensing and Regulation, Virginia Building and Code Officials Association, and the World Institute on Disability.

[11] 67 FR 15509.

respects. Two technical chapters covering specific occupancies (transportation facilities and residential facilities) were integrated into other chapters. A new chapter was added through the incorporation of guidelines for recreation facilities and play areas that the Board previously finalized in separate rulemakings. These changes are further detailed in this section. In addition, comments were received on issues that the Board is involved in but were not made part of this rulemaking. These issues, further discussed below, concern multiple chemical sensitivities and electromagnetic sensitivities, classroom acoustics, and certain elements specific to public rights-of-ways.

Organization and Format

Most commenters supported the new organizational structure of the guidelines and found it to be clearer and easier to use than the original ADAAG. Several suggested that the final rule contain a subject index, that pages not be numbered separately for each part of the rule, and that a table of contents be provided for advisory material and figures listing the figure with section number, the title of the figure, and page number where it is located. Several commenters recommended that there be one table of contents at the beginning of the document rather than separate tables of contents for each part of the rule. There was support for placing advisory material near the provision it discusses but commenters recommended even greater distinction of their non-legal, non-binding status since the advisory notes stand out more than the requirements. Commenters also recommended that figures should have titles and numbers and be clearly linked to the text. A few commenters recommended that advisory information be adopted as enforceable language or be deleted.

The Board has revised the format and structure of the guidelines in response to these comments. The final rule includes a subject index to facilitate use of the document. In the proposed rule, the ADA and ABA scoping documents and the technical section were paginated separately; in the final rule, the pages are numbered consecutively through the entire document. In addition, the Board has simplified the table of contents structure, provided titles for figures, and reformatted advisory notes so that they appear subordinate to the requirements they discuss. Advisory notes are provided for informational purposes only and are not mandatory. Throughout the final rule, advisory notes have been added or revised based on comments or revisions to text requirements. In most cases, advisory notes clarify the meaning of a requirement or provide recommendations for good practice.

Some commenters felt that the Board should reference other codes and standards for greater consistency with the model building codes and that more cross references should be made to other codes and standards. In the final rule, the Board has added references to other codes and standards to enhance consistency with model building codes and standards. Scoping and technical requirements for accessible means of egress have been replaced with a reference to corresponding requirements in the International Building Code (IBC), as further discussed below in the Section-by-Section Analysis under section 207. Criteria for fire alarm systems have been replaced by a reference to the National Fire Protection Association (NFPA) standard upon which they were based, as discussed below in section 702.

Existing Facilities

Commenters expressed concern about how changes to these guidelines would impact existing facilities that were previously retrofitted under ADA requirements, such as those requiring barrier removal and program access. The ADA requires the removal of barriers in existing places of public accommodation where it is readily achievable. State and local government entities are required to provide access to programs, which may necessitate retrofit of existing facilities. Commenters expressed concern that further retrofit efforts would be triggered due to new requirements in the revised guidelines. Specifically, commenters asked whether elements that comply with the original ADAAG would need to be altered to meet the requirements of the updated guidelines under the obligations for barrier removal or program access.

The Board's authority under the ADA only extends to the development and maintenance of accessibility guidelines for construction and planned alterations and additions. It does not have jurisdiction over requirements for existing facilities that are otherwise not being altered, except for certain types of transit stations (key stations and intercity rail stations). Under the ADA, regulations issued by the Department of Justice (DOJ) and the Department of Transportation (DOT) effectively govern requirements that apply to existing facilities. How, and to what extent, the Board's guidelines are used for purposes of retrofit, including removal of barriers and provision of program access, is wholly within the purview of these departments. It is the Board's understanding that the Department of Justice is aware of the concern outlined in comments and that the Department plans to address these concerns in its rulemaking to revise its ADA standards consistent with the Board's final rule.

Reorganization of Chapters on Transportation Facilities and Residential Facilities

The proposed rule, consistent with the advisory committee's recommendations, minimized classifications and structural delineations in the guidelines based on facility or occupancy type. As a result, special occupancy chapters of the original ADAAG had been integrated into the main body of the document in the proposed rule. It was felt that this change would help underscore the premise that the guidelines must be consulted and applied in its entirety regardless of the facility type. It is also consistent with the overall aim of encouraging an integrated approach to accessibility as reflected by other proposed format and organizational changes. However, the proposed rule did retain two technical chapters based on occupancy types: transportation facilities (Chapter 10) and residential facilities (Chapter 11). In the final rule, the provisions of these technical chapters have been incorporated into other chapters, as appropriate, for greater consistency with the rest of the document. The revisions related to this reorganization are further detailed in the Section-by-Section Analysis.

Incorporation of Guidelines for Play Areas and Recreation Facilities

In separate rulemakings, the Board developed supplements to ADAAG covering play areas and recreation facilities. These supplemental guidelines, developed independently from this rulemaking, were finalized after the Board published the proposed rule.

On October 18, 2000, the Board issued final guidelines for play areas.[12] The guidelines are one of the first of their kind in providing a comprehensive set of criteria for access to play areas. They cover the number of play components required to be accessible, accessible surfacing in play areas, ramp access and transfer system access to elevated structures, and access to soft contained play structures. The guidelines address play areas provided at schools, parks, child care facilities (except those based in the operator's home, which are

[12] 65 FR 62498.

exempt), and other facilities subject to the ADA. The Board developed the guidelines through regulatory negotiation, a supplement to the traditional rulemaking process that allows face-to-face negotiations among representatives of affected interests in order to achieve consensus on the text of a proposed rule. The regulatory negotiation committee represented a variety of interests, including play equipment manufacturers, landscape architects, parks and recreation facilities, city and county governments, child care operators, and people with disabilities. The committee submitted a report to the Board upon which the guidelines are based. The Board published the guidelines in proposed form for public comment in April 1998 and finalized them according to its review and analysis of the comments it received.

On September 3, 2002, the Board finalized guidelines that address access to a variety of recreation facilities covered by the ADA, including amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, sports facilities, and swimming pools and spas.[13] The requirements are largely based on recommendations prepared by the Recreation Access Advisory Committee, which the Board had established for this purpose. These recommendations are contained in a report, "Recommendations for Accessibility Guidelines: Recreational Facilities and Outdoor Developed Areas," which the Board had made widely available as a source of guidance pending the development of guidelines. The Board published the guidelines in proposed form in July 1999, and made them available for public comment for six months. During the comment period, the Board held public hearings on the proposed guidelines in Dallas, TX and Boston, MA. In an effort to provide the public with an additional opportunity for input on the rule before it was finalized, the Board published a summary of changes it intended to make to the guidelines. This summary was published on July 21, 2000, and was made available for public comment for two months. During the comment period, the Board held informational meetings on the summary in Washington, DC and San Francisco, CA. Approximately 70 comments on the summary were received.

The Board issued a notice on September 3, 2002, making the final guidelines issued for play areas and recreation facilities applicable to federally funded facilities covered by the ABA.[14] No comments were received in response to the notice.

The Board has integrated the guidelines for play areas and those for recreation facilities into this final rule. Referenced standards and definitions have been added to Chapter 1 (sections 105 and 106), scoping provisions have been incorporated into Chapter 2 (sections 234 through 243), and technical provisions are provided in Chapter 6 (Plumbing Elements and Facilities) and Chapter 10 (Recreation Facilities and Play Areas). In addition, various provisions and exceptions have been integrated into existing scoping provisions in Chapter 2 (sections 203 through 206, 210, 216, and 221) and technical provisions in Chapter 3 (section 302 and 303). These criteria have been editorially revised to fit into the new structure and format of the revised ADA and ABA accessibility guidelines. No substantive revisions have been made in incorporating them into this final rule. While the Board has otherwise sought to avoid technical chapters that are based solely on an occupancy type, it has located the technical provisions of the play areas and recreation facilities guidelines into a separate chapter. Since these guidelines are new and comprehensive in their coverage of a variety of distinct facility types, the Board felt that users could more readily familiarize themselves with the requirements if they remained localized in a separate chapter.

Multiple Chemical Sensitivities and Electromagnetic Sensitivities

The Board received approximately 600 comments from individuals with multiple chemical sensitivities and electromagnetic sensitivities. They reported that chemicals released from products and materials used in the construction, alteration, and maintenance of buildings; electromagnetic fields; and inadequate ventilation are barriers that deny them access to buildings. They requested the Board to include provisions in this final rule to make the indoor environment accessible to them.

The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory, or other functions of an individual that it substantially limits one or more of the individual's major life activities. The Board plans to closely examine the needs of this population, and undertake activities that address accessibility issues for these individuals.

The Board plans to develop technical assistance materials on best practices for accommodating individuals with multiple chemical sensitivities and electromagnetic sensitivities. The Board also is sponsoring a project on indoor environmental quality. In this project, the Board is bringing together building owners, architects, building product manufacturers, model code and standard-setting organizations, individuals with multiple chemical sensitivities and electromagnetic sensitivities, and other individuals. This group will examine building design and construction issues that affect the indoor environment, and develop an action plan that can be used to reduce the level of chemicals and electromagnetic fields in the built environment.

Neither the proposed rule nor the draft final rule included provisions for multiple chemical sensitivities or electromagnetic sensitivities. The Board believes that these issues require a thorough examination and public review before they are addressed through rulemaking. The Board does not address these issues in this final rule.

Classroom Acoustics

Comments were received that urged the Board to address the acoustical performance of buildings and facilities, in particular school classrooms and related student facilities. Research indicates that high levels of background noise in classrooms compromises speech intelligibility for many children to such an extent that their reading, communication, and learning skills may not be developing adequately. At particular risk are children who have mild to moderate hearing loss, temporary hearing loss, speech impairments, or learning disabilities. Instead of undertaking rulemaking of its own on this issue, the Board opted to work with the private sector in the development of classroom acoustic standards. In 1999, the Board partnered with the Acoustical Society of America (ASA) on the development of a new standard for acoustics in classrooms that takes into account children who are hard of hearing. ASA had previously established a special working group for this purpose. The Board helped sponsor the work of this group and expanded its membership through the addition of representatives from disability groups, school systems, designers, and government agencies. At the Board's urging, ASA committed to a two-year time frame for the completion of

[13] 67 FR 56352.

[14] 67 FR 56441.

standards. The standard, completed in 2002, has been approved as ASA/ANSI S12.60–2002, Acoustical Performance Criteria, Design Requirements and Guidelines for Schools. It sets specific criteria for maximum background noise (35 decibels) and reverberation time (0.6 to 0.7 seconds for unoccupied classrooms). These and other specifications are consistent with long-standing recommendations for good practice in acoustical design. Taken by itself, the standard is voluntary unless referenced by a code, ordinance, or regulation. The Board submitted a proposal to the International Code Council (ICC) recommending that core provisions contained in the ASA/ANSI standard be incorporated into the next edition of the International Building Code (IBC). The Board's proposal was taken up for consideration at an ICC hearing in September 2002, but was not adopted. However, school systems in various states and cities are applying the criteria in the ASA/ANSI standard to the design of classrooms. The Board is participating in outreach and education activities to promote greater understanding of the need for good classroom acoustics.

Public Rights-of-Way

Some comments asked that the final rule address certain elements common in public rights-of-ways. These comments addressed roadway design, speed bumps, crosswalks, on-street parking, audible signs and pedestrian signals, and emergency call boxes. The Board will address and invite comment on issues regarding access to public rights-of-way in a separate rulemaking. On June 17, 2002, the Board released for public comment a set of draft guidelines on accessible public rights-of-way in advance of publishing a proposed rule. The guidelines would supplement the ADA and ABA accessibility guidelines by adding new provisions for sidewalks, street crossings, and related pedestrian facilities. The draft guidelines were based on a report submitted to the Board by the Public Rights-of-Way Access Advisory Committee in January 2001. This committee, which the Board created to make recommendations on the guidelines, included representatives from the transportation industry, Federal, State and local government agencies, the disability community, and design and engineering professionals. The advisory committee's report, "Building A True Community," is available from the Board.

Section-by-Section Analysis

In finalizing this rule, the Board has revised various requirements in the guidelines based on its review and analysis of public comments. This section discusses public comments to the rule and details revisions that represent a substantive change from the proposed rule. Not all editorial or non-substantive revisions are addressed in this discussion.

Part I: ADA Application and Scoping

Chapter 1: Application and Administration

This chapter states general principles that recognize the purpose of the guidelines (101), provisions for adults and children (102), equivalent facilitation (103), conventions (104), referenced standards (105), and definitions (106). Revisions have been made in the final rule to the sections covering conventions, referenced standards, and definitions.

104 Conventions

Section 104.1 notes that all dimensions not stated as a "maximum" or "minimum" are absolute and that all dimensions are "subject to conventional industry tolerances." Conventional industry tolerances recognized by this provision include those for field conditions and those that may be a necessary consequence of a particular manufacturing process. In the final rule, the Board has limited this provision so that it does not apply to requirements where a range is provided since the specified range offers adequate tolerances. Section 104.2 addresses rounding in the case of percentages where fractions result.

Comment. Commenters recommended that a statement be added indicating that the figures in the guidelines are provided for information purposes only, consistent with the ANSI A117.1 standard.

Response. A provision has been added in the final rule which states that the figures contained in this document "are provided for informational purposes only" (104.3). This recognizes that all requirements in the guidelines are contained in text and that the figures are provided to illustrate the text-based specifications. Should a figure be interpreted differently from the text, the text governs.

105 Referenced Standards

Section 105 lists the industry standards referenced in the guidelines. It also clarifies that where there is a difference between a provision of the guidelines and the referenced standards, the provision of the guidelines applies. The final rule includes information on where these referenced standards can be obtained or inspected. The Board also has clarified in this section where in the guidelines each standard is referenced.

Standards referenced in the final rule include those issued by the:

- American National Standards Institute (ANSI) and Builders Hardware. Manufacturers Association (BHMA) for power operated and power assisted doors (105.2.1).
- American Society of Mechanical Engineers (ASME) for various elevators and platform lifts (105.2.2).
- American Society for Testing and Materials (ASTM) for use zones, play equipment, and accessible surfaces at play areas (105.2.3).
- International Code Council (ICC), whose International Building Code is referenced with respect to provisions for means of egress and railings (105.2.4).
- National Fire Protection Association (NFPA) for fire alarms (105.2.5).

The Board has revised the rule to reference the most recent editions of the standards and addenda. The final rule includes the addition of ASTM standards and the International Building Code (IBC). Guidelines for play areas previously issued by the Board, which reference ASTM criteria for use zone and accessible surfaces in play areas, have been incorporated into the final rule. Provisions in the guidelines for accessible means of egress have been replaced by references to corresponding requirements in the IBC.

Information on the standards referenced in this rule is available on the Board's Web site at *www.access-board.gov* and in advisory notes.

106 Definitions

Various defined terms and definitions have been revised, removed, or added in the final rule. The following definitions have been removed as unnecessary, in most cases due to changes in certain scoping or technical requirements: "accessible route," "area of refuge," "automatic door," "destination-oriented elevator," "ground floor," "occupiable," "power-assisted door," "sign," and "wheelchair." New definitions included in the final rule address: "assistive listening system," "equipment," "key station," and "occupant load." Definitions contained in the guidelines for recreation facilities and play areas are included in the final rule. Definitions that have been revised include: "assembly area," "common use," "mezzanine," "residential dwelling unit," "transient lodging," "vehicular way," and "walk."

Comment. It was suggested that the definition of "assembly area" should more clearly address the types of

facilities covered. The definition's reference to spaces used "for the consumption of food and drink" may be interpreted as applying to restaurants generally. The definition should also be revised, consistent with building codes, to apply to assembly areas that comprise only a portion of a facility.

Response. The definition of "assembly area" has been revised to include "a building, facility, or portion thereof used for the purpose of entertainment, educational or civic gatherings or similar purposes." An illustrative list of examples, previously provided in the scoping provision (221), has been relocated to this definition.

Comment. Consistent with the original ADAAG, the proposed rule defined "common use," in part, as spaces or elements "made available for a restricted group of people." Comments considered the reference to "restricted" as a source of confusion and misinterpretation. In addition, it was suggested that "group" be replaced by a specific number.

Response. As revised, the definition of "common use" refers to "interior or exterior circulation paths, rooms, spaces, or elements that are not for public use and are made available for the shared use of two or more people."

Comment. Commenters suggested that the definition for "mezzanine" should be revised for consistency with model building codes, including the IBC.

Response. "Mezzanine" is now defined by the same definition used in the IBC: "An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located." The Board has included clarification that mezzanines are elevated high enough to accommodate human occupancy on the floor below.

Comment. Commenters considered it important that the definitions for "dwelling unit" and "transient lodging" be revised and made mutually exclusive to avoid the confusion of potentially overlapping terms. In particular, the hotel and motel industry was concerned about requirements for dwelling units being misapplied to transient lodging facilities.

Response. In the final rule, the definitions for "dwelling unit" and "transient lodging" have been clarified and made mutually exclusive. The guidelines now use the term "residential dwelling unit," which is defined as "a unit intended to be used as a residence, that is primarily long-term in nature." This definition specifically excludes transient lodging, as well as medical care and long-term care facilities and detention and correctional facilities. "Transient lodging" has been revised as applying to any facility "containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature." The term excludes residential dwelling units, among other facility types. In addition, language exempting bed-and-breakfast type facilities with no more than five rooms has been relocated to this definition from the scoping provision for transient lodging in section 224.

ADA Chapter 2: Scoping Requirements

This section discusses comments and changes to scoping provisions for facilities covered by the ADA. These provisions specify which elements and spaces are required to be accessible according to various technical requirements contained in chapters 3 through 10.

Throughout this chapter and the rest of the document, the term "accessible" has been replaced with more precise references to applicable criteria in the guidelines. For example, instead of referring to "accessible" spaces of one type or another, the guidelines now refer to spaces "complying with" the relevant technical criteria that make them accessible. This was done for greater precision and clarity.

201 Application

This section provides that these guidelines apply to the design, construction, or alteration of covered facilities. The requirements apply to both permanent and temporary structures. No substantive changes have been made to this section.

Comment. In the proposed rule, the term "fixed" had been removed as a modifier of certain elements covered by the guidelines, such as tables and storage. This was removed, along with references to elements that are "built-in." Some comments argued that this change could be interpreted as broadening the scope of the guidelines to cover elements that are not fixed or built-in.

Response. References to "fixed" and "built-in" were removed for editorial purposes of clarity and consistency. While the scope of the guidelines does not extend to elements that are not fixed or built-in, the Board believes that such clarification can be appropriately addressed in the regulations that implement the enforceable standards based on the Board's guidelines.

202 Existing Buildings and Facilities

Section 202 establishes the scope and application of the guidelines in the case of alterations or additions to existing facilities. Section 202.3 states that each altered element or space is required to meet the applicable scoping provisions of Chapter 2. There are three exceptions to this requirement, which have been revised for clarity or added in the final rule. Criteria for alterations affecting primary function areas (202.4) and historic facilities (202.5) are also provided. In the final rule, the provision for primary function areas includes a new exception for residential facilities.

Comment. An exception in the proposed rule (202.3, Exception 1) stated that altered elements and spaces are not required to be on accessible routes. This was intended to clarify that an accessible route to an altered space or element does not have to be provided as part of the work, unless the alteration is to a primary function area covered by 202.4. Comments pointed out that while this exception was intended to cover accessible routes *to* an altered space, as worded it would also exempt accessible routes *within* an altered space.

Response. The Board did not intend to exempt requirements for accessible routes within spaces that are altered. The scope of this exception has been limited so that it applies only where elements and spaces are altered, but the circulation path to them is not. Consistent with the proposed rule, this exception is not permitted for alterations to primary function areas, which are required to be connected by an accessible path of travel (unless the cost of providing such a path is "disproportionate" to the overall alteration cost).

A second exception notes that compliance is required unless it is technically infeasible, in which case compliance is required to the maximum extent feasible (202.3, Exception 2). In the proposed rule, this exception contained clarifying language related to this provision that has been recast as an advisory note in the final rule.

A third exception has been added in the final rule for residential facilities (202.3, Exception 3). This exception exempts from coverage dwelling units not required to be accessible under the ADA or the Rehabilitation Act of 1973,[15] which requires that federally funded programs and services, including those pertaining to housing, be accessible to persons with disabilities. In finalizing the rule, the Board has reconciled housing requirements with those of

[15] 29 U.S.C. 701 *et seq.*

other Federal regulations, as discussed below in the scoping section on residential dwelling units (233). Regulations issued under title II of the ADA by DOJ and HUD under section 504 of the Rehabilitation Act require each program or activity conducted by a covered entity or a program or activity receiving Federal financial assistance to be readily accessible to and usable by individuals with disabilities when the program or activity is viewed in its entirety. Meeting these requirements may involve retrofit of existing facilities as part of a transition plan for compliance. Dwelling units that are accessible or that are to be made accessible under the requirements of the ADA or the Rehabilitation Act are required to comply with the requirements of section 202 when altered; other dwelling units are exempt under the new exception.

Comment. Commenters expressed concern that the replacement of telephones would trigger more extensive alterations, such as a requirement to lower a telephone installed at 54 inches (currently permitted by ADAAG) to 48 inches.

Response. Where elements are altered or replaced they must comply with these guidelines. However, in some cases the altered element is part of a larger element which is itself not altered. For example, pay telephone providers sometimes replace existing telephones with new telephones and, as part of the telephone replacement project, they do not replace or alter the existing telephone enclosures or pedestals. The new telephones, when replaced, must provide a volume control in compliance with section 704.3 that provides up to 20 decibels of gain; original ADAAG 4.31.5(2) only required 18 decibels of gain. However, the existing unaltered telephone enclosures or pedestals need not be lowered so that the telephones comply with the new 48 inch reach requirement established in section 308. Similarly, if a narrow door is replaced, the doorway need not be widened as a consequence of the door replacement. However, if new operating hardware is provided for the door, the hardware must comply with section 404.2.7.

Comment. Commenters indicated that it is common practice to reduce the number of existing telephones in telephone banks in order to reconcile the supply of pay telephones with the demand; noting also an overall decrease in the demand for pay telephones. The comments requested clarification as to whether the removal of an inaccessible pay telephone would be an alteration that would trigger a requirement to lower an adjacent wheelchair accessible pay telephone from 54 inches (currently permitted by ADAAG) to 48 inches.

Response. Inaccessible pay telephones may be removed without triggering requirements for lowering adjacent wheelchair accessible pay telephones, provided that the telephone enclosure or pedestal is not altered when telephones are removed.

Alterations to areas containing a primary function must include an accessible path of travel to the altered area unless it is disproportionate in cost or scope (202.4). This provision is intended to ensure that such areas, when altered, are on an accessible route and are served by accessible rest rooms, telephones, and drinking fountains. Requirements specific to altered residential dwelling units in section 233.3 effectively substitute for this provision by ensuring an accessible route to those dwelling units required to comply as part of an alteration. For consistency and clarity, the Board has exempted residential dwelling units from the requirements for altered primary function areas.

Comment. Comments from the historic preservation community requested that information be provided on the consultation procedures to be followed when applying the exceptions for alterations to qualified historic buildings or facilities in section 202.5. They also requested that the specific language for the exceptions for accessible routes, entrances, and toilet facilities be included in section 202.5, instead of in the various scoping provisions for those elements. In addition, they requested that information be provided on the obligation of public entities that operate historic preservation programs to achieve program accessibility under the DOJ regulations.

Response. The final rule includes advisory information in section 202.5 on the consultation procedures to be followed when applying the exceptions for alterations to qualified historic buildings or facilities. This information derives from advisory information in the original ADAAG (section 4.1.7). When an entity believes that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the entity should consult with its State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception for that element is permitted. The advisory note to section 202.5 also references the scoping provisions for accessible routes, entrances, and toilet facilities where the specific language for the exceptions for qualified historic buildings and facilities are found. Information has also been included in the advisory note to section 202.5 on the obligation of public entities that operate historic preservation programs to achieve program accessibility under the DOJ regulations.

203 General Exceptions

Certain spaces are generally exempt from the guidelines, including construction sites (203.2), raised areas (203.3), limited access spaces (203.4), machinery spaces (203.5), single occupant structures (203.6), certain areas within detention and correctional facilities (203.7) and residential facilities (203.8), employee work areas (203.9), and various spaces within recreation and sports facilities (203.10 through 203.14). These provisions have been editorially revised and renumbered in the final rule. Specifically, clarification has been added that exempt spaces "are not required to comply with these requirements or to be served by an accessible route," which is more precise than the phrase in the proposed rule that such spaces "are not required to be accessible." This is part of a global editorial revision to replace the term "accessible" throughout the text with more specific language. In addition, the reference in the exception at 203.5 to spaces frequented only by service personnel has been changed from "equipment spaces" to "machinery spaces," which was considered a more specific and accurate reference to the type of spaces covered by this exception. The Board's guidelines for recreation facilities contain exceptions for certain limited spaces within recreation and sports facilities that have been incorporated into the final rule. These exceptions address raised refereeing, judging, and scoring areas (203.10), water slides (203.11), animal containment areas (203.12), raised boxing and wrestling rings (203.13), and diving boards and platforms (203.14).

Substantive changes are made to the exceptions for limited access spaces and employee work areas. The exception at 203.4 covers limited access spaces, such as those accessed by ladders, catwalks, crawl spaces, or very narrow passageways. A reference to "tunnels" has been removed from this list, as this term could apply to spaces intended for coverage, such as underground connections between buildings and pedestrian connections required to be

accessible in provisions for accessible routes (206.4.3).

203.9 Employee Work Areas

Provisions for employee work areas in 203.9 require that accessible routes and accessible means of egress connect with employee work areas so that persons with disabilities can approach, enter, and exit the work area. Employee work areas are also subject to requirements that facilitate the provision of visual alarms. Specifically, employee work areas must meet accessibility requirements for:

- Circulation paths for common use within the area, except for those that are an integral part of equipment or that are located in work areas that are relatively small (*i.e.*, less than 1,000 square feet) or fully exposed to the weather (206.2.8).
- Means of egress (207.1).
- Wiring systems to support later installation of visual alarms as needed where work areas have audible fire alarm coverage (215.2).

There are limitations on the application of these requirements. Small work areas (*i.e.*, less than 300 square feet in area) that need to be elevated at least seven inches due to the function of the space are not required to comply with any of these requirements. In addition, other provisions in section 203 exempt spaces or structures that may function as work areas, such as raised areas, limited access spaces, machinery spaces, and single occupant structures (203.3 to 203.6). Circulation paths within work areas that are not fully exempt from compliance are required to comply with specifications for accessible routes, but exceptions are provided for route widths and handrails in certain instances.

This section differs from the proposed rule, which required a connecting accessible route to work areas for approach, entry, and exit, but which did not specifically address circulation paths within them or requirements for accessible means of egress. In addition, the proposed rule required visual alarms in employee work areas served by audible alarms.

Access to employee work areas was the subject of considerable discussion and a host of questions posed by the Board in the proposed rule. The issues centered on whether, and to what degree, access should be expanded within such areas. The original ADAAG required access to, but not fully within, employee work areas since title I of the ADA generally treats access for employees with disabilities as an individual accommodation handled on a case-by-case basis. Consequently, the original guidelines distinguished spaces used only as employee work areas from public use and common use spaces, which are fully subject to access requirements. In effect, requirements in ADAAG stopped at the entry to work areas by requiring only that such spaces be on an accessible route so that persons with disabilities could approach, enter, and exit the space. Maneuvering space, including wheelchair turning space, was not required within the work area, and elements within used only by employees as part of their job responsibilities were not required to be accessible. Nor was access required to individual work stations within a work area.

The ADAAG Review Advisory Committee recommended that ADAAG be changed to require an accessible route to each "individual work station" instead of to "work areas." Other than the connecting route, work stations would not be required to be accessible. The advisory committee recommended this change for consistency with model building codes which, unlike ADAAG, do not provide a similar exception for work areas. Building and fire codes already require connecting paths of travel to work stations for purposes of emergency egress. In the advisory committee's view, this aspect of the model building codes, as well as general exceptions for equipment and other spaces in section 203, would serve to limit the overall impact of this change. Further, the requirement for an "accessible route" to individual work stations, as opposed to access for "approach, entry, and exit" to work areas, was considered clearer and more easily interpreted.

The Board, while committed to harmonizing the ADAAG requirements with the requirements of the model codes, was concerned about whether such a requirement would be workable in all employment settings. Consequently, the Board posed several questions in the proposed rule on the appropriateness and impact of requiring an accessible route to individual work stations.

Comment. Many comments addressed access to work areas. The majority of comments were from people with disabilities who supported the recommendations of the ADAAG Review Advisory Committee to require an accessible route to all individual work stations. They stated that not providing an accessible route to all work stations would limit employment opportunities, make reasonable accommodation more difficult to implement, and exclude people with disabilities from interacting with other employees while in the workplace. The Board sought comment on what obstacles people with disabilities have encountered as a result of ADAAG requiring access only to work areas and not to individual work stations (Question 1). Responses to this question generally referred to employment or reasonable accommodation of persons with disabilities being made more difficult, although specific cases or instances were not detailed. The majority of comments against providing an accessible route to individual work stations came from organizations representing the business community. These comments considered the original ADAAG requirements to be more consistent with the intent of title I of the ADA and urged that they be retained. Increased costs and design impacts associated with greater access to work areas or individual work stations were generally cited as a concern.

Response. The final rule preserves the general scope of coverage in the proposed rule and current ADAAG by applying requirements to work areas, as opposed to individual work stations. Enhanced specifications for circulation access in work areas will effectively provide access to individual work stations in various types of work areas. However, the Board has limited the requirements for circulation access to interior work areas that are 1,000 square feet or more in size in order to minimize the impact on facilities with small work areas.

Comment. The Board requested comment on the impact of requiring access to "individual work stations" rather than to "employee work areas" (Question 2). Comments provided no clear consensus on this issue. People with disabilities stated that the impact would be minimal due to requirements in the model codes, a consideration shared by the ADAAG Review Advisory Committee. They also felt that not requiring access to individual work stations would limit their employment opportunities. The business community disputed the assertion that compliance with life safety codes would achieve an accessible route in all circumstances and noted that such a requirement would severely impact many small businesses.

Response. The final rule requires that common use circulation paths within work areas satisfy requirements for accessible routes in section 402. This will facilitate accommodation of employees, while recognizing constraints posed by certain work areas, including various types of equipment within. The final rule does not require full accessibility within the work area or

to every individual work station but does require that a framework of common use circulation pathways within the work area as a whole be accessible. This provision is generally consistent, but somewhat less stringent, than the requirements in the model building codes. In addition, exceptions to certain technical requirements for route width (403.5) and ramp handrails (405.8) are provided for circulation paths in certain work areas in order to prevent design conflicts.

Comment. Information was requested in the proposed rule on specific types of individual work stations, not otherwise exempt in the guidelines, that could not be served by an accessible route (Question 3). People with disabilities generally noted that all areas of a newly constructed building should be on an accessible route. Comments from industry mentioned various types of work stations that would not easily be served by an accessible route. These included press boxes, service bays, including grease pits in automotive centers, the employee side of check-out counters, compact restaurant kitchens, spot light towers, boom and other camera positions, cocktail bars, and lighting control booths.

Response. The Board has added exceptions at 203.9 and 206.2.8 for work areas that are raised, small, exterior, or an integral part of equipment. Work areas that are less than 300 square feet that have to be elevated seven inches or more because it is essential to the space's function are exempt from provisions for work areas entirely. Other exceptions in section 203, such as those covering raised areas (203.3), limited access spaces (203.4), machinery spaces (203.5), and single occupant structures (203.6) would apply to some of the mentioned types of work stations. In addition, an exception to accessible route requirements has been provided for press boxes (206.2.7), which is further discussed below in section 206.

Comment. The Board also sought information about whether the phrase "areas used only by employees as work areas" has been misinterpreted or considered unclear, and if it should be clarified in the final rule to prevent misinterpretation (Question 4). People with disabilities wanted clarification that employee common use areas not used as work areas must be fully accessible and do not qualify for the limited level of access permitted for areas used only by employees as work areas. Comments from industry generally supported the interpretation of this phrase. The Board sought information about whether the term "individual employee work stations" is sufficiently specific or if further clarification, qualification, or definition would be needed should a requirement be added to the final guidelines. Comments provided no clear consensus on this question.

Response. "Employee work area" is defined as spaces or portions of spaces used only by employees for work. This definition, which has been retained in the final rule without change, notes that corridors, toilet rooms, kitchenettes, and break rooms are not employee work areas. A definition for individual employee work station has not been included as the term is not used in the final rule.

204 Protruding Objects

Few comments were received on the scoping provision for protruding objects, which remains unchanged. Exceptions developed for sport activity areas and play areas in separate rulemakings on recreation facilities and on play areas are included in the final rule (204.1 Exceptions 1 and 2).

205 Operable Parts

The guidelines require operable parts on accessible routes and in accessible rooms and spaces to be accessible. Clarification has been added that operable parts on accessible elements are required to comply as well, which is consistent with technical provisions for various types of covered elements.

In the final rule, exceptions to this provision have been added. Some have been relocated from the technical provisions for operable parts in section 309. Exceptions in 205.1 cover:

- Operable parts intended for use only by service or maintenance personnel (Exception 1).
- Electrical or communication receptacles serving a dedicated use (Exception 2).
- Certain outlets at kitchen counters (Exception 3).
- Floor electrical receptacles (Exception 4).
- HVAC diffusers (Exception 5).
- Redundant controls, other than light switches, provided for a single element (Exception 6).
- Boat securement devices (Exception 7).
- Exercise machines (Exception 8).

The proposed rule contained an exception from the technical requirement that operable parts be within accessible reach ranges (309.3). This exception applied "where the use of special equipment dictates otherwise or where electrical and communication system receptacles are not normally intended for use by building or facility occupants." Since such operable parts may merit exception from some of the other technical criteria in 309, the exception has been revised to exempt such equipment generally and has been relocated to the scoping provision in section 205. The original exception has been divided in separate parts covering different types of elements: operable parts intended only for use by service or maintenance personnel (Exception 1); electrical or communication receptacles serving a dedicated use (Exception 2); and floor electrical receptacles (Exception 4).

Three exceptions derive from provisions that were specific to residential dwelling units in the proposed rule (section 1102.9). They were relocated to section 205 and made generally applicable to all types of facilities. These cover certain outlets above kitchen countertops (Exception 3); HVAC diffusers (Exception 5); and redundant controls on elements other than light switches (Exception 6). This latter exception derives from exemptions in the proposed rule for range hood controls and controls mounted on ceiling fans in residential facilities. This exception has been broadened to cover other types of redundant controls, except light switches.

Exceptions the Board developed in rulemaking on recreation facilities are included in the final rule. These exceptions permit cleats and other boat securement devices to be outside accessible reach ranges (Exception 7) and generally exempt exercise machines from requirements for controls and operating mechanisms, including reach range and operating force specifications (Exception 8).

206 Accessible Routes

This section specifies the required number of accessible routes (206.2) and their location (206.3), and addresses elements on accessible routes such as entrances (206.4), doors, doorways, and gates (206.5), platform lifts (206.7), and security barriers (206.8).

Section 206.2 specifies where accessible routes are required within a site, including their connection to accessible buildings, stories, spaces, and elements. In addition, there are provisions specific to restaurants and cafeteria dining areas, performance areas, press boxes, employee work areas, and various types of recreation facilities.

Editorial revisions made to this section include:

- Clarification that "at least one" accessible route is required between facilities and public streets and sidewalks, parking, passenger loading

zones, and public transportation stops (206.2.1).

• Revising the requirement for accessible routes between floor levels as applying to "multi-story" facilities and "stories" within, as opposed to "levels," the term used in the proposed rule (206.2.3, including the exceptions).

• Relocation of an exception for assembly areas in 206.2.3 to 206.2.4 (Exception 2).

• Clarifying an exception for certain raised courtroom stations by adding specific references to the types of spaces covered (206.2.4 Exception 1).

• Incorporation of provisions for recreation facilities that address accessible routes to amusement rides (206.2.9), boating facilities (206.10), bowling lanes (206.11), court sports (206.12), exercise machines (206.13), fishing piers and platforms (206.14), golf facilities (206.15), miniature golf facilities (206.16), and play areas (206.17).

Substantive changes, further discussed below, include:

• Modifying the exception for an accessible route in certain public facilities (206.2.3 Exception 2).

• A new exception for mezzanines in one story buildings (206.2.4 Exception 3).

• A new exception for dining areas in sports facilities (206.2.5 Exception 3).

• Revision of the requirement for accessible routes to performance areas (206.2.6).

• A new provision and exception for press boxes (206.2.7).

• A new provision and exceptions for employee work areas (206.2.8).

Comment. Public facilities, which are defined as State and local government facilities, are permitted an exception from the requirement for access between stories (206.2.3, Exception 2). In the proposed rule, this exception pertained to public facilities that are less than three stories and are not open to the public if the level above or below the accessible level houses no more than five persons and is less than 500 square feet. Comments considered the limit based on occupant load to be sufficient and suggested that the square footage cap was unnecessary.

Response. The 500 square foot maximum was based on a floor area allowance of 100 square feet per occupant, which is consistent with model building code requirements for business and industrial occupancies used in determining the occupant load for egress purposes. The Board agrees that the maximum occupant load is an effective cap on the size of buildings eligible for this exception. The square footage specification has been removed as a criterion of this exception.

The Board has clarified requirements for vertical access to mezzanines. While elevators, where provided, must serve all stories, including mezzanines where provided, ADAAG has not been clear on whether some form of vertical access is nonetheless required to a mezzanine level where no elevator is provided, such as a one-story building. Since mezzanines are elevated at heights similar to a full story, access by ramp or certain platform lifts may not provide a practical alternative. The final rule includes an exception at 206.2.4, Exception 3 stating that an accessible route to mezzanines is not required in facilities that are not subject to the requirement for an elevator, including one story buildings and those that qualify for the elevator exemption.

Comment. Designers called attention to dining areas integrated into the seating bowl of sports venues that are tiered in order to provide adequate lines of sight. These comments pointed out that it is difficult to provide accessible routes to much of the seating in such dining areas.

Response. An exception is included in the final rule for tiered dining areas in sports facilities at 206.2.5, Exception 3. Under this exception, access is not required to all dining areas, as is otherwise required. Instead, 25% of the dining area is required to be accessible provided that accessible routes connect seating required to be accessible, and each tier is provided with the same services.

Comment. The proposed rule required that an accessible route be provided where a circulation path "directly connects" seating and performance areas (206.2.6). Comments recommended that the accessible route should also directly connect such spaces to provide an equivalent level of access. Otherwise, it may be possible to provide access to performance areas through a more circuitous route and still be in compliance.

Response. Clarification has been added that the accessible route "shall directly connect the seating area with the performance area" where a circulation path is provided to do the same. This revision will ensure that the accessible route to a performance area is comparable to the general circulation route.

Since ADAAG was first published, many questions have been received about its proper application to press boxes at various sports facilities, particularly high schools. Such structures, which can be prefabricated, are significantly elevated above ground. Some are located at the top of bleachers. As a result, their design and location have posed unique challenges to the provision of a connecting accessible route. In the final rule, the Board has addressed the concerns raised in many technical inquiries by providing an exception for press boxes at 206.2.7. Press boxes in assembly facilities are required to be on an accessible route except for certain bleacher-mounted and free-standing types. An accessible route is not required to press boxes with 500 square feet or less of aggregate space that are located on bleachers with entrances on only one level (Exception 1). Free-standing structures are exempt if they are elevated more than 12 feet and have an aggregate area that is 500 square feet or less (Exception 2).

Section 206.2.8 establishes new provisions for employee work areas. The proposed rule required such areas to be on an accessible route so that people with disabilities could approach, enter, and exit the space. In the final rule, the Board has added a requirement that common use circulation paths, where provided within employee work areas, also be accessible by meeting the requirements for accessible routes in section 402. The basis for this change is discussed above under section 203.9 (Employee Work Areas). This revision provides for greater maneuvering access within work areas but does not require elements or equipment that are part of a work station to comply with any other requirements. This requirement is limited to relatively sizable, interior work spaces. Exceptions are provided for small work areas that are less than 1,000 square feet in size (Exception 1), circulation paths that are an integral part of equipment (Exception 2), and exterior work areas that are fully exposed to the weather (Exception 3).

Section 206.4 covers entrances. Substantive changes include:

• Increasing scoping for public entrances (206.4.1).

• Removing a requirement for accessible ground floor entrances (206.4.3 in the proposed rule).

• Revision of provision for parking structure entrances (206.4.2).

Editorial changes include reordering of provisions and the addition of requirements specific to transportation facilities (206.4.4) and residential dwelling units (206.4.6) that were previously located in chapters specific to those facilities. Scoping requirements for signs at entrances have been moved to the scoping for signs at section 216.

Comment. The proposed rule specified that at least 50% of public entrances be accessible (206.4.3). Many persons with disabilities urged the

Board to increase this scoping so that they have equal access in terms of convenience, entry options, travel distances, and proximity to accessible parking. Some commenters argued that all public entrances should be accessible.

Response. The minimum number of entrances required to be accessible has been increased from 50% to 60% in the final rule. While access to all entrances is desirable, a variety of conditions on a site can make access to every entrance difficult and costly. For example, facilities located on steep hillsides may have entrances elevated significantly above grade. However, this consideration, in the Board's view, is not as relevant to connections from parking structures. In final rule, the Board has required all pedestrian connections between parking structures and facility entrances to be accessible (206.4.2). This represents an increase from the proposed rule, which required only one to be accessible.

Comment. The proposed rule required that at least one accessible entrance be a ground floor entrance (206.4.3). Commenters recommended that this stipulation be removed since the ground floor may not always be the primary floor. In such conditions, the provision would not enhance accessibility.

Response. The requirement that at least one accessible entrance be a ground floor entrance has been removed in the final rule.

Comment. Section 206.4.2 covers access to pedestrian connections between parking structures and facility entrances. In the proposed rule, this requirement referred to "parking garages." Comments considered that term to be too narrow and recommended alternatives such as "parking facilities."

Response. The reference to "parking garage" has been changed to "parking structure" in the final rule.

Section 206.5 provides scoping requirements for doors, doorways, and gates. Revisions include:

- Clarification of a provision covering doors and doorways in inaccessible transient lodging guest rooms in section 206.5.3 (located at 224.1.2 in the proposed rule).
- Addition of a new exception from this requirement for shower and sauna doors (206.5.3, Exception).

This section also includes a provision for doors and doorways in residential dwelling units (206.5.4) that has been relocated from Chapter 11.

Comment. In transient lodging facilities, doors and doorways in inaccessible guest rooms are required to provide a clear width of at least 32 inches. This specification stems from the original ADAAG and is intended to afford some access to inaccessible guest rooms for visitation purposes. Clarification was requested on which types of doors this is intended to cover and whether it applies to shower doors.

Response. In the final rule, clarification has been added in 206.5.3 that the 32 inch minimum clearance applies to those doors "providing user passage" into and within guest rooms not required to be accessible. In addition, the Board has added an exception that exempts shower and sauna doors in inaccessible guest rooms from this requirement. Corresponding changes have been made to a similar provision in the scoping section for transient lodging facilities (224.1.2).

Scoping requirements for elevators in section 206.6 reference technical criteria for standard passenger elevators, destination-oriented elevators, existing elevators that are altered, limited-use/limited-application (LULA) elevators, and private residence elevators. Destination-oriented elevators are different from typical elevators in that they provide a means of indicating the desired floor at the location of the call button, usually through a key pad, instead of a control panel inside the car. Responding cars are programmed for maximum efficiency by reducing the number of stops any passenger experiences. Limited-use/limited-application (LULA) elevators are typically smaller and slower than other passenger elevators and are used for low-traffic, low-rise installations, including residential facilities.

Scoping provisions have been editorially revised to correspond to reorganized technical criteria in Chapter 4. Specifically, requirements for destination-oriented elevators and altered elevators have been integrated into the specifications for standard elevators (407). LULA elevators (408) and private residence elevators (409) are addressed in separate sections since their specifications vary considerably from the other elevator types. Scoping for private residence elevators (206.6, Exception 2) has been relocated from Chapter 11.

Section 206.6 requires each passenger elevator to comply with the requirements for standard elevators or destination-oriented elevators. LULA elevators are permitted in those facilities that are exempt from the requirement for an elevator (206.6 Exception 1).

Comment. Industry, facility operators, designers and some disability groups strongly supported LULA elevators as an alternative where a standard elevator is not required. Some comments from persons with disabilities opposed allowing use of LULA elevators over concern about their size and accessibility.

Response. The ADA's statutory language exempts certain facilities from the requirement for an elevator. The Board has retained the exception permitting LULA elevators, since it offers a more economical alternative than a standard elevator and thus may help encourage inclusion of some vertical access where none is mandated. The technical criteria for LULA elevators specify minimum car sizes that ensure adequate accessibility. In addition, the Board has revised the exception to also allow LULA elevators as an alternative to platform lifts, since such elevators provide an equivalent, if not greater, degree of access.

Comment. The guidelines provide an exception for private sector facilities based on the number of stories or the square footage per floor (206.2.3, Exception 1). A much narrower exception is permitted for State and local government facilities (206.2.3, Exception 2). The Board sought comment on whether LULA elevators should be allowed instead of a standard elevator in certain small State or local government facilities. There were few comments in response to this question.

Response. No changes have been made regarding LULA elevators that are specific to State and local government facilities. Any facility, regardless of whether it is a public or private facility, may be equipped with a LULA elevator if is not required to have an elevator. LULA elevators may also be used as a substitute for platform lifts.

Comment. The guidelines require that when one elevator is altered, the same alteration has to be carried out for all elevators programmed to respond to the same hall call control (206.6.1). Commenters opposed this requirement as excessive and argued that it goes beyond the potential scope of an elevator alteration. Generally under the guidelines, the requirements apply only to the element to be altered and not those outside the intended scope of work (except for alterations to primary function areas and the requirement for accessible paths of travel).

Response. This provision is unique in requiring an alteration to be replicated to corresponding elements (elevator cars) because it addresses an equally unique circumstance. Elevator users typically do not control which elevator will respond to a call. If one car is altered and as a result made accessible, it would make continuous access on that elevator a game of chance, with the

odds higher for each additional car responding to the call that is not similarly altered.

Section 206.7 specifies where platform lifts can be installed. In new construction, platform lifts are permitted as a means of vertical access to certain spaces, including performance areas and speakers' platforms (206.7.1), wheelchair spaces in assembly areas (206.7.2), incidental spaces not open to the public that house no more than five persons (206.7.3), and various work spaces in courtrooms (206.7.4). In the final rule, provisions have been added that permit platform lifts where exterior site constraints make installation of a ramp or elevator infeasible (206.7.5) and in residential dwelling units and transient lodging guest rooms (206.7.6). Also included in the final rule are provisions developed in separate rulemakings on recreation and play facilities that permit platforms lifts to be used to provide access to amusement rides (206.7.7), play equipment and structures (206.7.8), team or player seating areas in sports facilities (206.7.9), and boating facilities, fishing piers, and fishing platforms (206.7.10).

Comment. Comments suggested that the guidelines use the industry term "platform lifts" instead of "wheelchair (platform) lifts." The recommended term does not suggest that such platforms are limited to people who use wheelchairs.

Response. The term "wheelchair (platform) lifts" has been replaced with "platform lifts" throughout the document.

Comment. Original ADAAG allowed use of platform lifts where ramps or lifts are infeasible due to existing site constraints (4.1.3(5), Exception 4(d)). This provision was not included in the proposed rule as it was considered unwarranted in new construction. Strong support was expressed for reinstating this exception, particularly among industry. These comments referred to conditions that could pose significant challenges to access in new construction.

Response. The provision for existing site constraints has been reinserted in the final rule at section 206.7.5. It is intended to apply to instances where exterior site constraints posed by the topography make ramp or elevator access infeasible. Although the triggering condition (site constraints) must be exterior, the permitted platform lift may in fact be located in the interior of a building. This clarification is provided in an advisory note to this provision.

Section 206.7.6 permits platform lifts in residential dwelling units and transient lodging guest rooms. The Board included this provision in the final rule since it considers lift access appropriate in such spaces.

Section 206.8 requires that an accessible route or accessible means of egress be maintained where security barriers or check points are provided. It also requires that people with disabilities be able to maintain visual contact with their personal items to the same extent afforded others passing through barriers.

Comment. The proposed rule specified that people with disabilities be able to maintain visual contact with their personal belongings while "passing though" security barriers. Comments stated that the maintenance of visual contact should be ensured from the accessible route, which may not coincide with the route through barriers.

Response. Clarification has been added that "the accessible route shall permit persons with disabilities passing around security barriers to maintain visual contact with their personal items to the same extent provided others passing through the security barrier."

207 Accessible Means of Egress

Provisions for accessible means of egress are completely revised in the final rule. Provisions in the proposed rule were intended to be more consistent with model building codes and standards. In the final rule, the Board has taken this a step further by directly referencing the scoping and technical requirements in the International Building Code (IBC) for accessible means of egress. All technical criteria for accessible means of egress (409), including areas of refuge (410) have been removed in the final rule. Information on the IBC requirements for accessible means of egress is available on the Board's website at www.access-board.gov and in advisory notes.

The proposed rule, consistent with model building codes and standards, specified at least one accessible means of egress for all accessible spaces and at least two accessible means of egress where more than one means of egress was required. In addition, it provided a new requirement for an evacuation elevator to be provided as an accessible means of egress in buildings with four or more stories above or below the exit discharge level, which is also consistent with model building codes.

The proposed scoping provisions referenced technical criteria for accessible means of egress, including exit stairways and evacuation elevators (409). These specifications allowed use of exit stairways and elevators that are part of an accessible means of egress when provided in conjunction with horizontal exits or areas of refuge. While typical elevators are not designed to be used during an emergency evacuation, there are elevators that are designed with standby power and other features in accordance with the elevator safety standard that can be used for evacuation. The proposed rule also provided requirements for areas of refuge, which are fire-rated spaces on levels above or below the exit discharge levels where people unable to use stairs can go to register a call for evacuation assistance and wait for it.

Comment. Many comments supported the Board's overall effort to harmonize its guidelines with model building codes and life safety codes. Some considered this particularly important in specifications related to life and fire safety. To further underscore this effort, it was recommended that the Board directly rely on the International Building Code (IBC) in addressing accessible means of egress.

Response. Historically, the Board's guidelines have "piggybacked" model building and life safety codes in addressing accessible means of egress, particularly for scoping purposes. The required number was specified according to the number of means of egress or exits required by model building codes. The IBC's scoping and technical requirements for accessible means of egress are substantively consistent with the provisions contained in the proposed rule. For purposes of harmonization and simplicity, the Board has replaced these provisions with a reference in section 207.1 to a specific section of the IBC (1003.2.13 in the 2000 edition and 1007 in the 2003 edition).

Comment. In response to the draft final guidelines, the National Fire Protection Association (NFPA) urged the Board to reference its Life Safety Code (NFPA 101), a voluntary consensus code which contains scoping and technical provisions for accessible means of egress. NFPA requested that the final guidelines reference the 2000 edition of the Life Safety Code in addition to the IBC provisions for accessible means of egress.

Response. Requirements for accessible means of egress in the IBC are consistent with those the Board has proposed. Further, they are provided in the IBC in a discrete section (1003.2.13), which the final guidelines specifically reference. Specifications for accessible means of egress in the Life Safety Code are provided throughout that document. Consequently, NFPA's request would require a reference to the complete Life

Safety Code. For this reason, the Board has retained its references to the IBC for accessible means of egress. The final guidelines do reference NFPA's National Fire Alarm Code (NFPA 72–1999) with respect to technical requirements for visual alarms, further discussed below in section 702.

The Board had considered adding a provision, which was included in the draft of the final guidelines, that would have required accessible means of egress to be connected to the level of exit discharge by an accessible route. This would have been required except where the floor level is 30 inches or more above or below the level of exit discharge. In such cases, areas of rescue assistance would have been permitted in lieu of an accessible route to the level of exit discharge. The Board sought to incorporate a similar provision into the IBC. The IBC Committee on Means of Egress did not approve adding such a provision into the IBC. The IBC Committee and others believed that the rationale for areas of rescue assistance was relevant not just to the levels above and below the exit discharge level, but also to the level of exit discharge itself. The Board's provision recognized elevation differentials that would make connection by an accessible route very difficult even in new construction. This recognition, it was argued, should not be limited by a specific elevation change (*i.e.*, 30 inches). For purposes of harmonization, the Board has removed this provision in the final rule.

Comment. Comments suggested that situations should be addressed where accessible means of egress should be allowed to coincide, such as a space that provides few wheelchair spaces.

Response. The final rule includes an exception acknowledging that accessible means of egress can share a common path of egress travel where this is permitted for means of egress by local building or life safety codes (207.1, Exception 1).

In addition, the Board has retained in the final rule an exemption for detention and correctional facilities from the requirement for areas of refuge (Exception 2). This exception was provided because such areas are considered a security risk and evacuation is typically supervised in these types of occupancies.

The Board has added a new provision specific to platform lifts. The proposed rule allowed accessible routes to serve as accessible means of egress, except for wheelchair lifts, which are not permitted as part of an accessible means of egress because they are not generally provided with standby power that would allow them to remain functional in emergencies when power is lost. The final rule includes a provision that allows platform lifts with standby power to be part of an accessible means of egress where the IBC permits lift access (207.2). This change helps ensure that necessary accessible means of egress from spaces served by platform lifts are maintained in emergencies.

208 Parking Spaces

Section 208 specifies the minimum number of parking spaces required to be accessible. In general, required access is determined by a sliding scale based on the total number of spaces provided (Table 208.2). This section includes scoping requirements specific to hospital outpatient facilities (208.2.1), rehabilitation facilities and outpatient physical therapy facilities (208.2.2), residential facilities (208.2.3), and van spaces (208.2.4). Changes made in the final rule include:

- Removing an exception for "motor pools" (208.1, Exception).
- Clarifying scoping, including where multiple parking facilities are provided on a site (208.2).
- Clarifying requirements for parking at residential facilities (208.2.3).
- Increasing the portion of accessible spaces that accommodate vans (208.2.4).
- Relocation of requirements for signage to the scoping section on signs (216.5).

Section 208.1 exempts spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, and vehicular impound where public access lots are provided with accessible passenger loading zones. The proposed rule included in this list a reference to "motor pools," which the Board has removed in the final rule.

Comment. The scoping table in the proposed rule specified the minimum number based on the total number of parking spaces provided in a parking lot. Commenters indicated that this term could be construed as applying only to surface lots, even though the requirement is intended to apply to parking garages and other types of parking structures as well.

Response. The Board has replaced the references to "parking lots" with the term "parking facility," which is more inclusive of the various types of parking covered by this section.

Comment. Persons with disabilities urged an increase in the number of parking spaces required to be accessible. Other commenters, including those representing facility operators, asked for a reduction in this number because existing accessible spaces are believed to be underutilized. Comments also opposed basing scoping on the number of spaces provided at each facility instead of the total number provided on a site, which further serves to inflate the required number of accessible spaces.

Response. Scoping for accessible parking spaces (excluding the portion required to be van accessible) has not been changed in the final rule. A strong difference of opinion exists between those who use such spaces and those who must provide or maintain them. There was no clear consensus among commenters on either side of this issue on an alternative scoping level. Additionally, the final rule preserves the application of scoping on a facility-by-facility basis instead of on the total number provided on a site, consistent with the original ADAAG and the proposed rule. Clarification to this effect that was provided in an advisory note in the proposed rule has been added to the text of the requirement in 208.2.

Parking at residential facilities is addressed in section 208.2.3. Where parking spaces are provided for each dwelling unit, at least one parking space for each accessible dwelling unit is required to be accessible (208.2.3.1). The Board has clarified this provision to apply "where at least one parking space is provided for each dwelling unit." At least 2% of any additional spaces, where provided, are required to be accessible as well (208.2.3.2). The Board has amended requirements for guest parking (208.2.3.3) to include employee spaces, which is consistent with the basic scoping provision applying generally to all facility types in 208.2.

Comment. Section 208.2.4 covers van accessible spaces. The proposed rule specified that one of every eight accessible spaces, or fraction thereof, be designed to accommodate vans. Technical specifications for van spaces provide for a wider access aisle to better accommodate lift-equipped vehicles. Many comments considered this number to be wholly insufficient. People with disabilities who use vans reported difficulty finding available van spaces which, when provided, are too often already occupied. Recommended alternate scoping levels varied, though some urged that all accessible spaces be van accessible.

Response. The final rule has been revised to require one van space for every six accessible spaces, or fraction thereof. This change does not increase the total number of parking spaces required to be accessible, but instead increases the portion of such spaces that must be accessible to vans. The Board made this change due to several factors. In addition to the response from commenters, anecdotal information clearly suggests that the use of vans by

persons with disabilities is on the rise. In addition, the Board is aware of other entities, such as the State of Maryland, that have responded to this demand for more van spaces by doubling the required number. Another consideration is that van spaces are not designated or reserved exclusively for vans; their use by people who do not drive vans can impact their availability among accessible spaces. The primary difference between van spaces and standard accessible spaces is an additional three feet of aisle width. The technical specifications permit the additional space to be provided in either the aisle or the space. The Board believes that the impact of this change is lessened by technical requirements that allow two accessible spaces, including van spaces, to share the same aisle.

The requirement for van spaces applies to all types of facilities, including those that are the subject of special provisions, such as hospital outpatient facilities (208.2.1), rehabilitation and physical therapy facilities (208.2.2), and residential facilities (208.2.3). In the proposed rule, the reference to rehabilitation and physical outpatient therapy facilities covered in 208.2.2 was inadvertently omitted. This reference has been restored in the final rule.

Section 208.3 specifies the location of accessible parking spaces. This section has been edited to clarify:

- The location of accessible spaces generally (208.3.1).
- That an exception allowing van spaces to be clustered applies to "multi-story" parking facilities (208:3.1, Exception 1).
- That "substantially equivalent" or greater access in terms of travel distance, parking fee, and user cost and convenience is the basis upon which accessible spaces can be located in one facility instead of another (208.3.1, Exception 2).
- That accessible parking serving individual residential dwelling units must be located on the shortest accessible route to the units they serve (208.3.2).

Comment. Spaces can be located in other lots where equal or greater access would result in terms of travel distance, user cost, and convenience (208.3.1, Exception 2). Comments requested clarification of the terms "user cost" and "user convenience."

Response. In the final rule, the Board has replaced the reference to "user cost" with "parking fee" which it considered more descriptive. Under this exception, accessible spaces can be located in one parking facility instead of another so long as this does not result in higher parking fees. The Board has clarified the term "user convenience" in a new advisory note.

209 Passenger Loading Zones and Bus Stops

In general, at least one accessible passenger loading zone is required for every 100 linear feet of loading zone space provided (209.2.1). Additional requirements address bus loading zones and bus stops (209.2.2 and 209.2.3), medical and long-term care facilities (209.3), valet parking (209.4), and mechanical access parking garages (209.5). Revisions have been made to:

- Clarify the basic scoping provision (209.2.1).
- Integrate requirements for bus loading zones and bus stops previously located in a separate chapter covering transportation facilities (209.2.2 and 209.2.3).
- Modify provisions specific to medical care and long-term care facilities (209.3).
- Address mechanical access parking garages (209.5).

An accessible passenger loading zone is required for every 100 linear feet of loading zone space provided. The Board has clarified in the final rule that this applies to "fractions" of this amount as well, which is consistent with the intent of this provision as proposed.

The proposed rule addressed bus loading areas and bus stops in Chapter 10 (section 1002.2), which covered transportation facilities. With the integration of this chapter into the preceding chapters, the provisions for bus loading zones and bus stops have been incorporated into the general scoping provisions for passenger loading zones. This reorganization helps clarify that while these areas function as passenger loading zones, they are subject to different technical criteria. No substantive changes have been made to these requirements as part of this reorganization.

Comment. Accessible passenger loading zones are required at licensed medical care and licensed long-term care facilities. The scope of this requirement was not clear to commenters who asked whether the reference to medical care facilities included doctors' and dentists' offices, clinics, and similar types of health care facilities.

Response. The Board did not intend this provision to apply to medical facilities that do not generally provide overnight stay. In the final rule, this requirement is limited to those medical and long-term care facilities where the period of stay may exceed 24 hours. This change is consistent with original ADAAG's use of the term "medical care facility" and corresponds with a similar revision made to scoping provisions for patient bedrooms in such facilities in section 223. In addition, the Board has clarified that this provision applies only to long-term care facilities that are licensed.

Comment. It was recommended that the guidelines address mechanical conveyances used to elevate vehicles to different levels of parking facilities. Comments pointed out that model building codes cover facilities providing these vehicle lifting devices.

Response. The final rule includes a provision for "mechanical access parking garages" that requires accessible passenger loading zones at the vehicle drop-off and pick-up areas. This requirement is consistent with model building codes.

210 Stairways

Stairs that are part of a means of egress are required to comply with the guidelines (210.1). Exceptions are provided for certain stairs in detention and correctional facilities and altered stairs. The final rule modifies the exception for altered stairs (Exception 2), adds a new exception for aisle stairs in assembly areas (Exception 3), and incorporates an exception for play components developed in previous rulemaking on play areas (Exception 4).

Comment. In altered facilities, stairs serving levels that are connected by an accessible route do not have to comply, but must be equipped with complying handrails. Comments indicated that this requirement should apply only where an alteration affects stairs. Otherwise, the requirement for complying handrails should not apply.

Response. The requirement for complying handrails was intended to apply only where stairs are modified or replaced as part of an alteration. Clarification has been added in the final rule that the requirement for complying handrails applies "when the stairs are altered."

Comment. The International Building Code and other model building codes provide various exceptions for stairs in assembly areas to permit design features used to accommodate sight lines. Such features include unique riser and tread dimensions and handrail configurations. Comments indicated that an exception should similarly be provided in the guidelines to avoid conflict with model building codes.

Response. The final rule exempts aisle stairs in assembly areas from the requirements for stairs.

211 Drinking Fountains

In addressing drinking fountains, the guidelines cover access for people who use wheelchairs and access for standing persons who may have difficulty bending or stooping. Where provided, 50% of drinking fountains are required to be wheelchair accessible and 50% are required to be accessible to standing persons (with rounding up or down permitted in the case of odd numbers). Generally, this requires at least two units in order to provide such access. However, single units that provide dual access, such as those equipped with two spouts or combination high-low types, can substitute for two separate units. Scoping requirements apply where drinking fountains are provided on exterior sites, on floors, and within secured areas.

This section has been editorially revised for clarity and substantively revised in several respects:

- References to "water coolers" have been removed (211).
- The application of scoping to exterior sites has been clarified (211.1).
- An exemption for secured areas in detention and correctional facilities has been added (211.1, Exception).

The proposed rule scoped both drinking fountains and water coolers. The term "water coolers" typically refers to units that are either identical to drinking fountains or to furnishings that are not fixed or plumbed. The reference to water coolers was removed.

Comment. Many comments considered this section unduly complicated and obscure in potentially requiring at least two units where drinking fountains are provided. Commenters also opposed specific recognition of "high-low" units as an alternative to two separate units since other types, such as single bowl units with two spouts, are commercially available.

Response. Section 211 has been editorially revised to enhance clarity. Section 211.2 now states that "no fewer than two drinking fountains shall be provided" with one being wheelchair accessible and the other designed to accommodate people who have difficulty bending or stooping. Single units that provide both types of access are permitted as an alternative to multiple installations (211.2 Exception). Where fractions result (*i.e.*, provision of an odd number of units), rounding up or down is permitted.

In the final rule, scoping has been clarified as applying to units provided at "exterior sites," in addition to those installed on floors. For example, if drinking fountains are provided outside a building and on each of its floors, then dual access must be provided at exterior locations and on each floor. If drinking fountains are provided on one floor only, then the requirement for dual access would apply only to that floor.

Scoping is also applied to ensure dual access in secured areas of facilities, such as prisons and jails since circulation among occupants may be restricted to such an area. In the proposed rule, technical criteria applicable to detention and correctional facilities required wheelchair access to drinking fountains serving accessible housing or holding cells (section 807.2.4 in the proposed rule). However, the basic scoping in section 211 would have applied equally to detention and correctional facilities, including the requirement for units designed to accommodate people who have difficulty bending or stooping. In the final rule, an exception has been added to clarify that drinking fountains serving inaccessible cells only are not required to be accessible (211.1, Exception). Those units that serve accessible cells are required to be accessible as required in section 211.

212 Sinks, Kitchens, and Kitchenettes

Scoping provisions in section 212 require access to kitchens and kitchenettes, where provided. Where sinks are provided in each accessible room or space, at least 5% of each type, but no less than one, must be accessible, except for mop or service sinks, which are exempt.

Comment. In the proposed rule, this scoping section referenced "wet bars" along with kitchens and kitchenettes. Comments, including those representing the hotel and motel industry, considered this reference to be unnecessary since such elements are adequately covered through references to kitchenettes and sinks. The term "wet bar" could pose a source of confusion since the guidelines do not provide a definition or specific technical criteria for such elements.

Response. The reference to "wet bars" has been removed in the final rule.

The proposed rule provided several exceptions which clarified that access to kitchens and kitchenettes is not required in inaccessible medical care patient rooms, transient lodging guest rooms, dwelling units, or housing cells (212.1.1, Exceptions 1 though 4). These exceptions have been removed as unnecessary since scoping elsewhere in Chapter 2 indicates the number of rooms, units, and cells required to be accessible. Those not scoped are not required to be accessible. Thus, none of the provisions in the guidelines, including those for kitchens, would apply to rooms, units, and cells not required to be accessible, unless otherwise indicated.

213 Toilet Facilities and Bathing Facilities

Section 213 covers access to toilet and bathing facilities, including elements and fixtures they contain. Access is required where toilet and bathing facilities are provided, though exceptions are provided for certain altered facilities, including qualified historic facilities, single user rooms, and portable units clustered at a single location (213.2, Exceptions 1 through 4).

Substantive changes include an increase in the number of toilet rooms clustered at a single location required to be accessible and revision of criteria for unisex toilet and bathing rooms.

Comment. Where single user toilet rooms are clustered at a single location, not all are required to be accessible (213.2, Exception 4). In the proposed rule, this exception specified access to at least 5% of such toilet rooms. This reduced scoping was limited to those toilet rooms containing fixtures provided in excess of the number required by the local plumbing or building code. Comments from people with disabilities strongly opposed this reduction in access from the original ADAAG, which required all to be accessible. Commenters felt that this would severely limit choice and availability of accessible toilet rooms at such locations. Some urged that all toilet rooms clustered at a location should be required to be accessible.

Response. The exception has been modified to allow only half of the toilet rooms clustered at a single location to be inaccessible. This will enhance choice and availability of accessible toilet rooms while still providing a considerable reduction in the amount required to be accessible relative to the original ADAAG. As revised in the final rule, this scoping is not limited to situations where the fixture count required by the local plumbing or building code is exceeded. Thus, the 50% scoping would apply across the board to facilities clustered at a single location without regard to the required fixture count. The Board made this change in order to facilitate compliance.

Comment. Comments advised revising requirements for unisex toilet and bathing rooms for greater consistency with model building codes. Recommendations also noted that unisex facilities are also referred to as "single use" or "family" toilet and bathing rooms in some codes.

Response. The requirements for unisex facilities have been revised

according to specifications in the model building codes (213.2.1). Unisex toilet rooms must have a lavatory and privacy latch and cannot have more than two toileting fixtures (*i.e.*, two water closets, or one water closet and one urinal). This differs from the proposed rule which required unisex toilet rooms to have one water closet. Unisex bathrooms must have a lavatory, water closet, privacy latch, and one shower, and may have a tub in addition to a shower. The proposed rule permitted either a shower or tub. The final rule also includes a reference indicating that unisex toilet and bathing rooms are also known as "single use or family" facilities.

Editorial revisions made to the scoping provisions for toilet and bathing facilities include:

- Clarification of the requirement that toilet and bathing facilities be provided on an accessible story in facilities exempt from the requirement for an elevator where toilet and bathing facilities are provided (213.1).
- Relocation of requirements for signs (213.2.2 in the proposed rule) to the signage scoping section (216.8).
- Removal of exceptions for toilet and bathing rooms serving inaccessible patient rooms, guest rooms, dwelling units, and cells (213.2, Exceptions 5 through 8 in the proposed rule).

The proposed rule provided several exceptions which clarified that access is not required to toilet and bathing facilities serving inaccessible medical care patient rooms, transient lodging guest rooms, dwelling units, or prison and jail cells (213.2, Exceptions 5 through 8). Similar to corresponding exceptions for kitchens and kitchenettes in 212, these exceptions have been removed as unnecessary since scoping elsewhere in Chapter 2 indicates the number of rooms, units, and cells required to be accessible. Those not scoped are not required to be accessible, including toilet and bathing facilities serving them.

Section 213.3 addresses plumbed fixtures and accessories. Substantive changes have been made to scoping provisions for ambulatory accessible toilet compartments (213.3.1) and urinals (213.3.3).

Comment. The proposed rule, consistent with the original ADAAG, required that access for people who are ambulatory be provided, in addition to wheelchair accessible compartments, in toilet rooms with six or more toilet compartments. Ambulatory accessible stalls feature parallel grab bars on both sides and a self-closing door and are designed to accommodate people who may have difficulty walking, sitting, or rising. Comments pointed to a disparity in the application of this requirement between men's and women's rooms since the provision is triggered by the number of compartments without taking into account urinals. The number of toilet compartments in a men's rooms may be lower than in a women's rooms due to the provision of urinals.

Response. The requirement for ambulatory accessible compartments has been revised so that it applies equitably between men's and women's rooms (213.3.1). The provision has been modified to apply where six or more toilet compartments are provided or where "the combination of urinals and water closets totals six or more fixtures."

Comment. Where urinals are provided, the proposed rule specified at least one to be accessible. Comments, particularly those from industry, urged that this requirement be removed. Some comments questioned the degree to which men with disabilities use or prefer urinals over water closets. Several comments indicated that some building codes have been revised to permit stall-type urinals, which can facilitate the emptying of leg bags.

Response. The Board believes that access to urinals should be required to preserve a degree of choice in the type of toilet fixtures available. However, the scoping requirement has been revised to apply where more than one urinal is provided. Thus, accessible urinals are not required in toilet rooms equipped with one urinal.

Editorial changes made to scoping provisions in 213.3 for plumbed fixtures and accessories include:

- Removing as unnecessary the distinction between toilet compartments and toilet rooms in scoping accessible water closets (213.3.1, 213.3.2).
- Clarifying the prohibition on accessible lavatories being placed in toilet compartments (213.3.4).
- Removing references to operable parts dispensers, and receptacles, as such elements are generally covered by scoping in 205 (213.3.6 in the proposed rule).
- Relocation and modification of a scoping provision for coat hooks and shelves in toilet and bathing rooms and toilet compartments (213.3.7).

Comment. At least one accessible lavatory is required in toilet and bathing rooms. This required accessible lavatory cannot be located in a toilet compartment. Comments agreed with this provision, but requested that it be restated more clearly in the final rule.

Response. The provision has been revised for purposes of clarity to state that where lavatories are provided, at least one shall be accessible "and shall not be located in a toilet compartment."

Section 213.3.7 addresses coat hooks and shelves provided in accessible toilet rooms, toilet compartments, and bathing facilities and references corresponding technical criteria for such elements in these spaces. This provision has been relocated for clarity from the scoping section covering storage (208). In the proposed rule, this provision at 228.4 required such access only if coat hooks and shelves were provided in inaccessible toilet rooms or toilet compartments. This has been revised in the final rule as applying where such elements are provided without regard to inaccessible rooms and compartments.

214 Washing Machines and Clothes Dryers

No substantive changes have been made to scoping requirements for washing machines and clothes dryers. Editorial changes made to this section include changing the section's title from "Laundry Equipment" to "Washing Machines and Clothes Dryers" for consistency with the references used in the scoping provisions.

215 Fire Alarm Systems

Section 215 covers fire alarms, which are required to comply where audible fire alarms are provided. Provisions are included that are specific to public use and common use areas (215.2), work areas (215.3), transient lodging guest rooms (215.4), and residential dwelling units (215.5).

Substantive changes made in the final rule concern existing facilities, work areas, and other types of emergency alarm systems. Editorial changes include the addition of references to transient lodging facilities and residential dwelling units, which are subject to specific requirements for fire alarms in other scoping provisions in sections 224 and 233, respectively.

Fire alarm systems required to be accessible must have visual appliances which serve people who are deaf or hard of hearing. The advisory committee had recommended an exception that would require visual appliances in alterations only where a fire alarm system is upgraded or replaced or a new system installed. Such an exception would recognize that fire alarms are often complex building-wide systems that cannot necessarily be brought into compliance with requirements for visual appliances on a piecemeal basis. The Board had not included this exception in the proposed rule because it considered the basic application provisions for alterations in section 202.3 to be sufficient. In general, these

provisions apply requirements of the guidelines according to the scope of an alteration to the degree that compliance is "technically feasible." The Board has reconsidered this decision and has included an exception in the final rule for consistency with the International Building Code and the National Fire Protection Association code (NFPA 72). The exception clarifies that alterations affecting fire alarm systems partially, or in a limited manner, do not trigger requirements for visual appliances (215.1, Exception). However, alterations that involve the upgrade or replacement of an existing alarm system or the installation of a new system are subject to the requirements for visual alarms.

The Board intends the exception at 215.1 to be applied in the same manner and to have the same meaning as is common practice in a similar exception provided in the model codes upon which this exception is based. Upgrades to the fire alarm system are changes to the system infrastructure and are not changes to individual system components. For example, replacing the main fire alarm control panel which permits fire alarms to be better integrated with other building systems or with off-site monitoring services would be considered an upgrade to the fire alarm system. In addition, replacing or increasing the main power supply to the fire alarms would be an upgrade to the fire alarm system. However, adding or relocating individual visible or audible notification devices is not an upgrade to the system.

Comment. The proposed rule included a requirement for visual alarms in employee work areas that are served by audible alarms (203.3). Employee work areas are exempt from most other requirements in the guidelines under an exception at 203.9. In order to gauge the impact of this requirement, the Board posed several questions that sought comment on: how frequently alarm systems are typically replaced or upgraded in such a manner that the requirement would be triggered in existing facilities (Question 5), other alternatives that would provide a comparable level of life safety for employees who are deaf or hard of hearing (Question 6), and limiting the number of visual appliances for the benefit of people who have photosensitive epilepsy (Question 7). Comments indicated that alarm systems are typically replaced on a 10–15 year cycle. However, some indicated that the electrical service supporting the alarms is not necessarily replaced or upgraded when alarms systems are, which may preclude opportunities to easily add more appliances to the system as part of the work. Responses on alternative methods included low tech suggestions such as pagers, a buddy system, and other solutions that involve non-fixed elements or operational methods and are thus outside the scope of these guidelines. Many people who have photosensitive epilepsy and organizations representing them acknowledged that visual alarms are necessary in public use and common use areas but urged the Board to treat employee work areas differently. These commenters expressed concern that visual appliances in employee work areas could pose barriers to the employment of people who have photosensitive epilepsy. Activation of visual appliances in work areas on an as-needed basis does not provide a practicable solution as most codes, standards, and local laws prohibit deactivation of fire alarm appliances.

Response. The Board has removed the requirement for visual alarms in employee work areas. Instead, the final rule only requires that work areas be designed so that compliant visual appliances can be integrated into the alarm system (215.3). This provision, which applies only where work areas have audible alarm coverage, will facilitate accommodation of employees who are deaf or hard of hearing as required under title I of the ADA. The specification does not require electrical service to support wiring for visual appliances throughout all employee work areas. The specification merely requires that the wiring be placed so that it can be tapped into from the location of employee work areas. The Board believes that the surplus electrical service typically provided should be sufficient for the incidental installation of visual alarms.

Comment. The Board proposed covering facility alarm systems (other than fire alarm systems) that do not instruct occupants to evacuate the facility but provide other warning information, such as those used for tornado warnings and other emergencies. The proposed requirement (215.2 in the proposed rule) specified audible and visible signals but did not reference any specific technical criteria, including any addressing placement or photometric characteristics. Instead, the Board sought comment on what these characteristics should be, particularly where differentiation from fire alarm system signals is important (Question 9). Many commenters supported ensuring that such alarm systems are accessible to people who are deaf or hard of hearing, but no information was received on appropriate technical specifications for guidelines that are national in scope.

Response. The scoping requirement for other types of alarms has been removed in the final rule. The Board did not want to scope an element absent reliable technical specifications. The Board will consider bringing this matter to the attention of international model codes and standards organizations in the future.

216 Signs

Scoping requirements for signs cover room designations (216.2) and directional and informational signs (216.3). The guidelines also include provisions specific to certain elements and spaces, including parking, entrances, means of egress, and toilet and bathing rooms. In the proposed rule, these requirements were located at the scoping or technical sections covering the elements and spaces. In the final rule, all scoping requirements specific to signs have been localized in section 216.

Section 216.1 exempts certain types of signs, including building directories, menus, building names, temporary signs, and signs provided in non-public use spaces of prisons and jails. In the proposed rule, these exceptions were listed separately among provisions for room designations and directional or informational signs. For simplicity, they have been relocated as exceptions to the general scoping provision (216.1) which exempts them from this section entirely. In addition, the final rule includes new exceptions for:

- Seat and row designations in assembly areas (Exception 1).
- Occupant names (Exception 1).
- Company names and logos (Exception 1).
- Signs in parking facilities (Exception 2).

The Board included exceptions for occupant names, and company names and logos, which is consistent with its interpretation of the original ADAAG provisions and the intent of the proposed rule. These added exceptions clarify that the names of stores in shopping malls, building names, and similar types of signs are exempt from these requirements. A new exception exempts signs in parking facilities from compliance with the signage provisions of section 216 except those covering means of egress (216.4) and designation of accessible parking spaces (216.5).

Comment. Commenters requested that seat and row designations in assembly areas be exempt from the requirements for signage. It was also suggested that an exemption be provided for signs in

parking facilities which are intended for use by vehicle drivers.

Response. An exception has been included in the final rule for seat and row designations and signs in parking facilities.

Comment. Comments requested clarification on what constitutes a "temporary" sign.

Response. The Board has interpreted this reference, which is included in the original ADAAG, as pertaining to signs that are posted for a short duration. For greater clarity, the Board has described temporary as "seven days or less" in the final rule.

Section 216.2 covers designations of permanent rooms and spaces, including pictograms provided as part of such signs. These types of signs are required to be tactile through the provision of braille and raised characters. This provision has been editorially revised and simplified in the final rule, though its application remains basically unchanged. For example, the term "permanent" as a descriptor of the types of designations covered has been removed as unnecessary since opposite types ("temporary") are exempted.

Comment. Some comments considered the scoping provision for room designations difficult to understand.

Response. In the final rule, requirements for designations in section 216.2 have been simplified without substantive change.

Information and directional signs are addressed by 216.3. These types of signs are not required to be tactile but are subject to requirements for visual legibility and contrast. Signs providing direction to or information about interior spaces and facilities are required to comply. In the final rule, the Board has removed "permanent" as a descriptor of the type of rooms and facilities covered in this provision.

Various signage requirements specific to certain spaces and elements have been relocated for simplicity and ease of reference to section 216. These provisions include:

- 216.4 Means of Egress (from 207.3, 410.7, 410.8).
- 216.5 Parking (from 208.3).
- 216.6 Entrances (from 206.4.8).
- 216.7 Elevators (from 407.5.7).
- 216.8 Toilet Rooms and Bathing Rooms (from 213.2.2 and 213.2, Exception 4).
- 216.9 TTYs (from 217.4.9).
- 216.10 Assistive Listening Systems (from 219.4).
- 216.11 Check-Out Aisles (from 227.2.1).
- 216.12 Amusement Rides (incorporated from guidelines previously issued for recreation facilities).

Substantive changes have been made to provisions for means of egress, parking, assistive listening systems, and check-out aisles.

Section 216.4 provides specific requirements for means of egress, including exit doors, areas of refuge, and directional signs. The proposed rule required tactile signs at exit doors and provided specific requirements for areas of refuge and directional signs. These specifications are substantively revised in the final rule. The requirement for exit doors (216.4.1) has been clarified as applying to "doors at exit passageways, exit discharge, and exit stairways." In the final rule, scoping requirements for means of egress and areas of refuge have been revised to reference provisions in the International Building Code (IBC) as discussed above in section 207. Corresponding changes have been made to signage requirements for areas of refuge (216.4.2) and directional signs (216.4.3) which now reference the respective IBC signage specifications for scoping. Such signs must be provided where required by the IBC but are subject to technical specifications in these guidelines at section 703.

Accessible parking spaces are required to be designated by the International Symbol of Accessibility according to 216.5. This provision was located at 208.3 in the proposed rule. Exemptions are provided for small lots (Exception 1) and spaces individually assigned to residential dwelling units (Exception 2). Under the first exception, accessible spaces in lots with four or fewer spaces are not required to be identified as accessible (*i.e.*, reserved solely for use by people with disabilities). This exception is intended to mitigate the impact of a reserved space in very small lots and stems from model building codes. In the final rule, the scope of this exception was revised by changing the maximum lot size eligible for it from five to four. The exception for residential dwelling unit spaces has not been changed.

Comment. The proposed rule removed a requirement that the access designation for van parking include the term "van accessible" to clarify that both car and van drivers can use such spaces, as was the original intent of ADAAG. Many comments strongly opposed this change. While some may have misinterpreted it as removal of the requirement for van accessible spaces, others considered this designation important in encouraging car drivers to use other accessible spaces over those designed to accommodate vans.

Response. The final rule restores the requirement for van spaces to be designated as "van accessible," which is provided in the technical criteria for parking (502).

Comment. Signs are required to indicate the availability of assistive listening systems, which are required in certain assembly areas (216.10). In the proposed rule, such signs were required at ticket offices and windows. Comments pointed out that some assembly areas subject to this requirement may not have ticket offices or windows.

Response. In the final rule, the requirement has been revised to require signs for assistive listening systems at each assembly area required to provide an assistive listening system, but an exception allows such signs to be located at a ticket office or window instead, where provided.

Comment. Section 216.11 requires identification of accessible check-out aisles. The proposed rule required that this identification be placed in the same location as the identifying number or type of check-out aisle. Commenters noted that not all check-out aisles are distinguished by numbers. They recommended that the guidelines should be revised to ensure access to each type of aisle serving a different function, such as express aisles or cash-only aisles.

Response. The requirement for identification of check-out aisles has been revised to require that accessible designations be located in the same area as the number, letter, or function identifying the check-out aisle. The proposed rule required that accessible designations are not required where "all check-out aisles in the facility are accessible." This provision, which is reformatted as an exception in the final rule, has been revised to apply where "all check-out aisles serving a single function" are accessible.

217 Telephones

Access to telephones is covered for people who use wheelchairs and those who are deaf or hard of hearing. Scoping applies to various public telephones, including coin and coin-less pay telephones, closed-circuit telephones, courtesy phones, and other types of public telephones (217.1). Provisions are provided for wheelchair access (217.2), volume controls (217.3), and TTYs (217.4), which are devices that enable people with hearing or speech impairments to communicate through the telephone. Revisions made in finalizing the guidelines include:

- Clarifying coverage of courtesy phones (217.1).

- Applying requirements for wheelchair accessible telephones to exterior sites (217.2).
- Adding an exception for drive-up public telephones (217.2).
- Increasing scoping for volume controls on public telephones (217.3).
- Clarifying the application of TTY scoping requirements to exterior sites (217.4.4).
- Incorporating requirements for transportation facilities, including rail stations and airports, that were previously located in Chapter 10 (217.4.7).
- Relocating TTY signage requirements from 217 to the signage scoping section (216.9).

Comment. Section 217.1 lists various types of public telephones covered by this section. Commenters requested that courtesy phones be addressed along with other types of public phones.

Response. The Board has interpreted the reference to "public telephones" as including courtesy phones but has included a specific reference to them in 217.1 so that their coverage is clear. Such phones are subject to requirements for wheelchair access and volume controls, but they are not covered by TTY requirements, which apply only to public pay telephones.

Comment. Some commenters seemed unclear on whether requirements for wheelchair access applied to exterior installations.

Response. Scoping for wheelchair access in 217.2 was intended to cover interior and exterior public telephones. As proposed, this provision required access to at least one telephone on a floor or level and, where multiple banks are provided, each bank. In the final rule, the Board has added clarification that the requirements for wheelchair accessible phones apply to exterior sites, in addition to floors and levels.

Comment. Comments to the draft of the final guidelines noted that some public telephones are intended for use only from vehicles and recommended that they be exempt from the requirements for wheelchair access.

Response. An exception has been added in the final rule that exempts drive-up-only public telephones from the requirements for wheelchair access (217.2, Exception).

Comment. Comments from persons who are hard of hearing sought an increase in the number of phones required to have volume control. The proposed rule specified a minimum of 25%, but many urged that all public phones should have volume control.

Response. In the final rule, all public telephones are required to be equipped with volume control instead of 25%, as was proposed. This is consistent with other Board guidelines and standards covering access to telecommunications products and electronic and information technology. Section 255 of the Telecommunications Act of 1996,[16] a comprehensive law overhauling regulation of the telecommunications industry, requires telecommunications products and services to be accessible. The Board was assigned responsibility to issue guidelines pursuant to section 255, which are known as the Telecommunications Act Accessibility Guidelines.[17] These guidelines require all public telephones to be equipped with volume controls. A similar requirement is contained in standards[18] the Board issued under section 508 of the Rehabilitation Act of 1973, as amended,[19] which requires access to electronic and information technology developed, procured, maintained, or used by Federal agencies. Since all new phones are to be equipped with volume controls, the requirement for identifying signage (a specified pictogram featuring a handset with radiating sound waves) has been removed.

General scoping for TTYs in 217.4 includes provisions specific to floors, buildings, and exterior sites and distinguishes between private and public facilities. In private buildings (*i.e.*, places of public accommodation and commercial facilities) where four or more pay phones are provided at a bank, within a floor, building, or on an exterior site, a TTY is required at each such location. A lower threshold is provided for public buildings (*i.e.*, State and local government facilities) where one pay telephone on a floor or within a public use area of a building triggers the requirement for a TTY. In the final rule, the Board has clarified references to "site" as being specific to "exterior sites" to avoid confusion that may arise since the term "site," by itself, can be read to include the buildings on a site. This change helps clarify that TTY scoping requirements for exterior installations is to be satisfied independently from those applicable to interior locations.

218 Transportation Facilities

Section 218 provides requirements for rail stations, fixed guideway systems, bus shelters, and other transit facilities, such as airports. These provisions are based on requirements located in Chapter 10 in the proposed rule. They have been relocated without substantive change from the technical section to this section as they scope specific technical provisions. These technical provisions are now located in section 810.

219 Assistive Listening Systems

This section covers requirements for assistive listening systems and receivers in assembly areas. Section 219.2 requires an assistive listening system in each assembly area where audible communication is integral to the space and audio amplification is provided. However, in courtrooms this requirement applies whether or not audio amplification is provided. Section 219.3 specifies the minimum number of receivers according to a sliding scale based on the seating capacity of the assembly area.

Comment. Facility operators urged the Board to lower the required number of receivers because, in their view, the vast majority of provided receivers go unused. This is especially true at facilities with multiple assembly areas, such as multi-screen movie theaters, where receivers are provided for each assembly area.

Response. In the final rule, the Board has clarified that the minimum number is to be based on each assembly area. Thus, where a facility has multiple assembly areas, the required number is to be determined individually for each assembly area based on its seating capacity. However, the Board also has included an exception which would permit the minimum number to be based on the combined seating capacity of multiple assembly areas as an alternative if two conditions are met: all receivers are usable with all provided assistive listening systems; and all assembly areas required to have such systems are under the same management (219.3, Exception 1). This allows "mix and match" types of receivers to generally serve such facilities.

Comment. Assistive listening systems are generally categorized by their mode of transmission. There are hard-wired systems and three types of wireless systems: induction loop, infrared, and FM radio transmission. Induction loop systems use a wire loop to receive input from a sound source and transmit sound by creating a magnetic field within the loop. The loop may surround all or part of a room and can be installed in ceilings, floors, or walls. Listeners must be sitting within the loop and have either a receiver or a hearing aid with a telecoil. People with telecoil hearing aids do not need to use a receiver. In view of this benefit, comments to the draft of the final guidelines recommended that the requirement for

[16] 47 U.S.C. 153, 255.
[17] 36 CFR part 1193.
[18] 36 CFR part 1194.
[19] 29 U.S.C. 794 (d).

receivers specifically recognize that fewer hearing-aid compatible receivers can be specified for induction loop systems.

Response. Section 219.3 specifies the minimum number of receivers for assistive listening systems, including the number of receivers that are hearing-aid compatible. In the final rule, the Board has added an exception for assembly areas where all seats are served by an induction loop system (219.3, Exception 2). Under this exception, the additional amount of receivers required to be hearing-aid compatible is not required at all. For example, at an assembly area with a seating capacity of 500, a total of 20 receivers would generally be required and at least 5 of this number would have to be hearing-aid compatible. Under the exception for induction loop systems that serve all seats of an assembly area, at least 15 receivers would be required instead of 20.

Requirements for signs indicating the availability of assistive listening systems has been relocated from this section to the scoping section on signage (216.10). Revisions to these provisions are discussed above in section 216.

220 Automatic Teller Machines and Fare Machines

No substantive changes have been made to the scoping provisions for automatic teller machines and fare machines. Most comments on these types of machines concerned technical specifications and are discussed below in section 707.

221 Assembly Areas

Provisions in section 221 for accessible assembly areas cover general scoping (221.1), wheelchair spaces (221.2), companion seats (221.3), aisle seating (221.4), and new provisions for lawn seating (221.5).

Section 221.1 contains a general charging statement that assembly areas provide wheelchair spaces, companion seats, and designated aisle seats. The proposed rule contained a similar statement that provided an illustrative list of assembly areas covered by this section, such as motion picture houses, theaters, stadiums, arenas, concert halls, courtrooms, and others. This list has been incorporated into the definition of "assembly area" in section 106.5.

Section 221.2 covers the required number, integration, and dispersion of wheelchair spaces. The minimum number of wheelchair spaces is specified according to the total number of seats provided in an assembly area (Table 221.2.1.1). This requirement applies to seating generally, as well as luxury boxes, club boxes, suites, and other types of boxes. Substantive changes made in the final rule include:

- Limiting the requirements for wheelchair spaces to assembly areas with fixed seating (221.2).
- Lowering scoping for assembly areas with over 500 seats (Table 221.2.1.1).
- Adding a new provision for box seating (221.2.1.3).
- Clarifying requirements for integration of wheelchair spaces (221.2.2).
- Revising and relocating dispersion requirements for wheelchair spaces (221.2.3).
- Modifying provisions for companion seating (221.3) and designated aisle seating (221.4).
- Adding a new provision for lawn seating (221.5).
- Removing a specification concerning vertical access (221.5 in the proposed rule).

The Board has clarified in the final rule that wheelchair spaces are required in assembly areas with "fixed seating." This is consistent with the original ADAAG, but not the proposed rule, which did not specify that seating had to be fixed. This descriptor was restored because it is fixed seating that typically defines wheelchair spaces as a permanent feature, consistent with the scope of these guidelines.

Comment. The minimum number of wheelchair spaces is specified according to a sliding scale. A lower percentage is specified for larger facilities. The proposed rule specified 1% scoping (on top of 6 required wheelchair spaces) for assembly areas with over 500 seats. Comments from industry recommended that scoping should be lowered for larger facilities since industry surveys indicate that the vast majority of wheelchair spaces, particularly in stadiums and arenas, often go unused. A coalition representing major sports leagues, teams, and facilities throughout the U.S. conducted a two-year survey of usage of wheelchair spaces at 40 major arenas and stadiums during basketball, hockey, and baseball events. This survey found that of the 1% of seats made accessible in arenas, approximately 12% (0.12% of the total number of seats) were occupied by persons using wheelchairs; the assessed usage rate at baseball stadiums was 7% of the accessible seats (0.07% of the total number of seats). The coalition considered the 1% minimum scoping far in excess of the demonstrated need in large sports arenas. These and other industry comments urged the Board to reduce the required number to at least the amount recommended by the ADAAG Review Advisory Committee. The advisory committee had recommended a 0.5% scoping requirement for assembly areas with over 500 seats based on similar information concerning usage. Industry comments considered 0.5% as more than adequate in meeting the demand for accessible seating.

Response. The Board has reduced the scoping for wheelchair spaces in assembly areas with more than 500 seats. Scoping has been reduced from 1% to a ratio of 1 wheelchair space for every 150 seats in assembly areas with 501 to 5,000 seats. This is required on top of a requirement of six wheelchair spaces, consistent with the scoping count for the first 500 seats. A further reduction to 0.5% scoping, the level recommended by the ADAAG Review Advisory Committee, is specified for assembly areas with over 5,000 seats. The 0.5% scoping requirement is applied on top of a requirement for 36 spaces, which follows the scoping level for the first 5,000 seats. For example, in assembly facilities with 5,000 seats, the final rule requires that at least 36 spaces be accessible, whereas the scoping in the proposed rule would have specified 51 spaces minimum. The minimum number for facilities with 10,000 seats is 61 (reduced from 101), and for those with 50,000 seats is 261 (reduced from 501).

Comment. In certain performing arts facilities, seating may be provided in tiered boxes for spatial and acoustical purposes. Often, steps are located on the route to these boxes. The proposed rule was not clear on how the scoping and dispersion requirements would apply in these types of facilities. Comments noted that requiring accessible routes to all boxes would fundamentally affect this type of design and recommended that an exception be made for such venues.

Response. Wheelchair spaces are required to be provided in each luxury box, club box, and suite according to a scoping table (221.2.1.2). The Board has clarified in the final rule that this requirement applies where such boxes and suites are provided in "arenas, stadiums, and grandstands." A new provision has been added for other types of assembly facilities, such as certain performing arts facilities, that may have tiered box seating (221.2.1.3). Under this provision, wheelchair spaces are determined according to the total number of fixed box seats and are required to be dispersed among at least 20% of the boxes. For example, if an assembly area has 20 boxes with five fixed seats each (totaling 100 seats), at least four wheelchair spaces would be

required according to the scoping table. These four wheelchair spaces would have to be dispersed among at least four (20%) of the 20 boxes. This requirement clarifies that each box does not have to be treated separately as a discreet assembly facility individually subject to the scoping table, as is the case with luxury boxes and club boxes.

A provision for team and player seating areas is included in the final rule (221.2.1.4). This provision, which derives from the Board's guidelines for recreation facilities, requires at least one wheelchair space in team or player seating areas serving areas of sports activity. An exception is provided for seating areas serving bowling lanes.

Under section 221.2.2, wheelchair spaces must be integrated throughout seating areas. In the final rule, the Board has clarified this requirement to state that wheelchair spaces "shall be an integral part of the seating plan."

The original ADAAG required that wheelchair spaces be provided so that users are afforded a choice in sight lines that is comparable to that of the general public. Thus, while individuals who use wheelchairs need not be provided with the best seats in an assembly area, neither may they be relegated to the worst. In this rulemaking, the Board has sought to clarify specifications for lines of sight from wheelchair spaces. Specifically, the final rule clearly recognizes that viewing angles are essential components of lines of sight and that various factors, such as the distance from performance areas and the location of wheelchair spaces within a row, also greatly determine the quality of sight lines.

Section 221.2.3 covers dispersion of wheelchair spaces and lines of sight. Wheelchair spaces are required to be dispersed to provide users with choices of seating locations and viewing angles substantially equal to or better than the choices afforded all other spectators. Spaces must be dispersed horizontally and vertically. Horizontal dispersion pertains to the lateral, or side to side, location of spaces relative to the ends of rows. Provisions for vertical dispersion address the placement of wheelchair spaces at varying distances front to back from the performance area, screen, or playing field. Exceptions from the dispersion requirements are provided for assembly areas with 300 seats or less. In addition, an exception from the lines of sight and dispersion requirements is provided for wheelchair spaces in team or player seating areas serving areas of sports activity. Various changes have been made to the requirements for dispersion based on comments and responses to a number of questions posed by the Board in the proposed rule. The specifications of section 221.2.3 replace those in the proposed rule that were included in the technical criteria for wheelchair spaces at section 802.6.

In the final rule, the Board has added exceptions to the requirement for horizontal dispersion. Horizontal dispersion is not required in assembly areas with 300 seats or less where wheelchair spaces and companion seats are provided in the center sections of a row (the second or third quartile) instead of at the ends (221.2.3.1, Exception 1). This exception derives from the ANSI A117.1–2003 standard and recognizes that viewing angles at the mid-sections of rows are generally better than those at the ends of rows. In addition, the Board has clarified that two wheelchair spaces can be paired, but each must have a companion seat, as required by 221.3 (221.2.3.1, Exception 2). This exception applies to all assembly areas, not just those with 300 or fewer seats.

Assembly areas with 300 or fewer seats are not required to have vertically dispersed wheelchair spaces so long as the spaces provide viewing angles that are equal to or better than the average viewing angle (221.2.3.2, Exception 1). An exception from the vertical dispersion requirement is provided for bleachers which allows spaces to be provided only in the point of entry (221.2.3.2, Exception 2).

Comment. The proposed rule required dispersion that provides "a choice of admission prices * * * comparable to that provided to other spectators." Comments from designers indicated that the admission price criterion is problematic since prices are not typically known in the design and construction phase. Accommodating choice in admission price is more realistically addressed as an operational matter by facility operators and managers.

Response. The Board believes that the dispersion requirement pertaining to admission prices is better addressed by regulations, such as those maintained by the Department of Justice under the ADA, that govern policies and procedures, instead of by these design guidelines. The reference to admission prices has been removed from the requirement for dispersion.

Comment. The proposed rule also addressed dispersion in terms of sight lines and required "a choice of * * * viewing angles comparable to that provided to other spectators." This provision was intended to clarify a requirement in the original ADAAG that wheelchair spaces provide a choice in lines of sight comparable to those available to the general public. The Board questioned whether this restatement was sufficient and sought comment on whether this provision should be enhanced to require "lines of sight equivalent to or better than" those afforded the majority of other spectators in the same seating class or category (Question 43). Disability groups and persons with disabilities strongly favored such a change to ensure equivalency in the viewing experience. According to these comments, the proposed rule would permit location of wheelchair spaces in a manner that compromises the quality of viewing angles. Industry opposed holding wheelchair spaces to a higher standard in terms of the quality of viewing angles. Such commenters pointed to practical complications in comparing viewing angles between wheelchair spaces and inaccessible seating.

Response. The Board has revised the specification for dispersion so that persons using wheelchair spaces are provided "choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators' (221.2.3). This provision ensures equivalency in the range of viewing angles provided between wheelchair seating and all other seats. It recognizes, but does not mandate, a better range of viewing angles for the users of wheelchair spaces.

Comment. The proposed rule, like the original ADAAG, required dispersion of wheelchair spaces in assembly areas with more than 300 seats. The Board sought comment on whether this trigger should be lowered so that dispersion would be provided in smaller assembly spaces (Question 42). The Board was concerned about the possible impacts of such a change on certain assembly types, such as stadium-style cinemas, and sought further information on their design, including the average number of seats provided per screen. Designers and operators of all types of assembly facilities were encouraged to comment on the impact of reducing the triggering point from 300 to 250, 200, or 150 seats. Quality sight lines in facilities where dispersion may not be required, such as stadium-style theaters, was a primary concern voiced by commenters with disabilities. The majority of comments recommended lowering the threshold for dispersion requirements, though there was little consensus on a specific alternative number.

Response. The point at which dispersion is required (over 300 seats) has been retained in the final rule.

Dispersion is not required in assembly areas with 300 or fewer seats provided that certain conditions concerning viewing angles are met. These conditions are specified in relation to horizontal and vertical dispersion.

Comment. In smaller facilities where dispersion of wheelchair spaces is not required (*i.e.*, those with no more than 300 seats), the placement of the wheelchair spaces in relation to other seating acquires greater significance because wheelchair users are not offered a choice of viewing angles. Therefore, in order to ensure equal opportunity for people who use wheelchairs in assembly areas in which dispersion is not required, wheelchair spaces must provide lines of sight that are comparable to those provided for most of the other patrons in the assembly area. The Board sought comment on whether this requirement, specific to facilities where dispersion is not mandated, should require lines of sight from wheelchair spaces that are equivalent to or better than the line of sight provided for the majority of event spectators (Question 44). Persons with disabilities and organizations representing them unanimously backed this provision. The issue was considered particularly relevant in stadium-style seating and other smaller assembly areas where, despite the requirements for comparable lines of sight in the original ADAAG, wheelchair spaces are typically located only in the front or back rows.

Response. The final rule makes the provision of equivalent lines of site a specific condition for not having to disperse wheelchair spaces in assembly areas with 300 or fewer seats. Wheelchair spaces do not have to be dispersed vertically (*i.e.*, front to back), so long as the viewing angle from them is equal to, or better than, the average viewing angle provided in the facility (221.2.3.2). Wheelchair spaces and companion seats do not have to be dispersed horizontally (*i.e.*, side to side) if they are located in the mid-sections of rows (second or third quartile of the total row length) instead of at or near the ends of rows (221.2.3.1). This condition for horizontal dispersion is required to the extent that the mid-section row is long enough to accommodate the requisite number of wheelchair spaces and companion seats; if it is not, some may be located beyond the mid-section portion (in the first or fourth quartile of the total row length).

Comment. The proposed rule specified vertical dispersion so that wheelchair spaces are located at "varying distances" from the performing area (802.6.3). Comment was sought on whether the term "varying distances" provides sufficient guidance in achieving dispersion (Question 41). The Board asked whether a minimum separation between horizontal rows should be specified. Most comments, including those from individuals with disabilities and from industry, considered this term too vague and supported a more specific or quantifiable requirement. Few specific alternatives to this language were recommended.

Response. The Board has retained the reference to "varying distances" in the final rule (221.2.3.2). Since the requirement applies to a wide variety of assembly facilities of different sizes and designs, the Board does not consider it practical to specify a particular vertical separation or distance requirement. Meeting the requirement for vertical dispersion is highly relevant to the size of the facility, the range of sight lines available, elevation changes, and other design characteristics. Clarification has been added that the dispersion requirement pertains to the distance from the "screen, performance area, or playing field." The proposed rule made reference only to performance areas. This revision clarifies coverage of elements and events, such as movie screens and sporting events.

Comment. The proposed rule reflected the importance of providing individuals with disabilities with selections from a variety of vantage points to enjoy performances and sporting events. The Board requested comment on whether there are conditions where vertical (*i.e.*, front to back) separation between wheelchair spaces is not desirable and if there is a point at which increased distance fails to improve accessibility or to contribute significantly to equal opportunity (Question 40). Of the few comments which addressed this question, the majority called attention to the importance of vertical dispersion in providing equivalency in the quality of the viewing experience. Some comments considered adequate integration of wheelchair spaces to be equally important or expressed concern about vertical separation that results in longer travel distances from restrooms, concessions, and other amenities.

Response. The Board has not included any new conditional limitations on the requirements for vertical dispersion of wheelchair seating in achieving appropriate viewing angles (other than an exception for bleacher seating).

Comment. Bleacher manufacturers requested clarification on how dispersion requirements would apply to bleachers, which have been interpreted as exempt under original ADAAG specifications.

Response. The final rule includes an exception for bleacher seating that allows spaces to be provided in the point of entry only (221.2.3.2, Exception 2). An advisory note clarifies that "points of entry" at bleachers may include cross aisles, concourses, vomitories, and entrance ramps and stairs.

Comment. In costing out changes made in the proposed rule, the Board estimated that vertical dispersion requirements could cost as much as $11 million for each "large" (50,000 seats) stadium or arena to provide vertical dispersion in uppermost decks. According to the Board's regulatory assessment, "in order to accommodate the additional dispersion required by this item, it is assumed that an upper deck concourse will be required for the facility. These large facilities generally have a lower deck, a middle deck (with suites and/or club level amenities), and an upper deck. The steep slopes used in the upper deck make it impractical to accommodate accessible routes with more than a minimal change in level up or down from the vomitory access point within the seating bowl. The dispersion requirement based on admission pricing and the vertical dispersion requirement will generally require that a more substantial change in level be accommodated outside the seating bowl for the upper deck area. It is assumed that an additional concourse, of 50,000 square feet in area, will be used to provide access to the upper deck at an additional level." The Board sought information on alternatives to constructing a secondary concourse that would provide vertical dispersion in upper decks of larger stadiums (Question 39). Few comments or suggested alternatives were provided in response. A few comments stressed the importance of vertical dispersion, while others felt it was necessary to weigh such requirements against the possible design and cost impacts.

Response. The Board has retained requirements for vertical dispersion that are substantively similar to the specifications in the proposed rule. However, as noted above, the final rule does not require wheelchair spaces to be dispersed based on admission prices since pricing is not always established at the design phase and may vary by event. Instead of requiring wheelchair spaces to be vertically dispersed on each accessible level, the final guidelines require wheelchair spaces to be vertically dispersed at varying distances from the screen, performance area, or playing field. The final guidelines also

require wheelchair spaces to be located in each balcony or mezzanine served by an accessible route. In most sports facilities, these requirements can be met by locating some wheelchair spaces on each accessible level of the sports facility.

Comment. The proposed rule contained a requirement that where elevators or wheelchair lifts are provided on an accessible route to wheelchair spaces or designated aisle seats, they shall be provided in "such number, capacity, and speed" in order to provide a level of service equivalent to that provided in the same seating area to patrons who can use stairs or other means of vertical access (221.5 in the proposed rule). This requirement was included to ensure an equal level of convenience between accessible seating and inaccessible seating in terms of travel between the entry gate and seats or between the seats and concession stands. Most commenters did not support this requirement, and considered it unenforceable and confusing. Some commenters misunderstood the intent of this provision and thought it pertained specifically to egress routes.

Response. The Board has removed the requirement concerning the number, capacity, and speed of elevators and wheelchair lifts in providing an equivalent level of service.

Section 221.3 covers companion seats which are to be paired with wheelchair spaces. The proposed rule specified that companion seats be readily removable so as to provide additional space for a wheelchair. In the final rule, companion seats are permitted to be movable. Thus, they are not required to double as an alternative wheelchair space.

Comment. The Board sought information on the impact of the requirement that each wheelchair space have an adjacent companion seat that can be removed to provide an adjoining wheelchair space (Question 10). Comments noted that this requirement effectively doubles the scoping requirements for wheelchair spaces and that the required extra space would significantly increase construction costs. Several comments noted that more flexibility for both wheelchair spectators and the facility could be achieved by allowing companion seats to be movable; however, comments noted that some building codes may require companion seats to be fixed. Another solution put forward was the use of seating that folded and swung away, leaving enough space for a wheelchair position.

Response. The final rule requires one companion seat for each wheelchair space, but allows the seat to be movable. This seat is not required to provide an additional wheelchair space when removed.

Comment. In the belief that readily removable seats should provide a companion with virtually the same experience in terms of comfort and usability as other fixed seats, the Board asked what specific characteristics they should have relative to other seats (Question 11). The majority of comments strongly favored requirements for companion seats to be equivalent or comparable to other provided seating in the same assembly area.

Response. The Board has included technical criteria for companion seats that requires them to be equivalent to other seats in the immediate area in terms of quality, size, comfort, and amenities (802.3).

Section 221.4 addresses designated aisle seats. The Board has significantly lowered the number of designated aisle seats required to be accessible. An exception from the requirement for designated aisle seats for team or player seating areas serving areas of sports activity has been incorporated into the final rule from the guidelines for recreation facilities.

Comment. The proposed rule specified that 1% of all seats be designated aisle seats, a quarter of which were to be located on accessible routes and the rest not more than 2 rows from an accessible route. The Board requested information on the cost and related design impacts of this requirement, particularly in locating aisle seats at or no more than two rows from an accessible route (Question 12). Comments stated that requiring designated aisle seats to be on an accessible route would require more space and entrances to seating areas and would result in the loss of seating space. Comments further stated that this would require a significant increase in the cost of such facilities.

Response. The Board has reduced the overall scoping for designated aisle seats. The final rule requires that 5% of aisle seats, not all seats, be designated aisle seats. These seats are required to be those closest to, but not necessarily on, an accessible route. Technical requirements for aisle seats at 802.4 have also been modified.

Section 221.5 provides a new requirement that addresses lawn seating and exterior overflow areas. Such areas are required to be connected by an accessible route. The accessible route is required to extend up to, but not through, lawn seating areas. Since such areas typically do not provide fixed seating, this provision does not require wheelchair spaces, companion seats, or designated aisle seats.

Comment. Where public address systems are provided in transportation facilities to convey public information, a means of conveying the same or equivalent information to persons who are deaf or hard of hearing is required. In the proposed rule, the Board sought comment on whether additional provisions for an equivalent means of communication should be applied to other types of facilities (Question 45). The Board was specifically interested in how captioning can be associated with electronic scoreboards in stadiums to convey audible public announcements. People who are deaf or heard of hearing strongly urged that requirements for access to information conveyed through public address systems be applied to all types of facilities, not just transportation facilities.

Response. The Board considered adding a provision (included in the draft final rule) that would have required the visual display of audible pre-recorded or real-time messages where electronic signs are provided in stadiums, arenas, or grandstands. This provision would not have required provision of electronic signs, but instead would have specified that, where provided, they be used to display information to deaf or hard-of-hearing spectators provided audibly during an event. Since this requirement would have been more pertinent to facility operations than to facility design, the Board did not include it in the final rule. Providing "effective communications" is within the purview of the Department of Justice and is addressed in the Department's title II and III regulations. See 28 CFR 35.160 and 28 CFR 36.203(c).

222 Dressing, Fitting, and Locker Rooms

Section 222 covers dressing rooms, fitting rooms, and locker rooms. At least 5% of each type, in each cluster, is required to be accessible. A requirement for coat hooks and shelves located at 228.4 in the proposed rule has been relocated for clarity to this section (222.2).

223 Medical Care and Long-Term Care Facilities

This section indicates the number of patient or resident sleeping rooms required to be accessible in medical care and long-term care facilities. The general scoping provision at 223.1 indicates that the facilities covered by this section include medical care facilities and licensed long-term care

facilities where the period of stay exceeds 24 hours. Section 223.2 covers hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities. In general, those facilities are held to a 10% scoping requirement, but those that specialize in the treatment of conditions affecting mobility are subject to a 100% scoping requirement. In long-term care facilities, 50% of the rooms must be accessible.

Changes made in the final rule include:

- Modifying the description of the facilities covered by this section (223.1).
- Adding a new exception for toilet rooms in critical care and intensive care patient sleeping rooms (223.1).
- Clarifying the application of scoping requirements to rehabilitation facilities (223.2).
- Revising the scoping requirement for long-term care facilities to apply to "each type" of resident sleeping room (223.3).

Comment. Comments considered it unnecessary to qualify covered medical care facilities as those that are licensed, since all are typically licensed.

Response. The general charging statement (223.1) has been changed to refer to "medical care facilities and licensed long-term care facilities." In addition, the Board has removed as unnecessary language describing these facilities as places "where people receive physical or medical treatment or care."

Comment. There are certain types of patient rooms, such as those provided in critical or intensive care units where patients who are critically ill are immobile or confined to beds and thus generally not expected to use adjoining toilet rooms. Typically, such patients are relocated to other types of rooms when no longer confined to beds. Comments recommended that toilet rooms serving these types of rooms should not have to be accessible.

Response. An exception has been added that permits toilet rooms in critical care and intensive care patient sleeping rooms to be inaccessible (223.1, Exception).

Section 223.2 addresses scoping for hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities. The Board has clarified the distinction made in scoping between facilities that specialize in the treatment of conditions affecting mobility (100%) and those that do not (10%), including rehabilitation facilities.

Comment. The Board sought comment on how dispersion of accessible sleeping rooms can be effectively achieved and maintained in medical care facilities such as hospitals and long-term care facilities (Question 13). Commenters with disabilities supported a requirement for dispersion of accessible sleeping rooms among all types of medical specialty areas, such as obstetrics, orthopedics, pediatrics, and cardiac care. Conversely, commenters representing the health care industry pointed out that treatment areas in health care facilities can be very fluid due to fluctuation in the population and other demographic and medical funding trends. Comments indicated that in long-term care facilities, access is provided at rooms that are less desirable than others available in the facility. Commenters recommended that the final rule should include a requirement that ensures that accessibility is fairly dispersed among different types of rooms in long-term care facilities.

Response. The Board has not added a requirement for dispersion in medical care facilities because compliance over the life-time of the facility could prove difficult given the need for flexibility of spaces within such facilities. However, an advisory note has been added to encourage dispersion of accessible rooms within the facility so that accessible rooms are more likely to be proximate to appropriate qualified staff and resources. Since these considerations are not as relevant to long-term care facilities, the Board has added a requirement that the 50% scoping requirement for long-term care facilities be applied to "each type" of resident sleeping room provided to ensure dispersion among all types (223.3).

224 Transient Lodging Guest Rooms

The minimum number of guest rooms required to be accessible in transient lodging facilities is covered in section 224. Access is addressed for people with disabilities, including those with mobility impairments (224.2) and people who are deaf or hard of hearing (224.4). In addition to rooms, there is a provision which addresses the number of beds required to be accessible in facilities such as homeless shelters, where a room may have a large number of beds. (224.3). Revisions of this section include:

- Removal of the exception for certain bed-and-breakfast facilities (224.1), which are now exempted through the definition of "transient lodging" provided in section 106.
- Clarification of a provision covering doors and doorways in inaccessible transient lodging guest rooms (224.1.2).
- Revised scoping for accessible beds (224.3).
- Reduced scoping for guest rooms with accessible communication features (224.4).
- Modified dispersion requirements (224.5).

The definition of "transient lodging" in section 106.5 has been revised to exclude, in part, "private buildings or facilities that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor." As a result, an exception for such facilities in 225.1 has been removed.

Comment. In transient lodging facilities, doors and doorways in inaccessible guest rooms are required to be at least 32 inches wide (224.1.2). This specification stems from the original ADAAG and is intended to afford some access to inaccessible guest rooms for visitation purposes. Clarification was requested on which types of doors this is intended to cover and whether it applies to shower doors.

Response. In the final rule, clarification has been added that the 32 inch minimum clearance applies to those doors "providing user passage" into and within guest rooms not required to be accessible. In addition, the Board has added an exception that exempts shower and sauna doors in inaccessible guest rooms from this requirement. Corresponding changes have been made to a similar provision in the general scoping section for doors (206.5.3).

Comment. A hotel and motel trade group opposed any increase in the number of guest rooms required to be accessible and submitted a study it commissioned on the usage of such rooms. According to this study, 80% of accessible guest rooms remain unused by people with disabilities. This trade group also submitted comments to the draft final guidelines that included a statistical study of the number of persons who use wheelchairs based on U.S. census data (1.03% of the population age 15 years and older). Based on this information, this commenter requested that the required number of accessible guest rooms be reduced to a level consistent with assessed usage rates and population estimates.

Response. The proposed rule was consistent with the recommendations of the ADAAG Review Advisory Committee and preserved, without increase, the number of accessible guest rooms (224.2). The number of accessible guest rooms is also consistent with the International Building Code. Accessible guest rooms include features such as grab bars and other elements that benefit not only people who use wheelchairs,

but also people who use crutches, canes, and walkers. Data provided by the Disability Statistics Center at the University of California, San Francisco shows that the number of adults who use wheelchairs has been increasing at the rate of 6 percent per year from 1969 to 1999; and by 2010, it is projected that 2 percent of the adult population will use wheelchairs. In addition to people who use wheelchairs, 3 percent of adults used crutches, canes, walkers and other mobility devices in 1999; and the number is projected to increase to 4 percent by 2010. Thus, by 2010, up to 6 percent of the population may need accessible guest rooms.

Data submitted by the hotel and motel trade group showed that hotel stays are almost equally divided between business travel and non-business travel. Non-business travelers usually travel as members of a household or group for vacation, special events, or leisure. In 1999, 2.3 percent of households had an adult member who uses a wheelchair; and by 2010, it is projected that 4 percent of households will have an adult member who uses a wheelchair. In addition to households with an adult member who uses a wheelchair, 7 percent of households had an adult member who used canes, crutches, walkers or other mobility devices in 1999; and the number is projected to increase to 9 percent by 2010. Thus, by 2010, up to 13 percent of households will have adult members who may need accessible guest rooms.

The Board recognizes that all the people and households that may benefit from an accessible guest room may not specifically request an accessible room, and the scoping levels reflect this fact. The statistical study submitted by the hotel and motel trade group assumed independence in accessible room requests. In reality, accessible room requests are likely to be somewhat correlated, due to hotel preferences or group travel. For smaller hotels, a slight violation of the independence assumption could lead to a higher sellout rate, as these hotels have relatively fewer accessible rooms. The hotel and motel trade group also submitted data on actual accessible room reservation requests for select hotels that implied the current demand for accessible rooms is closer to 0.8 percent than 1 percent, as in their original study. However, this sample was likely not representative and the study did not take into account data showing that the population who needs accessible rooms is growing. Hotels constructed in the next few years will serve the population for decades to come. Because of the problems with the assumptions used in the statistical study and the failure to consider future needs, the Board concluded that a reduction in the number of accessible guest rooms is not warranted.

The hotel and motel trade group has pointed out that the Board has reduced the scoping for wheelchair spaces in assembly areas by 0.33 percent for assembly areas with 501 to 5,000 seats, and by 0.5 percent for assembly areas with more than 5,000 seats. However, the hotel and motel trade group has proposed a much greater reduction in the number of accessible rooms for all size hotels with more than 50 rooms. For example, they proposed that hotels with 100 rooms provide 40 percent fewer accessible rooms (3 accessible rooms, instead of the 5 accessible rooms currently required). There are important difference between large assembly areas such as sports stadiums which may have 50,000 to 70,000 seats, and hotels. Only 1 percent of hotels have more than 500 rooms. These hotels cater to meetings and conferences sponsored by groups who reserve large numbers of rooms. Disability groups and organizations may hold meetings and conferences at these hotels and need large numbers of accessible rooms. For all these reasons, the number of accessible guest rooms has not been changed in the final rule.

Comment. The proposed rule addressed access to beds according to a table based on the total number provided in a guest room. This table, as recommended by the ADAAG Review Advisory Committee, included bed counts well into the hundreds. The table followed a sliding scale that started with roughly a 4% requirement (1 per 25 beds provided in a room) which decreased to 3% (for over 500 beds) and then to 2% (for over 1,000 beds). Comments considered the upper levels covered by the table as ridiculously high and suggested a simpler and more realistic provision.

Response. The scoping table for beds has been removed in the final rule and replaced by a flat 5% requirement that applies where more than 25 beds are provided in a guest room. Technical requirements for guest rooms require at least one bed in a sleeping room to be accessible. This provision would govern in rooms with 25 or fewer beds.

The guidelines address rooms required to provide communication features accessible to persons who are deaf or hard of hearing, including visual notification of fire alarms, telephone calls, and door knocks or bells. Telephones in such rooms must have volume controls and nearby outlets for the installation of TTYs. The Board had proposed increasing the minimum number of such guest rooms to 50% of the total number of guest rooms provided. This contrasted significantly with the original ADAAG, which specified the minimum number according to a sliding scale. It required 1 in 25 rooms to comply up to a guestroom count of 100. Scoping successively decreased to 1 for every 50 rooms for the next 101 to 200 rooms and to 1 for every 100 rooms for the next 201 to 500 rooms. For facilities with 501 to 1,000 rooms, 2% of rooms were required to comply, and where the room count exceeded 1,000, the scoping dropped to 1% (ADAAG 9.1.3). The original ADAAG also required that all accessible guest rooms be equipped with communication features in addition to the number of rooms required to provide communication access only (ADAAG 9.2.2(8)).

The Board had proposed the increased scoping for guestrooms with accessible communication for several reasons. The communication features addressed in this requirement address life safety in providing visual notification of fire alarms for people who are deaf or hard of hearing. The Board also felt that the increased scoping would afford greater flexibility in the guest room assignment of people who are deaf or hard of hearing, especially in light of revisions to the technical requirements that effectively preclude the use of portable visual alarm devices. In addition, permanent installation of visual alarm appliances is considerably less expensive and easier to achieve as part of facility design and construction than as a retrofit.

Comment. The Board sought information on the new construction cost impact of the proposed increased scoping and also asked whether exceptions should be provided for altered facilities or additions (Question 14). The hotel and motel industry strongly opposed increasing scoping for rooms providing communication access to 50%, which it considered unsubstantiated and unsupported by the assessed need. The industry considers the original ADAAG specification, which is substantially lower than 50%, to be excessive in view of its assessments on the usage rate of such rooms by persons with disabilities. People who have photosensitive epilepsy also opposed the proposed increase because the potential for triggering seizures would be too great. On the other hand, many comments from persons who are deaf or hard of hearing voiced strong support for maintaining or further increasing the proposed 50% requirement. In the belief

that some transient lodging facilities have adopted voluntary policies requiring permanently installed visual alarms in all or a majority of newly constructed guest rooms, the Board sought information on such cases (Question 15). Commenters responded that they were unaware of any such corporate policies.

Response. In the final rule, the Board has reduced the scoping for guest rooms with accessible communication features to the level specified by the original ADAAG. The Board has included some limited changes from the original ADAAG scoping for consistency with the International Building Code (IBC). The minimum number required to comply is based on the number of rooms provided: 2–25 (2), 26–50 (4), 51–75 (7), 76–100 (9), 101–150 (12), 151–200 (14), 201–300 (17), 301–400 (20), 401–500 (22), 501–1,000 (5% of total), 1,001 and over (50, plus 3 for each 100 over 1,000). These levels slightly differ from the original ADAAG at the higher levels (401 rooms and above). The numbers are consistent with the IBC except that the IBC scoping does not apply to facilities with less than 6 guest rooms.

Comment. The industry also objected to requiring alarm appliances to be permanently installed. One hotel chain commented that their deaf and hard of hearing guests preferred portable appliances because these can be used in any guest room. This point was contradicted by comments from deaf and hard of hearing commenters and advisory committee members who urged permanent installation.

Response. The Board has elected to reference the NFPA 72–1999 National Fire Alarm Code and has included a requirement that appliances be permanently installed. The Board believes that the hospitality industry can best guarantee deaf and hard of hearing guests the same level of protection as hearing guest by providing them visual devices that are part of the same fire alarm system that alerts hearing guests. Fire alarm systems must pass rigorous installation standards and frequent inspections. To date, the Board is unaware of any portable equipment that satisfies the requirements of the referenced standard. Even if portable equipment satisfying this standard were available, there is still a key concern that their installation, when not supervised by a trained professional, would not guarantee proper location and visibility of the signal. The NFPA 72 includes criteria for the appropriate location of the visual alarm appliance within the guest room. Deaf and hard of hearing travelers have reported that hotel staff have installed portable alarms on the floor, under furniture, and in other locations that do not satisfy the requirements of the referenced standard.

Section 224.5 requires dispersion of accessible rooms among the various classes of rooms provided, including room type, bed count, and other amenities to a degree comparable to the choices provided other guests. When complete dispersion is not possible due to the number of rooms required to be accessible, dispersion is to be provided in the following order of priority: room type, bed count, and amenities.

The proposed rule required communication access in half of the accessible guestrooms in addition to the number required in section 224.4. The Board considered removing this requirement and stipulating that there be no overlap between the dispersion of accessible rooms and communication accessible rooms, as indicated in the draft of the final guidelines. The Board sought to prevent such overlap to maximize the availability of each room type and proposed that a similar change be made in the IBC. This change was not adopted into the IBC, in part due to consideration of persons using wheelchairs who may need accessible communication features. The IBC does not require or prohibit overlap between both types of rooms. In the final rule, the Board has revised the dispersion requirement to allow some overlap (10% maximum) between rooms and to ensure that at least one room provides both wheelchair access and communication access. Thus, no more than 10% of the accessible rooms can be used to satisfy the required number of rooms providing communication access. Communication access can be provided in a greater number of accessible rooms, but the amount in excess of 10% cannot count toward the number of rooms required to provide communication access.

Comment. Comments urged that dispersion should be based on bed count, instead of bed type. People with disabilities, especially those who traveled with attendants, felt that bed type or size was not as important as the number of beds.

Response. The criteria for dispersion is also modified. In the list of factors that define various classes of rooms, the Board has replaced "types of beds" with "number of beds."

225 Storage

This section covers storage elements and facilities, including lockers, self-service shelving, and self-service storage facilities. In the proposed rule, these elements and spaces were covered in two separate sections: 225 (Self-Service Storage Facilities) and 228 (Storage). In the final rule, these sections have been combined into one for clarity. No substantive changes have been made to these provisions.

A scoping provision for coat hooks and shelves that was located at 228.4 has been moved and revised. Since this provision is specific to certain types of spaces, it is now located among scoping requirements covering toilet rooms and compartments (213.3.8), and dressing, fitting, and locker rooms (222.2), as discussed above at these sections.

226 Dining Surfaces and Work Surfaces

Provisions for access to dining and work surfaces have been revised to:

- Further define dining surfaces as those used "for the consumption of food or drink" (226.1).
- Clarify that the types of work surfaces covered do not include those surfaces used by employees, since elements of work stations are not required to comply with these guidelines (226.1).
- Exempt sales and service counters from this section, which are covered instead by section 227 (226.1, Exception 1).
- Exempt check-writing surfaces at inaccessible check-out aisles (226.1, Exception 2).

Comment. These guidelines generally do not require elements of a work station to be accessible. Concern was expressed that the reference to "work surfaces" may be confused as covering surfaces that are part of a work area or station.

Response. Clarification has been added that this section applies to work surfaces that are provided "for use by other than employees." In addition, the Board has specified that the type of dining surface covered are those provided "for the consumption of food or drink."

Comment. Some comments reflected a misunderstanding that this section also applied to sales counters and other elements that are addressed in section 227 (Sales and Service).

Response. The final rule includes two clarifying exceptions. Exception 1 indicates that sales and service counters, which are addressed in section 227 (Sales and Service), are not required to comply with the requirements for dining and work surfaces. Exception 2 acknowledges that check writing surfaces are a type of work surface and that those provided at inaccessible check-out aisles are not required to comply.

227 Sales and Service

Section 227 covers access to check-out aisles (227.2), sales and service counters (227.3), food service lines (227.4), and queues and waiting lines (227.5). The general charging statement has been editorially revised to clearly indicate coverage of these various elements. The title of this section has been changed to "Sales and Service" instead of "Sales and Service Counters" since some of the provisions it contains apply to elements that may not have a counter, such as check-out aisles and waiting lines.

Requirements for check-out aisles have been revised to clarify access to check-out aisles serving different functions (227.2). In addition, the final rule restores an exception for smaller facilities that allows one check-out aisle to be accessible (227.2, Exception). Signage requirements for accessible check-out aisles have been modified and relocated to section 216.11, as discussed above.

Generally, check-out aisles are required to be accessible according to a scoping table in 227.2. In the proposed rule, this table specified access according to the number of check-out aisles provided for "each function." However, the corresponding scoping provision did not fully correlate with the table because it specified that "at least one" accessible check-out aisle be provided for each function. In the final rule, this provision has been revised to be consistent with the scoping of the table.

Comment. The original ADAAG provided an exception for facilities with less than 5,000 square feet of selling space which allowed only one check-out aisle to be accessible regardless of the number or different types of aisles provided. This exception has been provided to limit the impact of accessible check-out aisles on smaller facilities. The Board had removed this exception in the proposed rule because it reasoned that most facilities that would qualify for it would likely have only one check-out aisle or use sales counters instead of check-out aisles. Commenters disagreed, indicating that such facilities may have multiple check-out aisles. Thus, the exception should be restored.

Response. The exception has been included in the final rule (227.2, Exception).

228 Depositories, Vending Machines, Change Machines, and Mail Boxes

No substantive changes have been made to the scoping requirements for depositories, vending machines, change machines, mail boxes, and fuel dispensers in section 228 (229 in the proposed rule). Few comments addressed this section. In the final rule, the Board has added a reference to fuel dispensers to clarify their coverage by the guidelines. The proposed rule included requirements intended to apply to fuel dispensers such as gas pumps. Gas pump manufacturers expressed concerns about reach range requirements and operating force specifications which have been addressed in the final rule, as discussed in sections 308 and 309 below.

229 Windows

Scoping provisions for windows require that at least one glazed opening, where provided for operation by occupants, meet technical criteria for operable parts. Access is also required to each glazed opening required by the administrative authority to be operable. In the final rule, the Board has included an exception from this requirement for windows in residential dwelling units. Devices that make window controls and latches accessible can be provided as a supplementary add-on feature instead of installed as a permanent fixture. For this reason, the Board believes that such access can be effectively provided as a reasonable accommodation under Federal regulations for program access. These regulations govern the types of residential facilities covered by these guidelines.

Comment. Concern was expressed that reference to glazed openings provided for "operation by occupants" would be interpreted to apply to those operated by employees.

Response. Scoping provisions in 203.9 exempt employee work areas from the guidelines except for requirements concerning accessible routes, circulation paths, and wiring for visual alarms. Other elements of employee work areas are not required to comply.

Comment. The referenced technical criteria address the operable parts of windows, including that such parts be within accessible reach ranges, but they do not address the height of glazed openings. The Board sought comment on whether a maximum sill height should be specified so that people who use wheelchairs can look through the window to view ground level activities (Question 16). The Board also requested information on any design requirements, practices, or considerations that would specify installation above an accessible height in certain occupancies for security or safety reasons, such as to guard against break-ins or to prevent improper use by building occupants, including children. Information was sought on any other design impacts, such as the use of the space or cavity below windows for mechanical or other building systems. Comments from people with disabilities supported the idea of a specified sill height, though few recommended a particular height. Comment from industry opposed such a requirement. Some pointed to concerns about child safety and the impact on heating, ventilation, and air conditioning (HVAC) systems and other mechanical systems that use the cavity for duct work.

Response. No additional criteria for windows, including the sill height, have been included in the final rule.

230 Two-Way Communication Systems

Scoping for two-way communication systems remain unchanged in the final rule. Few comments addressed this section.

231 Judicial Facilities

This section covers courthouses and other judicial facilities and provides requirements for courtrooms (231.2), holding cells (231.3), and visiting areas (231.4). This section has not been changed except for a few editorial revisions:

- Provisions specific to courtrooms have been relocated without substantive change to a new technical section on courtrooms (808) in Chapter 8, which covers special rooms, spaces, and elements.
- A scoping provision for partitions in visiting areas (231.4.2) has been revised for consistency with the technical criteria it references.

Comment. Commenters indicated that provisions specific to courtrooms in section 232.2 of the proposed rule functioned more as technical requirements and should be relocated to the appropriate technical chapter.

Response. The Board agrees and has relocated these provisions to a new technical section in Chapter 8 (Special Rooms, Spaces, and Elements) at section 808 that is specific to courtrooms.

Comment. A commenter pointed out that the provision for solid partitions or security glazing in visiting areas should be revised to be more consistent with the technical provision it references, which requires some method to facilitate voice communication.

Response. The Board has revised this provision to clarify that "at least one of each type" is required to comply, consistent with the referenced technical requirement in section 904.6.

232 Detention and Correctional Facilities

This section provides scoping criteria specific to prisons, jails, and other types of detention and correctional facilities.

Several provisions in this section have been revised:

- This section has been revised to refer to "cells" as opposed to "cells or rooms" for purposes of simplicity.
- Scoping for beds in cells (232.2.1.1) references a provision for beds in transient lodging guest rooms which has been revised, as discussed above in section 224.
- A provision for partitions in visiting areas (232.5.2) has been revised for consistency with the technical criteria it references, consistent with a similar provision for judicial facilities (231.4.2) discussed above in section 231.
- A dispersion requirement for wheelchair and communication accessible cells has been removed, as discussed below (232.2.4 in the proposed rule).
- An exception from the requirement for grab bars in cells specially designed without protrusions for purposes of suicide prevention (233.3, Exception 1 in the proposed rule) has been moved to the technical requirement for grab bars, which is a more appropriate location (604.5).

Scoping provisions for detention and correctional facilities require access to at least 2% of the general housing and holding cells provided (232.2.1). In addition, where emergency alarm systems and telephones are provided in general housing or holding cells, at least 2% of the cells must be equipped with accessible communication features, such as visual alarms and telephones equipped with volume controls, to accommodate persons with hearing impairments (232.2.2). The proposed rule contained a requirement that half of the accessible communication features be provided in accessible cells, consistent with a dispersion requirement provided for transient lodging guest rooms. This provision was changed, as indicated in the draft of the final guidelines, to prohibit any overlap between accessible cells and those equipped with accessible alarms and telephones. In the final rule, the Board has removed this provision. Scoping for accessible communication features is triggered only where cells are equipped with alarms and telephones. In facilities without such cells, only scoping for accessible cells would apply, making provisions for required overlap irrelevant. Where such cells are provided, the final rule does not prohibit the location of accessible communication features in accessible cells.

233 Residential Facilities

Requirements for residential facilities address access for persons with disabilities, including persons with mobility impairments and those who are deaf or hard of hearing. This section specifies the minimum number of residential dwelling units required to be accessible. The term "residential dwelling units" pertains to facilities used as a residence. A revised definition for the term used in the final rule, "residential dwelling units," is provided in section 106.5. These facilities have been redefined to further distinguish them from other types of facilities, such as transient lodging, that provide living accommodations on a short-term basis. This section has been significantly revised in the final rule for consistency with other Federal regulations that address access to residential facilities, particularly those issued by the U.S. Department of Housing and Urban Development (HUD).

The ADA's coverage of residential facilities extends primarily to entities subject to title II such as public housing and other types of housing constructed or altered by, on behalf of, or for the use of State or local governments. Title III of the ADA does not generally apply to private housing, including apartments and condominiums, except for spaces within that serve as places of public accommodations, such as sales and rental offices. HUD administers a variety of programs that fund or subsidize housing. Many of these programs are subject to section 504 of the Rehabilitation Act of 1973 [20] which requires that those receiving Federal financial assistance be accessible to persons with disabilities. HUD's section 504 regulations [21] apply access requirements to residential facilities and include specific provisions for the minimum number of dwelling units required to be accessible. Specifically, they require at least 5% of dwelling units in multi-family projects of 5 or more dwelling units to be accessible and at least 2% to be equipped with communication features accessible to persons with hearing impairments. While these requirements are consistent with those in the proposed guidelines, the HUD regulations further specify how this scoping is to be applied to housing "projects," a term specifically defined in the HUD regulations. To avoid any potential conflicts in this area, the Board has referenced HUD's section 504 regulations for purposes of scoping (233.2). Thus, entities subject to HUD's section 504 regulations are required to apply the technical requirements for new construction and alterations of this rule to the number of units required to be accessible under HUD's regulations.

Scoping provisions for facilities not subject to HUD's section 504 regulations are addressed in a separate section (233.3). Requirements for these residential facilities address new construction, dwelling units for sale, additions, alterations, and dispersion. Substantive revisions made in the final rule concern:

- Residential facilities with a limited number of dwelling units (233.3.1, Exception).
- Dwelling units for sale (233.3.2).
- Alterations (233.3.4).

In addition, references to technical requirements have been editorially revised consistent with the integration of a separate chapter on residential facilities (11) into other chapters of the guidelines.

New construction scoping for facilities not subject to HUD's section 504 regulations is substantively consistent with the level specified in the proposed rule (233.3.1). At least 5% of the total number of residential dwelling units must be accessible to persons with mobility impairments and at least 2% must be equipped with communication features accessible to persons who are deaf or hard of hearing.

For newly constructed residential facilities with less than 5 units, the proposed rule provided an exception that allowed the minimum number to be applied to the total number of dwelling units constructed under a single contract, or developed as whole, whether or not located on a common site. In the final rule, this exception has been revised to apply to facilities with 15 or fewer units, a level which derives from UFAS, which the Board considered more appropriate (233.3.1, Exception).

The Board had considered adding a provision stipulating that units providing mobility access and those providing communication access are to be satisfied independently (*i.e.*, both types of access cannot be provided in the same unit to satisfy the minimum number of each type required to be accessible). The Board did not include such a requirement in the final rule for consistency with requirements in the International Building Code (IBC). The IBC specifies that multi-family dwelling units required to have fire alarm systems also have the capability to support visible alarms. This

[20] 29 U.S.C. 794.

[21] 24 CFR 8.22(b).

requirement facilitates installation of visual alarms as needed, including in units providing access for persons with mobility impairments. To avoid any conflict with the IBC requirement, the Board has removed its provision prohibiting the location of required accessible communication features in dwelling units that are accessible to persons with mobility impairments.

The final rule includes a provision that specifically covers residential units that are constructed for purchase (233.3.2). This provision does not apply the scoping percentages otherwise required in new construction, but instead references regulations issued under the ADA or section 504 of the Rehabilitation Act. DOJ's title II ADA regulation and section 504 regulations contain provisions that ensure access to programs and activities. These regulations require that each program or activity conducted by a covered entity or a program or activity receiving Federal financial assistance be readily accessible to and usable by individuals with disabilities when viewed in its entirety. A public entity that conducts a program to build housing for purchase by individual home buyers must provide access according to the requirements of the ADA regulations and, where Federal financial assistance is provided, the applicable section 504 regulation. The Board determined that access to dwelling units for purchase is better addressed by the program access obligation of these regulations instead of by the across-the-board scoping percentages of this rule.

Scoping for additions applies the minimum number according to the number of units added (233.3.3). No substantive changes have been made to this requirement in the final rule.

Scoping provisions for alterations have been revised in the final rule (233.3.4). The Board determined that applying requirements to dwelling units in alterations should be further tailored to conditions specific to residential facilities. As a result, the final rule focuses on alterations where the planned scope of work is extensive enough to achieve fully accessible units that are on accessible routes. Provisions are included that specifically address residential facilities vacated as part of an alteration and those that are substantially altered. Consistent with these provisions, the Board has included exceptions to the general scoping provisions for alterations, as discussed above (sections 202.3 and 202.4).

Where a building is vacated for purposes of alteration and has more than 15 dwelling units, at least 5 percent of the altered dwelling units are required to be accessible to persons with mobility impairments and to be located on an accessible route (233.3.4.1). In addition, at least 2 percent of the dwelling units are to be equipped with accessible communication features. Facilities vacated for purposes other than alteration, such as asbestos removal or pest control, are not subject to this requirement.

Where individual dwelling units are altered and, as a result, a bathroom or a kitchen is substantially altered and at least one other room is also altered, the dwelling unit is required to comply with the scoping requirements for new construction until the total number of accessible units is met (233.3.4.2). A substantial alteration to a kitchen or bathroom includes, but is not limited to, changes to or rearrangements in the plan configuration, or replacement of cabinetry. Substantial alterations do not include normal maintenance or appliance and fixture replacement, unless such maintenance or replacement requires changes to or rearrangements in the plan configuration, or replacement of cabinetry. As with new construction, the final rule permits facilities that contain 15 or fewer dwelling units to apply the scoping requirements to all the dwelling units that are altered under a single contract, or are developed as whole, whether or not located on a common site.

An exception to these alteration scoping requirements is provided in the final rule where full compliance is technically infeasible (233.3.4, Exception). Technical infeasibility, as defined in the rule, pertains to existing structural conditions or site constraints that effectively prohibit compliance in an alteration. Under this exception, where it is technically infeasible to provide a fully accessible unit or an accessible route to such a unit, then a comparable unit at a different location under an entity's purview can be used as a substitute provided that it fully complies with the access requirements. A substituted dwelling unit must be comparable to the dwelling unit that is not made accessible. Factors to be considered in comparing one dwelling unit to another should include the number of bedrooms; amenities provided within the dwelling unit; types of common spaces provided within the facility; and location with respect to community resources and services, such as public transportation and civic, recreational, and mercantile facilities.

Dispersion of accessible units is required among the various types of units provided so that people with disabilities have choices of dwelling units comparable to and integrated with those available to other residents (233.3.5). Single-story units can substitute for multi-story units provided they have equivalent amenities and spaces. These provisions have not been substantively revised in the final rule.

234 Through 243 Recreation Facilities and Play Areas

Sections 234 through 243 address various types of recreation facilities, including play areas. These requirements were developed in separate rulemakings that were finalized after the proposal for this rule was published. They have been incorporated into the final rule and have been reformatted and editorially revised for consistency with the document. No substantive changes have been made. Scoping provisions, which reference technical provisions in chapters 6 and 10, address:

- Amusement rides (234).
- Recreational boating facilities (235).
- Exercise machines (236).
- Fishing piers and platforms (237).
- Golf facilities (238).
- Miniature golf facilities (239).
- Play areas (240).
- Saunas and steam rooms (241).
- Swimming pools, wading pools, and spas (242).
- Shooting facilities with firing positions (243).

Part II: ABA Application and Scoping

This part provides application and scoping requirements for facilities subject to the ABA. The ABA covers facilities that are designed, built, altered, or leased with Federal funds. The Board's ABA guidelines serve as the basis for standards issued by four standard-setting Federal agencies: the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the U.S. Postal Service (USPS). The standards originally issued by these agencies are known as the Uniform Federal Accessibility Standards (UFAS).

The Board based the ABA application and scoping documents (Chapters 1 and 2) on those in Part 1 for ADA facilities to ensure greater consistency between the level of access required for ADA and ABA facilities. While differences or departures from the ADA scoping and application sections have been minimized, some are unavoidable due to differences between the ABA and ADA statutes and regulations issued under them. For example, the ABA covers facilities leased by Federal

agencies and the guidelines for the ABA reflect this statutory difference.

In the final rule, differences between the ADA and ABA application and scoping chapters pertain to modifications and waivers, definitions, additions, leases, general exceptions (specifically existing elements and employee work areas), and provisions specific to private buildings and facilities. In the proposed rule, the Board raised a question concerning housing on military installations that was applicable only to the ABA guidelines.

F103 Modifications and Waivers

The ABA recognizes a process under which covered entities may request a modification or waiver of the applicable standard. The standard-setting agencies may grant a modification or waiver upon a case-by-case determination that it is clearly necessary. This modification and waiver process is recognized in section F103 as a substitute to the provision for "equivalent facilitation" in section 103 provided for facilities subject to the ADA.

F106 Definitions

Definitions for "joint use," "lease," and "military installation," are included that pertain to provisions specific to the ABA covering leased facilities. Definitions of "private building or facility" and "public building or facility" are not included because these terms are used to distinguish between places of public accommodation and commercial facilities covered by title III of the ADA (private) and State and local government facilities covered by title II of the ADA (public). In addition, a definition of "employee work area" has been included in the ABA guidelines, consistent with the ADA guidelines.

F202.2 Additions

Section F202.2 addresses additions to existing facilities and provides specific criteria for accessible routes, entrances, and toilet and bathing facilities that derive from UFAS. These provisions have been retained but are not provided in the ADA scoping document. Provisions in this section for public pay telephones and drinking fountains have been included for consistency with a requirement in the ADA scoping document for an accessible path of travel for certain additions (202.2).

F202.6 Leases

The ABA requires access to facilities leased by Federal agencies. Section F202.6 contains scoping requirements for facilities that are newly leased by the Federal government, including new leases for facilities previously occupied by the Federal government. The negotiation of a new lease occurs when (1) the Federal government leases a facility that it did not occupy previously; or (2) an existing term ends and a new lease is negotiated for continued occupancy. The unilateral exercise of an option which is included as one of the terms of a preexisting lease is not considered the negotiation of a new lease. Negotiations which do not result in a lease agreement are not covered by this section. Provisions in this section address joint-use areas, accessible routes, toilet and bathing facilities, parking, and other elements and spaces. Corresponding changes concerning coverage of leased facilities appear in the sections stating the purpose (F101) and the overall scope of the guidelines (F201.1).

F203 General Exceptions

Section F203.2 establishes a general exception for elements complying with earlier standards issued pursuant to the ABA or to section 504 of the Rehabilitation Act of 1973. This exception, or "grandfather clause," applies only to individual elements and applies only to the extent that earlier standards contain specific provisions for the required element. For example, UFAS Section 4.17 contains provisions for wheelchair accessible toilet compartments, but does not contain provisions for ambulatory accessible toilet compartments. The technical criteria for wheelchair accessible toilet compartments in these guidelines at section 604.8.1 differ from UFAS 4.17; however, if an existing wheelchair accessible toilet compartment complies with UFAS 4.17 it need not comply with 604.8.1. On the other hand, where a Federal facility is altered, the toilet room may be subject to new accessibility requirements. In such cases, elements that were not addressed in earlier standards, such as the ambulatory accessible toilet stall, must be provided, unless it is technically infeasible to comply or a waiver or modification of the standards is obtained.

The Board has added the exception at F203.2 because Federal agencies raised concerns that these guidelines contain provisions for leasing at section 202.6 that could require alterations to elements that would have been deemed accessible under UFAS. For example, when a new lease is negotiated, certain elements within the space must comply with 202.6 even if the space was previously occupied by the Federal agency. UFAS Section 4.1.6(1) (f) contains a provision that exempts elements in both federally owned and leased facilities from any new requirements for accessibility unless altered. These guidelines require leased facilities to provide certain accessible elements such as accessible routes, toilets, drinking fountains, and telephones. Where these elements comply with earlier standards, they need not comply with these guidelines. For example, section 602.2 of these guidelines requires drinking fountains to provide a forward approach while UFAS 4.15.5 permits either a forward or parallel approach. Therefore, an existing drinking fountain providing a parallel approach and complying with UFAS 4.15.5 need not comply with section 602.2. An advisory note further clarifies that this exception does not effect a Federal agency's responsibilities under the Rehabilitation Act.

The ADA guidelines specify a limited degree of access within employee work areas (203.9). The level of access is not similarly limited in ABA facilities, consistent with the ABA's statutory language. Consequently, there are specifications for work areas that apply to ADA facilities but not to ABA facilities. These provisions address circulation paths (206.2.8) and visual alarms (215.3), and include exceptions concerning technical specifications for accessible routes (403.5) and ramp handrails (405.8). Also, ADA scoping provisions for work surfaces are clarified in the final rule as not applying to those provided for use by employees (226.1). However, an exception is provided in the ABA guidelines for laundry equipment used only by employees (F214.1).

F214 Washing Machines and Clothes Dryers

The ABA guidelines specifically exempt washing machines and clothes dryers provided for employee use (214.1). Other types of employee use equipment are not exempted. General exceptions for employee work areas in the ADA guidelines (203.9) effectively exempt laundry and other types of equipment used only by employees for work purposes. Laundry equipment that is provided for use by employees as part of their housing, recreation, or other accommodation must be accessible because that equipment is not used by the employee to perform job related duties.

Private Buildings and Facilities

Certain provisions in the ADA scoping document are specific to private buildings and facilities (*i.e.*, places of public accommodation and commercial facilities). These include an exception

from the requirement for an accessible route in private multi-level buildings and facilities that are less than three stories or that have less than 3,000 square feet per floor (206.2.3, Exception 1) and TTY scoping provisions specific to private buildings (217.4.2.2 and 217.4.3.2). These provisions are not included in the ABA guidelines.

F228 Depositories, Vending Machines, Change Machines, and Mail Boxes

The Board has clarified coverage of fuel dispensers in the final rule by adding a reference to them in the both the ADA scoping document (section 228) and the ABA scoping document (section F228). These elements are subject to requirements for operable parts in section 309, which specify location within accessible reach ranges and maximum operating forces. Exceptions to these requirements are provided for fuel dispensers. In the final rule, the Board has exempted coverage of fuel dispensers used only for fueling official government vehicles, such as postal and military vehicles. The Board considered such an exception appropriate to minimize the impact on elements used only by employees as part of their work responsibilities. A similar exception was not included in the corresponding provision for facilities covered by the ADA because such facilities are held to a different level of access with respect to work areas. The ADA scoping document, unlike its ABA counterpart, does not require elements within work areas used only by employees to be accessible.

F234 Residential Facilities

Requirements for residential dwelling units subject to the ABA are substantively consistent with the ADA scoping document in distinguishing between residential facilities subject to HUD regulations (F233.2) and those that are not (F233.4). As discussed above in section 233, the Board has sought to ensure consistency between the requirements of this rule and regulations for housing issued by HUD. In addition, the Board has included provisions specific to housing provided on military installations (F233.3) which are consistent with those for facilities not covered by HUD regulations. The term "military installation," as defined in the final rule (F106.5), applies to all facilities of an installation, whether or not they are located on a common site.

The proposed rule did not include an exception for military housing that is provided in the current standards used to enforce the ABA (UFAS). UFAS (4.1.4(3)) permits the Department of Defense (DOD) the option of modifying dwelling units as needed on an installation-by-installation basis (4.1.4(3)), as opposed to providing access at the time of construction as is required for other types of dwelling units. This flexibility allows the military departments to modify units for access to suit the needs of families with disabilities.

Comment. The Board sought comment on whether the final rule should include a similar provision that would permit accessible dwelling units under control of the DOD to be designed to be readily and easily modifiable to be accessible provided that modifications are accomplished on a first priority basis when a need is identified (Question 17). The vast majority of comments, most of which were from persons with disabilities, opposed such a provision. DOD supported retaining this exception, consistent with UFAS, since it provides appropriate flexibility in accommodating families with disabilities at military installations.

Response. The Board has not included an exception for military housing in the final rule. Consistent with the proposed rule, certain exceptions are provided for residential dwelling units generally that permit the installation of accessible features after construction if specified conditions are met. For example, grab bars do not have to be installed during the construction of residential dwelling units if the proper reinforcement is provided to facilitate their later installation as needed.

Chapter 3: Building Blocks

Chapter 3 contains basic technical requirements that form the "building blocks" of accessibility as established by the guidelines. These requirements address floor and ground surfaces (302), changes in level (303), wheelchair turning space (304), clear floor or ground space (305), knee and toe clearance (306), protruding objects (307), reach ranges (308), and operable parts (309). They are referenced by scoping provisions in Chapter 2 and by requirements in subsequent technical chapters (4 through 10).

Most comments addressed requirements for reach ranges and operable parts. Substantive revisions made in the final rule include:

- Lowering the maximum height for side reaches from 54 to 48 inches (308.3.1).
- Providing a limited exception from this requirement for gas pumps (308.3.1 and 308.3.2, Exception 2) and an exception for the operable parts of gas pumps (309.4).
- Adding an exception from requirements for obstructed side reaches to accommodate the standard height of laundry equipment (308.3.2, Exception 1).

302 Floor or Ground Surfaces

Section 302 requires floor or ground surfaces to be stable, firm, and slip resistant and provides specifications for carpets and surface openings.

Comment. Slip-resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under conditions likely to be found on the surface. The Board was urged to reference specifications and testing protocols for slip resistance, in particular those developed by Voices of Safety International.

Response. Historically, the Board has not specified a particular level of slip resistance since it can be measured in different ways. The assessed level (or static coefficient of friction) varies according to the measuring method used. It is the Board's understanding that various industries each employ different testing methods and that there is no universally adopted or specified test protocol. The final rule does not include any technical specifications or testing methods for slip resistance as recommended by comments. The Board has chosen not to reference specifications that have not been vetted by the model codes community or developed through established industry procedures governing the adoption of consensus standards and specified test methods.

The final rule includes exceptions developed in a separate rulemaking on recreation facilities that exempts animal containment areas and areas of sports activity from the requirements for floor or ground surfaces.

303 Changes in Level

Section 303 addresses vertical changes in level in floor or ground surfaces. No changes have been made to this section. Exceptions for animal containment areas and areas of sports activity established in rulemaking on recreation facilities are included in the final rule.

304 Turning Space

Minimum spatial requirements are specified for wheelchair turning space. This section permits either a 60 inch diameter circle or a T-shaped design. Objects that provide sufficient knee and toe clearance can overlap a limited portion of the turning space.

Comment. Comments urged that the minimum dimensions for turning space be increased to better accommodate scooters and motorized wheelchairs.

Recommendations ranged from 64 to 68 inches for the diameter of circular space and the overall dimensions of the T-shaped space. The overlap of this space by other elements should be prohibited or further restricted according to some of these comments because knee and toe clearances do not accommodate the front tiller of scooters.

Response. The lack of consensus on the dimensions for larger turning space and the absence of supporting data points to the need for research on the spatial turning requirements for scooters and other powered mobility aids. The Board believes that such research is needed before any changes to the long-standing criteria for turning space are made. The Board is sponsoring a long-term research project on scooters and other powered mobility aids through the Rehabilitation Engineering Research Center on Universal Design.

305 Clear Floor or Ground Space

Section 305 provides requirements for the basic space allocation for an occupied wheelchair. Few comments addressed this section, and no substantive changes have been made.

306 Knee and Toe Clearance

Section 306 defines the minimum clearances for knees and toes beneath fixed objects. Few comments addressing this section were received. The only changes made to this section are editorial in nature for purposes of clarity.

307 Protruding Objects

Objects mounted on walls and posts can be hazardous to persons with vision impairments unless treated according to the specifications in section 307 for protruding objects. Objects mounted on walls above the standard sweep of canes (*i.e.*, higher than 27 inches from the floor) and below the standard head room clearance (80 inches), are limited to a 4 inch depth. Objects mounted on posts within this range are limited to a 12 inch overhang.

Comment. Several commenters called for the 27 inch triggering height to be reduced. Recommendations ranged from 15 to 6 inches. Comments also recommended that post-mounted objects be held to the requirements for wall-mounted objects.

Response. Post-mounted objects are common along sidewalks, street crossings, and other public rights-of-way. The Board intends to develop guidelines specific to public rights-of-way in a separate rulemaking. This other rulemaking will address and invite comment on protruding objects in public rights-of-way. With respect to the mounting height above which requirements for protruding objects apply (27 inches), the Board believes research is needed to further assess this specification. No substantive changes have been made to the provisions for protruding objects in the final rule.

308 Reach Ranges

Accessible reach ranges are specified according to the approach (forward or side) and the depth of reach over any obstruction. The proposed rule, consistent with the original ADAAG, specified maximum heights of 48 inches for a forward reach and 54 inches for a side reach. In the final rule, the maximum side reach has been lowered to the height specified for forward reaches. Exceptions to this requirement and a related provision for reaches over obstructions have been added for gas pumps, laundry equipment, and elevators.

The ADAAG Review Advisory Committee's report, upon which the proposed rule was largely based, recommended that the side reach range, including obstructed reaches, be changed to those required for forward reaches. This recommendation was based on a report from the Little People of America which considered the 54 inch height beyond the reach for many people of short stature. The advisory committee also considered the 48 inch maximum for side reaches as preferable for people who use wheelchairs. The Board proposed retaining the 54 inch side reach maximum pending further information on the need for, and impact of, such a change in view of its application to a wide and varied range of controls and elements. However, the Board acknowledged that the ANSI A117.1–1998 standard included such a change, which would mitigate the impact of similar action by the Board in view of new codes based on the ANSI A117.1 standard.

Comment. Several hundred comments, almost a fifth of the total received in this rulemaking, addressed the merits of lowering the side reach maximum. The vast majority urged lowering the side reach, consistent with the advisory committee's recommendation. Most of these comments were submitted by persons of short stature and disability groups. These commenters, as well as the ANSI A117 Committee and the Little People of America, stated that the unobstructed high reach range requirement should be lowered to 48 inches to help meet the needs of people of short stature, people with little upper arm strength and movement, and people with other disabilities. This change would enhance consistency between the guidelines and other codes and standards. Comments called attention to difficulties people encounter accessing ATMs, vending machines, and gas pumps. Various trade and industry groups opposed lowering the side reach range due to concerns about the impact and cost on various types of equipment, including those highlighted by other comments as difficult to reach. In particular, gas pump manufacturers outlined the difficulties in designing a fuel dispenser that would meet the 48 inch requirement. Gas pumps are often located on curbs at least 6 inches high for safety reasons. In addition, safety and health regulations require distance between the electronics of the pump and the dispenser. Comments from the elevator industry noted that a 48 inch maximum height would adversely impact the design of elevator controls.

The Board held a public meeting in October, 2000 to collect further information on this issue. Persons of short stature and disability groups reiterated the need for lowering the side reach to 48 inches. ATM manufacturers noted that they could meet the 48 inch maximum height for most new models of ATMs. Gas pump manufacturers demonstrated the difficulties in meeting the 48 inch height requirement in view of their current designs and safety and health design requirements. The gas pump manufacturers impressed upon the Board the great difficulty of installing a redesigned gas pump on an existing curb. They contended that although it would be possible to redesign gas pumps to be 48 inches to the highest operable part, even when installed on a curb, such gas pumps would have non-uniform fittings. They noted that installing them would be costly and could necessitate removing the entire curb.

Response. The maximum side reach height has been lowered from 54 to 48 inches. An exception is provided for the operable parts of fuel dispensers, which are permitted to be 54 inches high maximum where dispensers are installed on existing curbs. This exception responds to industry's concern regarding costs associated with alterations and will permit the existing stock of gas pumps that are currently within 54 inches to be used. In addition, certain exceptions are provided for elevators in section 407, consistent with the ANSI A117.1 standard.

Comment. Requirements for side reaches over an obstruction in 308.3.2 limit the height of the obstruction to 34 inches maximum. A major manufacturer of laundry equipment indicated that this specification would significantly impact

the standard design of clothes washers and dryers, which have a standard work surface height of 36 inches. Complying with a 34 inch maximum height would decrease machine capacity and involve substantial redesign and retooling to develop compliant top-loading and front-loading machines.

Response. An exception has been added that permits the top of washing machines and clothes dryers to be 36 inches maximum above the floor.

309 Operable Parts

Specifications for operable parts address clear floor space, height, and operating characteristics. Operable parts are required to be located with the reach ranges specified in 308. In addition, they must be operable with one hand and not require tight grasping, pinching, twisting of the wrist, or more than 5 pounds of force to operate.

Comment. The proposed rule included an exception from the height requirements in 309.3 for special equipment and electrical and communications systems receptacles. This exception's coverage of various operable parts was considered to be too broad.

Response. This exception has been revised to specifically cover operable parts that are "intended for use only by service or maintenance personnel," "electrical or communication receptacles serving a dedicated use," and "floor electrical receptacles." However, since such equipment may merit exception from other criteria for operable parts besides the height specifications, this exception has been recast as a general exception from section 309 and has been relocated to the scoping requirement for operable parts in Chapter 2 (see section 205.1, exceptions 1, 2, and 4).

Comment. Gas pump manufacturers indicated that the safety requirements for the operation of gas pump nozzles effectively preclude a maximum operating force of 5 pounds.

Response. An exception has been added to 309.4 that permits gas pump nozzles to have an activating force greater than 5 pounds.

Comment. The Board sought comment on whether the maximum 5 pounds of force was appropriate for operating controls activated by a single finger, such as elevator call and control panel buttons, platform lift controls, telephone key pads, function keys for ATMs and fare machines, and controls for emergency communication equipment in areas of refuge, among others. Usability of such controls also may be affected by how far the button or key must be depressed for activation. Specifically, the Board asked whether a maximum 3.5 pounds of force and a maximum 1/10 inch stroke depth provide sufficient accessibility for the use of operable parts activated by a single finger (Question 18) and whether there were any types of operable parts that could not meet, or would be adversely affected by such criteria (Question 19). The few comments received on this issue were evenly divided on the merits of adding these specifications. Comments noted that they would pose problems for fare machines and interactive transaction machines designed to withstand vandalism and misuse, various types of plumbing products, dishwashers and laundry machines, and amusement games and attractions. The elevator industry indicated that the noted specifications would not pose a problem in the design of elevators.

Response. Due to the limited support expressed and the potential impacts raised by commenters, a maximum 3.5 pounds of force and a maximum 1/10 inch stroke depth for operable parts activated by a single finger has not been included in the final rule.

Chapter 4: Accessible Routes

Chapter 4 contains technical requirements for accessible routes (402) and the various components of such routes, including walking surfaces (403), doors, doorways and gates (404), ramps (405), curb ramps (406), elevators (407 through 409), and platform lifts (410). In the proposed rule, this chapter included requirements for accessible means of egress and areas of refuge (409 and 410). These sections have been removed, as discussed above at section 207. The scoping provisions for accessible means of egress at section 207 now reference corresponding requirements in the International Building Code (IBC). Information on the IBC is available on the Board's Web site at *www.access-board.gov* and in advisory notes.

402 Accessible Routes

Section 402 lists the various elements that can be part of an accessible route: walking surfaces, doorways, ramps, elevators, and platform lifts. Walking surfaces must have a running slope of 1:20 or less. Those portions of accessible routes that slope more than 1:20 must be treated as ramps or curb ramps.

Comment. Comments noted that curb ramps should be included in the list of accessible route components.

Response. A reference to curb ramps has been added to this list in the final rule (402.2). In addition, the Board has clarified that only the run of curb ramps, not the flared sides, can be considered part of an accessible route.

403 Walking Surfaces

Requirements in 403 for walking surfaces apply to portions of accessible routes existing between doors and doorways, ramps, elevators, or lifts. The requirements for walking surfaces derive from existing specifications for accessible routes covering floor or ground surfaces, slope, changes in level, and clearances. Revisions made to this section include:

- Adding an exception for circulation paths in employee work areas (403.5, Exception).
- Removing redundant specifications for protruding objects (403.5.3 in the proposed rule).
- Addressing handrails provided along walking surfaces (403.6).

The final rule requires that common use circulation paths within work areas satisfy requirements for accessible routes (203.9). This provision does not require full accessibility within the work area or to every individual work station, but does require that a framework of common use circulation pathways within the work area as a whole be accessible. These circulation paths must be accessible according to requirements for accessible routes and walking surfaces. Section 403.5 includes requirements for the clear width of walking surfaces. The Board has included an exception to section 403.5 which recognizes constraints posed by various types of equipment on the width of circulation paths. Under this exception, the specified clearance for common use circulation paths within employee work areas can be reduced by equipment where such a reduction is essential to the function of the work being performed.

The proposed rule included a requirement that protruding objects not reduce the required clear width of walking surfaces (403.5.3). The Board has removed this requirement as redundant. Section 307, which addresses protruding objects, specifies that such objects not reduce the clear width of accessible routes (307.5).

Comment. Requirements for handrails in the proposed rule applied only to those provided along ramps and stairs. The handrail requirements in section 505 address specifications for continuity, height, clearance, gripping surface, cross section, fittings, and extensions. The Board sought comment on whether these requirements should also be applied to handrails that are provided along portions of circulation paths without ramps or stairs (Question 20). The few comments that addressed

this question supported the inclusion of such a requirement.

Response. In the final rule, the Board has included a requirement at section 403.6 that handrails, where provided along walking surfaces not treated as a ramp (*i.e.*, those with running slopes no steeper than 1:20), meet the technical criteria in section 505. The Board has included provisions in section 505 that exempt walking surfaces from requirements for handrails on both sides and from requirements for handrail extensions.

Comment. Section 403.5 specifies a continuous clearance of 36 inches minimum for walking surfaces. Wider clearances are specified for wheelchair passing space (60 inches minimum) and certain sharp turns around narrow obstructions. Several comments urged an increase in the specified clearances for walking surfaces, such as a 48 inch minimum for exterior routes, and an increase in wheelchair passing space to 66 inches.

Response. No revisions have been made to the specified clearance of walking surfaces. The minimum width of exterior routes on public streets and sidewalks will likely be revisited in supplementary guidelines specific to public rights-of-ways that the Board intends to develop. These supplementary guidelines will be proposed for public comment.

404 Doors, Doorways, and Gates

This section covers both doors, doorways, and gates that are manually operated (404.2) and those that are automated (404.3). Changes made to the requirements for manually operated doors:

- Clarify coverage of gates and the application of this section to manual doors and doorways intended for user passage (404.2).
- Clarify and modify maneuvering clearance requirements (404.2.4).
- Modify requirements for doors and gates in series (404.2.6).
- Clarify the height of door and gate hardware and add an exception for gates at pools, spas, and hot tubs (404.2.7).
- Revise an exception for door and gate surface requirements (404.2.10, Exception 2) and add a new exception for existing doors and gates (Exception 4).

In the proposed rule, section 404 referenced doors and doorways. The original ADAAG included a provision for gates which were subject to all relevant specifications for doors and doorways. The final rule includes references to gates throughout section 404 so that they are equally covered, consistent with the intent of this section and with scoping provisions for doors, doorways, and gates in section 206.5. In addition, clarification has been added that the requirements for manual doors, doorways, and gates in section 404.2 apply to those "intended for user passage."

Comment. Commenters requested that the Board specifically address doors which do not provide user passage.

Response. Section 404, as all of Chapter 4, addresses accessible routes and components of such routes. Doors which do not provide user passage would not be considered part of an accessible route. However, doors not providing user passage, such as those at many types of closets and wall mounted cabinets, are subject to requirements for storage (811) and for operable parts (309) where they are required to be accessible.

Section 404.2.4 addresses maneuvering clearances at manual doors, doorways, and gates. It includes tables that specify these clearances according to the type of door, doorway, or gate (swinging, sliding, folding, and doorways without doors or gates) and the approach (front, latch side, hinge side). Clearances are specified for the pull side and the push side in the case of swinging doors. The final rule includes clarification, which was partially contained in a previous footnote to Table 404.2.4.1, that maneuvering clearances "shall extend the full width of the doorway and the required latch side or hinge side clearance," consistent with corresponding figures.

Comment. The proposed rule exempted doors to hospital patient rooms that are at least 44 inches wide from the specifications for latch side clearances. This exception derives from the original ADAAG and was intended to apply to those types of patient rooms where patients are typically transported in and out by hospital staff. Commenters pointed out that this exception should be limited to acute care patient bedrooms, as in the original ADAAG. The 44 inch specification pertains to the clear opening width of doors intended to accommodate gurneys.

Response. The exception, located at section 404.2.4 in the final rule, remains generally applicable to entry doors serving hospital patient rooms. The 44 inch width criterion has been removed so that the exception may be applied without regard to the door width. The Board opted not to limit the application of this exception due to concerns about the impact on the standard design and size of patient rooms. Doors to patient rooms are often located close to adjacent interior walls in order to facilitate circulation and to enhance privacy. As a matter of design, practice, or code requirement, such doors are typically wider in order to accommodate beds and gurneys.

Comment. Table 404.2.4.1 specifies maneuvering clearances for manual swinging doors and gates. At doors that provide a latch side approach, the minimum depth of this clearance is increased where a closer is provided because additional space is needed to counteract the force of closers while maneuvering through the door from either the push or the pull side. In the proposed rule, this additional depth (6 inches) was specified when both a closer and a latch are provided. Comments indicated that this requirement should apply based on the provision of a closer since the addition of a latch does not impact the need for additional maneuvering clearance.

Response. The specification in Table 404.2.4.1, footnote 4, has been revised to apply where a closer is provided at doors with latch side approaches. The reference to latches has been removed.

Comment. Section 404.2.5 addresses the height of thresholds. A maximum height of ½ inch is generally specified, although an exception permits a maximum height of "inch at existing or altered thresholds that have a beveled edge on each side. Many comments opposed any threshold height above ½ inch. Conversely, a few comments urged that this exception be broadened to restore a similar allowance for exterior sliding doors.

Response. The Board has retained the ¾ inch height allowed for thresholds with a beveled edge on each side that are existing or altered because compliance with the ½ inch requirement can, in some cases, significantly increase alteration costs and necessitate replacement of door assemblies. An exception in original ADAAG that allowed a ¾ inch threshold at exterior sliding doors was removed in the proposed rule because products are available, including swinging doors, that meet the ½ inch maximum specified for all other doors. No changes to the criteria for thresholds have been made in the final rule.

Section 404.2.6 specifies the minimum separation between doors and gates in series (48 inches plus the width of doors or gates swinging into the space). The proposed rule, consistent with the original ADAAG, included a requirement that doors and gates in series swing either in the same direction or away from the space in between. The Board has removed this requirement for consistency with the ANSI A117.1 standard. The required separation

between doors and gates in series and specifications for maneuvering clearances at doors will ensure sufficient space regardless of the door swing.

The height of door and gate hardware (34 to 48 inches) is specified in section 404.2.7. In the final rule, the Board has clarified that this height pertains to the operable parts of hardware, consistent with the ANSI A117.1 standard.

In finalizing this rule and incorporating its guidelines for recreation facilities, the Board determined that the specified height for door and gate hardware conflicts with industry practice or safety standards for swimming pools which specify a higher range for the location of latches beyond the reach of young children. The Model Barrier Code for Residential Swimming Pools, Spas, and Hot Tubs (ANSI/NSPI–8 1996) permits latch releases for chain link or picket fence gates to be above 54 inches. The model safety standard does not apply this requirement to key locks, electronic openers, and integral openers which have a self-latching device that is also self-locking. To reconcile this conflict, the Board has added an exception in the final rule for barrier walls and fences protecting pools, spas, and hot tubs (404.2.7, Exception 2). Under this exception, a 54 inch maximum height is permitted for the operable parts of the latch release on self-latching devices. Although the final guidelines specify 48 inches as the maximum forward or side reach, the original ADAAG recognized a maximum of 54 inches for side reach. Consistent with the model safety standard, this exception is not permitted for self-locking devices operated by keys, electronic openers, or integral combination locks.

Comment. Section 404.2.7 also covers the operating characteristics and height of door and gate hardware. An exception is provided for "existing locks at existing glazed doors without stiles, existing overhead rolling doors or grilles, and similar existing doors or grilles that are designed with locks that are activated only at the top or bottom rail." The advisory committee had recommended a broader exception that would have permitted any location for locks used only for security purposes and not for normal operation. Several comments preferred the exception put forth by the advisory committee over the one proposed by the Board.

Response. The Board sought to limit the exception to existing doors or grilles because design solutions for accessible doors and gates are available in new construction. In addition, the Board felt that the advisory committee's language concerning "locks used only for security purposes" could be construed as applying to any lock. No changes have been made to the exception.

Comment. Section 404.2.9 addresses the opening force of doors and gates. The provisions are consistent with existing ADAAG specifications by requiring a maximum 5 pounds of force for sliding, folding, and interior hinged doors. Fire doors are required to have the minimum opening force permitted by the appropriate administrative authority. No maximum opening force was proposed for exterior hinged doors. Many comments urged the Board to address exterior hinged doors, with a majority proposing a maximum of 8.5 pounds of force. Where this maximum cannot be met, the door should be required to be automatic or power-assisted, according to these comments. Some commenters felt that automatic doors should be made mandatory regardless of the opening force of manual hinged doors.

Response. Historically, the Board has not specified a maximum opening force for exterior hinged doors to avoid conflicts with model building codes. The closing force required by building codes usually exceeds 5 pounds, the maximum considered to be accessible. Factors that affect closing force include the weight of the door, wind and other exterior conditions, gasketing, air pressure, heating, ventilation, and air conditioning (HVAC) systems, and energy conservation, among others. Research previously sponsored by the Board indicates that a force of 15 pounds is probably the most practicable as a specified maximum. Considering that closing force is 60% efficient, a 15 pound maximum for opening force may be sufficient for closure and positive latching of most doors, but is triple the recognized maximum for accessibility. A maximum opening force for exterior hinged doors has not been included in the final rule.

Section 404.2.10 requires that swinging doors and gates have a smooth surface on the push side that extends their full width. This provision derives from the ANSI A117.1–1992 standard and is intended to permit wheelchair footrests to be used in pushing open doors without risking entrapment on the stile. This provision requires that parts creating joints in the smooth surface are to be within 1/16 inch of the same plane as the other. Also, cavities created by added kick plates must be capped. Exceptions from this requirement are recognized for sliding doors (Exception 1), certain tempered glass doors without stiles (Exception 2), doors and gates that do not extend to within 10 inches of the floor or ground (Exception 3), and existing doors and gates (Exception 4).

Comment. Exception 2 exempts tempered glass doors without stiles that have a bottom rail or shoe with the top leading edge tapered at 60 degrees minimum from the horizontal. Comments indicated that these types of doors should be exempt from the requirement for the smooth surface area on the push side, but should be subject to other portions of the provision covering surface joints and added kick plates.

Response. In the final rule, section 404.2.10, Exception 2 has been revised to exempt the type of tempered glass doors described only from the requirement for a smooth surface on the push side that extends the full width of the door. Such doors remain subject to specifications for parts creating joints in the surface and for provided kick plates.

In finalizing the rule, the Board determined that the cost of making existing doors or gates comply with the smooth surface requirement in alterations can be significant. An exception from this requirement for existing doors and gates is provided in the final rule (404.2.9, Exception 4). Under this exception, such doors or gates do not have to comply with the surface requirements, provided that cavities created by added kick plates are capped.

Section 404.3 addresses automatic doors and gates, including those that are full-powered, low-energy, and power-assisted. In addition to the provisions of section 404.3, such doors are subject to industry standards (ANSI/BHMA 156.10 and 156.19). The reference to these standards in section 105.2 has been updated in the final rule to refer to the most recent editions: ANSI/BHMA A156.10–1999 Power-Operated Pedestrian Doors and the 1997 or 2002 editions of ANSI/BHMA A156.19 Power-Assist and Low-Energy Power-Operated Doors. The Board's Web site at *www.access-board.gov* provides further information on these referenced standards. Provisions in section 404.3 address clear width; maneuvering clearance; thresholds; doors and gates in series; operable parts; break out opening; and revolving doors, gates, and turnstiles.

Changes made to this section include:

- Removal of unnecessary language from the charging statement (404.3).
- Modification of maneuvering clearance specifications (404.3.2).
- Removal of requirements for door labels and warnings (404.3.6 in the proposed rule).
- Revision of specifications for break out opening (404.3.6).

• Addition of a provision for revolving doors, gates, and turnstiles (404.3.7).

Comment. In the proposed rule, section 404.3 noted that "[a]utomatic doors shall be permitted on an accessible route." Commenters indicated that this language was unnecessary since any type of door complying with section 404 may be on an accessible route (404.1).

Response. The statement permitting automatic doors on accessible routes in section 404.3 has been removed.

In the proposed rule, section 404.3.2 required that maneuvering clearances specified for swinging doors be provided at power-assisted doors and gates since their activation, unlike those that are fully automated, involves manual operation. In the final rule, this provision has been revised to also apply to automatic doors and gates not equipped with standby power that are part of an accessible means of egress. In cases of building power failure, this will help provide access where manual operation of the door or gate is required, unless the opening device has its own back-up power supply. A new exception exempts those automatic doors or gates that remain open in the power-off condition since manual operation is not necessary during power outages.

The proposed rule included a requirement that labels and warning signs for automatic doors meet requirements in section 703.4 for non-tactile signage (404.3.6). The Board has removed this requirement in the final rule since the referenced industry standards address the characteristics of these signs and labels.

Comment. In the proposed rule, the Board included a requirement that the clear break out opening for swinging or sliding automatic doors be at least 32 inches in emergency mode so that an accessible route through them is maintained in emergencies (404.3.7). Several comments opposed this requirement because of a common accessibility retrofit in which 60 inch wide double doors are automated so that both 30 inch leaves open simultaneously to meet the minimum 32 inch clear opening requirement. However, neither leaf would provide the minimum 32 inch clearance in emergency mode required by this provision.

Response. The Board has revised the requirement so that it applies only to those automatic doors and gates without standby power that are part of a means of egress (404.3.6). Automatic doors equipped with backup power would meet this requirement, including those with double leaves less than 32 inches wide. In addition, the Board has added an exception under which compliance with this provision is not required where accessible manual swinging doors or gates serve the same means of egress.

Comment. A commenter advised that no revolving doors or turnstiles should be permitted on an accessible route.

Response. As indicated in the proposed rule, manual revolving doors, gates, and turnstiles cannot be part of an accessible route (404.2.1). The Board has included a provision clarifying that automatic types of revolving doors, gates, and turnstiles cannot be the only means of passage at an accessible entrance (404.3.7). While automated revolving doors, if large enough, may be usable by people with disabilities, certain questions remain about the appropriate maximum speed, minimum diameter, compartment size, width and configuration of openings, break out openings, and safety systems such as motion detectors that stop door movement without contact. An alternate door in full compliance with 404 is considered necessary since some people with disabilities may be uncertain of their usability or may not move quickly enough to use them.

405 Ramps

Section 405 provides technical criteria for ramps. Revisions made to this section include:

• A new exception for ramps in assembly areas (405.1).

• Removal of an exception for ramp slopes in historic facilities (405.2).

• Addition of exceptions for ramps in employee work areas (405.5 and 405.8).

• Clarification of specifications for ramp landings (405.7).

Comment. Requirements for ramps apply to portions of accessible routes that slope more than 1:20. Technical provisions address running slope, cross slope, handrails, landings, edge protection, and other elements. Comments from designers of assembly areas requested that the guidelines make clear that ramps adjacent to seating in assembly areas that are not part of a required accessible route do not have to comply with the guidelines. Often, it is not practicable that such ramps meet requirements for handrails, edge protection, running slope, and other specifications.

Response. An exception has been added in the final rule (405.1) for ramps adjacent to seating in assembly areas, which are not required to comply with the guidelines provided that they do not serve elements required to be on an accessible route.

Section 405.2 specifies a maximum running slope of 1:12 for ramps. Alternate slope requirements are permitted for short ramps in existing facilities where space constraints effectively prohibit a 1:12 running slope. A 1:10 maximum slope is permitted for ramps with a rise of up to 6 inches, and a maximum 1:8 slope is allowed for ramps with a rise of up to 3 inches.

Comment. Commenters recommended that language in the original ADAAG be restored calling for the "least possible slope" to be used, with 1:12 being the maximum allowed.

Response. While the least possible slope is generally desired for easier access, this language had been removed because it is considered too vague from a compliance standpoint and thus difficult to enforce. The final rule, consistent with the proposed rule, specifies only that the maximum slope shall be 1:12.

Comment. The proposed rule included an exception for qualified historic structures (405.2, Exception 2) that would have permitted a running slope of 1:6 maximum for ramps no longer than 24 inches. Commenters urged that this exception be removed for consistency with the ANSI A117.1–1998 standard and the International Building Code (IBC).

Response. This exception for qualified historic facilities has been removed in the final rule. Such facilities, however, may qualify for the exceptions generally permitted for existing facilities that have been retained in the final rule.

The final rule includes exceptions for ramps located in employee work areas. Common use circulation paths within such areas are subject to requirements for accessible routes (203.9). These circulation paths must be accessible according to requirements for accessible routes, including ramps. Exceptions included in the final rule for the clear width (405.5) and handrails (405.8) of ramps located in employee work areas recognize constraints posed by various types of equipment. Employee work area ramps do not have to meet the specified 36 inch minimum clear width where a decrease is necessary due to equipment within the work area so long as the decrease is essential to the work being performed. Ramps within employee work areas are not required to have handrails if they are designed to permit the later installation of complying handrails. A clearance of 36 inches between handrails is required, except at those ramps that qualify for the clear width exception in 405.5.

Comment. Section 405.7 addresses ramp landings, including the minimum

width and length (405.7.2 through 405.7.4). A commenter suggested that these provisions be revised to the "clear" dimension for clarity and consistency.

Response. Specifications for ramp landings have been revised in the final rule, as suggested, to refer to the "clear" dimension.

406 Curb Ramps

Section 406 provides requirements specific to curb ramps and also applies requirements for other types of ramps covered by section 405. These include specifications for running slope, surface, clear width, and wet conditions. Consistent with the scope of the guidelines, these requirements apply to facilities on sites. The Board will address and invite comment on requirements for curb ramps located in public streets and sidewalks in upcoming rulemaking to develop supplementary guidelines specific to public rights-of-way. This supplement will be proposed for public comment based on recommendations from the Board's Public Rights-of-Way Access Advisory Committee, which was comprised of representatives from the transportation industry, Federal, State and local government agencies, the disability community, and design and engineering professionals. This committee's recommendations are contained in a report, "Building a True Community," which was submitted to the Board in January 2001.

Provisions for curb ramps in section 406 have been revised to:

- Clarify requirements for cross slope (406.1).
- Modify specifications for side flares (406.3) and landings (406.4).
- Delete unnecessary language concerning handrails (406.4 in the proposed rule).
- Clarify the specified location of curb ramps (406.5).
- Change specifications for diagonal curb ramps (406.6).

Comment. Comments indicated that specifications for cross slope (1:48 maximum) are not referenced in the curb ramp section.

Response. In the final rule, the Board has clarified that curb ramps, like other elements of accessible routes, cannot have a cross slope steeper than 1:48, by adding a reference to the cross slope specification for ramps in section 405.3.

Section 406.3 addresses the sides of curb ramps and specifies that side flares, where provided, have a slope of 1:10 maximum. In the proposed rule, this provision required flared sides where pedestrians must walk across the curb ramp. Returned sides were permitted where pedestrians would not normally walk across the ramp. In the final rule, this distinction has been removed. However, curbs with returned sides remain an alternative to flared sides. In addition, the specification for shallower (1:12) side flares for curb ramps with limited space at the top has been removed in conjunction with revisions to the criteria for landings (406.4).

Comment. Commenters advised that landings should be specified at the top of curb ramps.

Response. Section 406.4 is new to the final rule in clarifying requirements for landings at the top of curb ramps. Curb ramps must be connected by an accessible route which, in effect, requires space at least 36 inches in length at the top of curb ramps. Otherwise, maneuvering at the top of ramps would require turning on the flared sides. Landings must also be as wide as the curb ramp they serve. The proposed rule specified that side flares of 1:12 maximum must be provided when space at the top of curb ramps is less than 48 inches long. This specification has been removed. However, a similar exception has been added for alterations. Under this exception, 1:12 maximum side flares are required where there is no landing at the top of curb ramps. This exception was provided to address situations where existing space constraints or obstructions may prohibit a landing at the top of curb ramps.

The proposed rule noted that handrails are not required on curb ramps (406.4 in the proposed rule). This language, though accurate, has been removed as unnecessary since the technical provisions for curb ramps in section 406 do not include or reference requirements for handrails.

Section 406.5 specifies the location of curb ramps at marked crossings. In the final rule, requirements for the general location of curb ramps that were provided at section 406.8 in the proposed rule have been integrated into this provision for simplicity. As reformatted, section 406.5 covers the location of curb ramps, including at marked crossings.

Comment. Curb ramps must be located so that they do not project into vehicular traffic lanes or parking spaces and access aisles. Commenters noted that this requirement should be clarified to apply not only to the run of the curb ramp, but also to flared sides, where provided.

Response. Consistent with the intent of the requirement in section 406.5, the Board has clarified that the specified location applies to curb ramps "and the flared sides of curb ramps."

Comment. Section 406.6 provides specifications for diagonal (or corner type) curb ramps. These curb ramps must have a 48 inch minimum clear space at the bottom. Comments advised that this space should be provided outside active traffic lanes of the roadway so that persons traversing the ramp are not in the way of oncoming traffic from either direction at an intersection.

Response. Clarification has been added in the final rule that the clear space at the bottom of diagonal curb ramps must be located "outside active traffic lanes of the roadway."

Comment. Requirements for diagonal curb ramps in section 406.6 also specify that a segment of straight curb at least 2 feet long must be provided on each side of the curb ramp and within the marked crossing. This portion of curb face provides a detectable cue to people with vision impairments traveling within the crosswalk. Comments noted that this segment of curb does not have to be horizontally straight to provide such a cue and that achieving straight segments two feet long within marked crossings is very difficult under standard intersection design conventions.

Response. The requirement in section 406.6 that the 2 foot curb segment aside diagonal curb ramps be "straight" has been removed. The segment can be provided at arced portions of the curb, but must still be located within marked crossings.

Comment. Comments, most from groups representing persons with vision impairments, called attention to the need for detectable warnings at curb ramps, blended curbs, and cut-through islands. They requested that such a requirement be reinstated in the final rule. A few comments opposed such a change.

Response. The original ADAAG contained a requirement that curb ramp surfaces have a raised distinctive pattern of truncated domes to serve as a warning detectable by cane or underfoot to alert people with vision impairments of the transition to vehicular ways (ADAAG 4.7.7). This warning was required since the sloped surfaces of curb ramps remove a tactile cue provided by curb faces. In response to concerns about the specifications, the availability of complying products, proper maintenance such as snow and ice removal, usefulness, and safety concerns, the Board, along with the Department of Justice (DOJ) and the Department of Transportation (DOT), suspended the requirement for

detectable warnings at curb ramps and other locations pending the results of a research project sponsored by the Board on the need for such warnings at these locations.[22] The research project showed that intersections are very complex environments and that pedestrians with vision impairments use a combination of cues to detect intersections. The research project suggested that detectable warnings had a modest impact on detecting intersections since, in their absence, pedestrians with vision impairments used other available cues. The results of this research indicated that there may be a need for additional cues at some types of intersections, but did not identify the specific conditions where such cues should be provided.

Suspension of this requirement continued until July 26, 2001, to accommodate the advisory committee's review of ADAAG and resulting rulemaking by the Board.[23] The advisory committee recommended that the requirement for detectable warnings at platform edges in transportation facilities be retained, but it did not make any recommendations regarding the provision of detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing detectable warnings at vehicular-pedestrian intersections in the public right-of-way should be established first, and that the application to locations within a site should be considered afterward. Consequently, the Board did not include requirements for detectable warnings in the proposed rule, except at boarding platforms in transit facilities. Nor did the Board further extend the suspension, which expired on July 26, 2001. Since the enforcing agencies did not extend the suspension either, the detectable warning requirements are technically part of the existing standards again. DOJ and DOT can provide additional guidance on their enforcement of these requirements pending the update of their standards according to these revised guidelines.

The Board will address and invite comment on detectable warnings on curb ramps in its development of guidelines covering public rights-of-way. Those guidelines will be proposed for public comment based on recommendations from the Public Rights-of-Way Access Advisory Committee. This committee's report to the Board makes recommendations for detectable warnings at curb ramps. Consistent with the ADAAG Review Advisory Committee's recommendation, the Board intends to address detectable warnings in public rights-of-way before including any specification generally applicable to sites. Thus, this final rule does not reinstate requirements for detectable warnings at curb ramps or hazardous vehicular areas.

407 Elevators

Section 407 covers passenger elevators, including destination-oriented elevators and existing elevators. This section also requires compliance with the industry safety code, ASME/ANSI A17.1–2000 Safety Code for Elevators and Escalators. The Board has revised the rule to reference the most recent edition of this code (105.2.2).

The requirements for elevators have been extensively revised and reformatted. In the proposed rule, different types of elevators were covered by separate subsections: standard elevators (407.2), destination-oriented elevators (407.3), limited-use/limited-application elevators (407.4), and existing elevators (407.5). In addition, residential elevators were addressed in a separate chapter covering residential facilities (11). Since there was considerable redundancy in the specifications between some types of these elevators, the Board has integrated into one section (407) the requirements for standard, destination-oriented, and existing elevators. Basically, this revised section tracks the requirements for standard elevators in 407.2 of the proposed rule, but the provisions have been renumbered and formatted. Various exceptions specific to destination-oriented and existing elevators have been incorporated into this section to preserve the substance of differing specifications. Requirements for limited-use/limited-application (LULA) elevators and residential elevators are provided in sections 408 and 409, respectively.

Comment. The proposed rule applied requirements specifically to "new" elevators, including destination-oriented and LULA types, and to "existing" elevators. However, substantive differences between requirements for "new" and "existing" elevators applied only to standard elevators. Comments recommended that references to "new" be removed for consistency with the rest of the document.

Response. The Board has removed references to "new" in the requirements for elevators in sections 407 and 408 for consistency with the scoping of the guidelines. The requirements of these sections apply to existing elevators that are altered, consistent with the basic application of the guidelines. Provisions specific to "existing" elevators in section 407 address certain allowances permitted in the alteration of standard elevators.

Substantive changes made to requirements for elevators in section 407 include:

- Revision of the height of call controls (407.2.1.1).
- Removal of a specification concerning objects located below hall call buttons (407.2.2 in the proposed rule).
- Modification of specifications for audible hall signals (407.2.2.3) and audible car position indicators (407.4.8.2).
- Revision of the height of tactile floor designations at hoistways (407.2.3.1).
- Addition of an exemption for destination-oriented elevators from the requirements for door and signal timing (407.3.4).
- Addition of a new exception for the height of car controls (407.4.6.1, Exception 1).
- Modification of requirements for keypads (407.4.7.2).
- Clarification that requirements for operable parts in 309 apply to call controls (407.2.1) and car controls (407.4.6).
- Removal of redundant specifications for emergency communication systems (407.4.9).
- Relocation of requirements for existing elevator cars to be labeled by the International Symbol of Accessibility, unless all cars are accessible, to the signage scoping section (216.7).

Section 407.2 provides specifications for elevator halls and lobbies. In the final rule, this provision has been editorially revised to refer to elevator "landings," consistent with the ANSI A117.1–2003 standard.

Comment. The proposed rule specified that call buttons be located 35 to 48 inches above the floor (407.2.2). These controls should be held to the basic reach range specifications in section 308 like any other operable part, according to commenters.

Response. In the final rule, call controls are required to be located within one of the reach ranges specified in section 308 (407.2.1.1). In addition, the Board has removed a requirement that objects mounted beneath hall call buttons protrude no more than 4 inches into the clear floor space. Such protrusions are adequately addressed by requirements for clear floor space in 305

[22] 59 FR 17442 (April 12, 1994).

[23] 61 FR 39323 (July 29, 1996) and 63 FR 64836 (November 23, 1998).

and for protruding objects in section 307.

Comment. Audible hall signals must indicate the direction of a responding car by the number of sounds (once for up and twice for down) or by verbal announcements (407.2.2.3). The proposed rule included a maximum frequency (1,500 Hz) for audible signals. The Board sought comment on whether a frequency band width should be specified for verbal annunciators (Question 21). Specifically, the Board asked whether a band width of 300 to 3,000 Hz for hall signals would be appropriate. Information on the availability and cost of products meeting this specification was also requested. Comments from the elevator industry indicated that hall signals currently fall within this range.

Response. The Board has added a requirement in the final rule that hall signal verbal annunciators have a frequency of 300 Hz minimum and 3,000 Hz maximum. For consistency, a similar requirement is specified for verbal car position indicators (407.4.8.2.3). In the proposed rule, these verbal annunciators were subject to a maximum frequency of 1,500 Hz. In addition, the Board has modified hall signal verbal annunciators by requiring that they "indicate the direction of elevator car travel," instead of specifying the content ("up," "down") as required in the proposed rule.

Comment. The proposed rule specified a decibel range of 20 to 80 decibels for hall signals and annunciators (407.2.3.1) and car position annunciators (407.3.4.2). Comments recommended that the minimum be changed to 10 decibels above the ambient noise level for consistency with the ANSI A117.1–2003 standard.

Response. The minimum decibel range for hall and car position signals has been changed to 10 decibels above ambient. In addition, the provision for audible indicators (407.4.8.2) has been revised to require floor announcement when the car is about to stop, instead of when it has stopped, consistent with the ANSI A117.1 standard.

The proposed rule specified that tactile floor designations at the hoistway be 60 inches above the floor, measured from the baseline of the characters (407.2.4). In the final rule, this specification, now located at section 407.2.3.1, applies the mounting height generally required for other types of tactile signs by 703.2 (48 to 60 inches above the floor). The Board felt that there was little reason to hold hoistway signs to a more restrictive location than that specified for other types of tactile signs.

Comment. Section 407.3.1 recognizes acceptable types of elevator doors. The proposed rule recognized horizontal sliding doors. A comment indicated that other door types recognized by the elevator code should be recognized, such as vertical sliding doors.

Response. In the draft of the final guidelines, the Board had included a reference to vertical sliding doors permitted by the elevator safety code (ASME A17.1) in response to this comment. A similar change was not approved for the ANSI A117.1 standard due to concerns about such doors posing a tripping hazard to persons with vision impairments. For consistency, the Board has removed the reference to vertical sliding doors in the final rule.

Section 407.3.4 specifies door and signal timing. This provision helps ensure that elevator doors remain open long enough for persons with disabilities to travel from call buttons to the responding car and is based on a travel speed of 1½ feet per second. Destination-oriented elevators may have call buttons located outside elevator landing areas and have enhanced programming features for the response time of cars. In recognition of this, the Board has included in the final rule an exception from the door and signal timing requirements for destination-oriented elevators (407.3.4, Exception 2).

Comment. Comments recommended that the height of elevator car controls be harmonized with the ANSI A117.1 standard. Specifically, the ANSI standard specifies a maximum reach height of 48 inches for forward or side reaches. It also provides an exception that allows a maximum height of 54 inches for elevators with more than 16 openings where a parallel approach to the car controls is provided. The advisory committee also recommended lowering the maximum height for control buttons from 54 to 48 inches, consistent with its recommendations for reach ranges generally. The advisory committee recognized a potential adverse impact of a lower maximum height on elevators with panels that must have a large number of buttons in a limited amount of space and recommended an exception that would allow the 54 inch maximum height for elevators with more than 16 stops.

Response. As discussed above in section 308, the Board lowered the maximum side reach height from 54 to 48 inches. This height is the same as that specified for forward reaches. Elevator car controls are required to be within these reach ranges (407.4.6.1). Consequently, the Board has included an exception, consistent with the ANSI A117.1 standard and the advisory committee's recommendation, that allows a maximum height of 54 inches where the elevator serves more than 16 openings and a parallel approach is provided (407.4.6.1, Exception 1).

Comment. The proposed rule, in addressing elevator car controls, required that telephone-style keypad buttons, where provided, be identified by raised characters centered on the keypad button (407.2.11.2). Comments indicated that tactile characters for each button are not needed on such keypads. Support was expressed for making this requirement consistent with the ANSI A117.1–1998 standard which requires a standard keypad arrangement with a raised dot on the number 5 key which is held to specifications for braille dots and a base diameter of 0.118 to 0.120 inch. Raised characters are not required.

Response. The Board has revised the requirements for elevator keypads, now located at 407.4.6.3 and 407.4.7.2, that are consistent with the ANSI A117.1 standard. The final rule requires a standard telephone keypad arrangement with the number 5 key identified by a raised dot that complies with specifications for the base diameter and specifications for braille dots in section 703.3.1. In addition, the Board has included a requirement that the characters provided on buttons comply with visual characteristics specified in section 703.5, which covers finish and contrast, character proportion and height, stroke thickness, and other criteria.

Section 407.4.9 provides criteria for emergency two-way communication systems in elevator cars which address the height of operable parts and identification by tactile characters. The proposed rule included requirements for the cord length of provided handsets and instructions. It also required that emergency signaling devices not be limited to voice communication. These requirements have been removed in the final rule because the referenced elevator safety code (ASME A17.1), as revised, adequately addresses these features or makes them unnecessary. For example, the ASME code prohibits the use of handsets since they are easily subject to vandalism, which obviates the need for specifications concerning the cord length.

Comment. Comments recommended that the guidelines address emergency communication systems located in a closed compartment and apply the specifications for operable parts in section 309 to compartment door hardware.

Response. The Board had included such a requirement in the draft of the final guidelines (407.4.9.6). In the final rule, the Board has removed this requirement since the ASME A17.1 safety code no longer permits emergency communication systems to be located within a closed compartment. However, the Board has retained provisions it had included that clarify the application of requirements for operable parts in 309.4 to call controls (407.2.1) and car controls (407.4.6).

Comment. In order to accommodate people with hearing or speech impairments, the proposed guidelines specified that the emergency communication system not rely solely on voice communication (407.2.13 in the proposed rule). The Board sought information and product literature on emergency communication devices and communication technologies that provide two-way communication in a manner accessible to people who are deaf and others who cannot use voice communication (Question 22). Comments, particularly those from groups representing persons who are deaf or hard of hearing, strongly supported such a requirement. They considered some form of interactive communication similar to that available through TTYs essential for providing equivalent access in emergencies. However, these comments did not specifically mention any technologies that are currently available to provide such access within elevator cars.

Response. Additional requirements for emergency communication systems are not included in the final rule. Further, the Board has removed specifications concerning the method of communication since the referenced elevator safety standard contains analogous provisions. Under such provisions, emergency communication systems cannot rely solely on voice communication. The ASME A17.1 code (section 2.27) requires provision of a push button labeled "HELP" which, when activated, initiates a call for help and establishes two-way communication. A visual signal is required on the same panel as the "HELP" button to notify persons with hearing impairments that the call for help has been received and two-way communication has been established. Voice (or other audible systems) with a visual display that provides information on the status of a rescue will meet this requirement. Clearly labeled visual displays can be as simple as lighted jewels that indicate that the call for help has been activated and that the message has been received. The visual signal is also required to indicate termination of the two-way communication link.

408 Limited-Use/Limited-Application Elevators

Section 408 provides requirements for limited-use/limited-application (LULA) elevators which correspond to section 407.4 in the proposed rule. LULA elevators are typically smaller and slower than other passenger elevators and are used for low-traffic, low-rise installations. This section provides specific criteria for these elevators and also references various provisions for standard elevators covered in section 407. Thus, some changes discussed above for standard elevators also pertain to LULA elevators as well. For example, the revision to the height of call buttons in section 407.2.1.1 (which are now subject to the basic reach range requirements instead of the previously specified range of 35 to 48 inches) also applies to LULA elevators. Additional changes in the final rule that are substantive in nature pertain to hoistways, car controls, and car sizes.

Comment. Some individuals and disability groups opposed the allowance of LULA elevators due to concerns about their size and accessibility. Industry, facility operators, designers and some disability groups strongly supported LULA elevators as an alternative where a standard elevator is not required.

Response. The Board has retained provisions for LULA elevators which are only permitted in facilities not required to have any elevator or as an alternative to platform lifts (206.6). Since this kind of elevator requires less space and costs less than standard elevators, LULA elevators will provide a more viable option where a form of vertical access would otherwise not be provided. The technical criteria for LULA elevators specify minimum car sizes that ensure adequate accessibility. In addition, they are required to comply with the applicable section of the elevator safety code (ASME/ANSI A17.1, Chapter XXV).

Comment. Requirements for standard elevators require that the main entry level be labeled by a tactile star at the hoistway (407.2.3.1). In the proposed rule, such a requirement was not included for LULA elevators. Comments suggested that such a requirement be included in the final rule for consistency.

Response. Requirements for hoistway signs for LULA elevators in section 408.2.3 have been replaced with a reference to corresponding requirements for standard elevators in section 407.2.3.1. This provision includes a requirement for a tactile star at the hoistway of the main entry level.

The guidelines specify that LULA elevator cars be at least 42 inches wide and 54 inches deep with a door on the narrow end providing at least 32 inches clear width (408.4.1). In the final rule, the Board has added alternate dimensions which are substantively consistent with the latest edition of the ANSI A117.1 standard. These dimensions permit a car at least 51 inches by 51 inches provided that the door has a clear width of at least 36 inches (408.4.1, Exception 1).

409 Private Residence Elevators

Residential dwelling units may be equipped with either a LULA elevator or a private residential elevator instead of a standard passenger elevator (206.6). Section 409 provides requirements for private residential elevators, which were located at section 1102.7 in the proposed rule. In the final rule, call buttons are subject to requirements in section 309 for operable parts, including clear floor space (309.2), height (309.3), and operation (309.4) according to section 409.2. In the proposed rule, they were subject only to requirements for height. In addition, the Board has applied requirements for the operation of operable parts (309.4) to controls (409.4.6) and the operable parts of emergency communication systems (409.4.7.2). No other substantive changes have been made to this section.

410 Platform Lifts

Section 410 provides requirements for platform lifts and addresses floor surfaces, clear floor space, operable parts, and doors and gates. This section has been updated to reference the new ASME A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts (410.1). This standard was under development when the proposed rule was published. This section has been reformatted and changes made to the specifications for doors and gates.

Comment. Platform lifts are required to have power-operated doors or gates. Those with doors or gates on opposing sides generally facilitate lift use by permitting a forward approach to both entry and exit doors or gates. As a result, these types of lifts are permitted to have a manual door or gates. The guidelines specify that manual doors or gates be "self-closing" (410.5, Exception). Comments noted that since the ASME/ANSI A18.1 standard requires such doors and gates to be self-closing, the specification in the rule was redundant.

Response. The Board has retained the requirement that manual doors or gates

be self-closing (401.5, Exception) for consistency with the new ANSI A117.1 standard. In addition, the Board has added clarification, consistent with the ANSI standard, that the exception in section 410.5 does not apply to platform lifts serving more than two landings.

Comment. Commenters stressed that platform lifts should not be key operated.

Response. Previous editions of the safety code for lifts, not the Board's guidelines, required platform lifts to be key operated. The most recent edition of the ASME standard, which the final rule references, does not contain a requirement for key operation.

Chapter 5: General Site and Building Elements

Chapter 5 provides technical criteria for parking spaces (502), passenger loading zones (503), stairways (504), and handrails (505).

502 Parking Spaces

Section 502 addresses car parking spaces and van parking spaces. Substantive changes pertain to the:

- Width of spaces, including van spaces, and access aisles (502.1 and 502.2).
- Location of access aisles for angled van spaces (502.3.4).
- Identification of van spaces (502.6).
- Adjacent accessible routes (502.7).

In the final rule, the Board has clarified how parking spaces and access aisles are to be measured. Where parking spaces are marked with lines, the width of parking spaces and access aisles is to be measured from the centerline of the markings (502.1). However, at spaces or access aisles not adjacent to another parking space or access aisle, width measurements are permitted to include the full width of the line defining the parking space or access aisle (502.1, Exception).

Comment. The proposed rule specified that car and van spaces be at least 8 feet wide and that access aisles be at least 5 feet wide for car spaces and at least 8 feet wide for van spaces. These specifications are consistent with the original ADAAG. However, that document also recognized an alternative "universal" design under which all spaces are designed to be accessible for vans or cars by incorporating additional space in the parking space instead of the access aisle. Under this design, parking spaces are at least 11 feet wide and access aisles at least 5 feet wide. Commenters requested that this design be recognized in final rule, at least for the portion of spaces required to be van accessible. Comments pointed out certain benefits of the alternative design, such as access aisles that are less likely to be mistaken for another parking space.

Response. The final rule includes specifications for alternative van parking spaces based on the "universal" design specifications (502.2). Van spaces are required to be at least 11 feet wide and to have an access aisle at least 5 feet wide. An exception allows van spaces to be 8 feet wide where the access aisle is at least 8 feet wide, which is consistent with the specifications of the proposed rule and the original ADAAG.

Comment. Requirements for access aisles in section 502.3 address width, length, marking, and location. Two spaces are permitted to share an access aisle. The proposed rule, consistent with the original ADAAG, allowed access aisles to be provided on either side of the parking space. Many commenters urged the Board to revisit this issue, particularly with respect to van parking. The lift provided on vans is typically located on the passenger side. It is important, especially where front-in only parking is provided, that the access aisle be located on the passenger side of van spaces.

Response. The Board has included a requirement that where angled spaces are provided, the access aisle must be located on the passenger side of van spaces (502.3.4). Otherwise, this provision permits access aisles to be located on either side of the space since drivers can pull in or back into spaces as needed.

To harmonize the guidelines with the ANSI A117.1–2003 standard, the Board has added clarification that access aisles are not permitted to overlap vehicular ways (502.3.4).

Comment. The proposed rule removed a requirement that the access designation for van parking include the term "van accessible" to clarify that both car and van drivers can use such spaces, as was the original intent of ADAAG. Many commenters strongly opposed this change. While some may have misinterpreted it as removal of the requirement for van accessible spaces, others considered this designation important in encouraging car drivers to use other accessible spaces over those designed to accommodate vans.

Response. The Board has restored the requirement that the designation of van spaces include the term "van accessible" (502.6). This designation is not intended to restrict the use of spaces to vans only, but instead to identify those spaces better suited for vans. An advisory note to this effect is included in the final rule.

Comment. The proposed rule removed language in the original ADAAG that vehicles parked in accessible spaces not reduce the clear width of connecting accessible routes. The Board had considered this requirement redundant in view of specifications for accessible routes in section 402. Many commenters disagreed and urged that such a requirement be restored in the final rule. Some comments pointed out that the ANSI A1171.1 standard, like the original ADAAG, specifies that "parked vehicle overhangs shall not reduce the clear width of an accessible route."

Response. The Board has added a requirement that spaces and access aisles be designed so that parked vehicles "cannot obstruct the required clear width of adjacent accessible routes" (502.7). A typical design solution where accessible routes run in front of spaces is the provision of wheel stops that help prevent encroachment into the accessible route.

503 Passenger Loading Zones

Few comments addressed the technical requirements for passenger loading zones, and no substantive changes to them have been made. For consistency with the ANSI A117.1 standard, the Board has clarified in the final rule that access aisles required at passenger loading zones are not permitted to overlap vehicular ways (503.3).

504 Stairways

Section 504 covers stairways, including treads, risers, nosings, and handrails. This section requires that landings subject to wet conditions be designed to prevent the accumulation of water (504.7). In the final rule, the Board has revised this requirement to apply to stair treads, as well as landings. No other substantive changes have been made to this section.

505 Handrails

Specifications for handrails in section 505 apply to those provided at ramps, stairs, and along walking surfaces. Revisions made to this section concern:

- Coverage of handrails provided along walking surfaces (505.1).
- Exceptions for aisle stairs and short ramps (505.2).
- Handrails at switchback or dogleg stairs and ramps (505.3).
- Gripping surfaces (505.6 and 505.8).
- Extensions (505.10).

Handrails are required along both sides of ramps and stairs. The Board has included a requirement (403.6) that handrails, where provided along walking surfaces, comply with section

505, as discussed above. The term "walking surfaces" applies to portions of accessible routes that are not treated as ramps because the running slope is less than 1:20. Consistent with this change, provisions in section 505 have been modified to specifically reference walking surfaces, including the general charging statement at 505.1. Walking surfaces are not subject to requirements for handrails on both sides (505.2) or handrail extensions (505.10).

In the final rule, an exemption from the requirements for stairways, including handrails, has been included for aisle stairs in assembly areas (210.1, Exception 3). An exception from the requirement for handrails on both sides for aisle ramps and aisle stairs has been revised for consistency. Specifically, the reference to aisle stairs in this exception has been removed as redundant.

Specifications for ramps require handrails only at ramps with a rise greater than 6 inches (405.8). Curb ramps are not subject to handrail requirements. The Board has removed as redundant an exception in the handrail section for ramps with a rise of 6 inches maximum (505.2, Exception 2).

The guidelines require handrails to be continuous within the full length of stair flights and ramp runs (505.3). The Board has added clarification, consistent with the original ADAAG, that the inside handrail at switchback or dogleg stairs and ramps be continuous. This change was made for consistency with the ANSI A117.1 standard.

Comment. The proposed rule specified that gripping surfaces be continuous and unobstructed by elements, including newel posts (505.6). An exception permitted brackets and balusters attached to the bottom of a handrail provided they did not obstruct more than 20% of the handrail length, their horizontal projection was at least 2½ inches from the bottom of the handrail, and their edges had a radius of at least ⅛ inch. Comments from the handrail industry, including manufacturers, trade associations, and others, indicated that these stipulations would effectively prohibit many common fabrication methods and would be unduly costly and burdensome on the industry while promising limited access benefits. Specifically, these comments indicated that many materials currently used will not meet the minimum ⅛ inch radius specifications. In addition, commenters claimed many current mounting brackets do not meet the 2½ inch minimum requirement for horizontal projections below the handrail, which is inconsistent with the 1½ inch minimum specified by model building codes. They also would preclude use of panels below handrails, which have become popular in meeting code requirements that prohibit openings in railings through which a 4 inch sphere can pass. Manufacturers stated that they have not received complaints about sharp edges and that some railing cross sections have been used for many years without injury. Opposing comments referred to ergonomic studies which support a 2¼ inch clearance below the handrail.

Response. The Board has revised some of the specifications for gripping surfaces in section 505.6 in order to accommodate a wider range of handrail materials and designs. The revised provisions prohibit obstructions on the top and sides of handrails, while the bottom may be obstructed up to 20% of the handrail length. This is generally consistent with the proposed rule. The Board believes that such a requirement will still permit popular designs such as panels under handrails so long as they are not directly connected to the entire length of the bottom of the handrail gripping surface. The requirement that horizontal projections occur 2½ inches minimum below the bottom of gripping surfaces has been changed to 1½ inches, consistent with model building codes and industry practice. In addition, the Board has added an exception for handrails along walking surfaces that permits obstructions along the entire bottom length that are integral to crash rails and bumper guards (505.6, Exception 1). Another exception, consistent with the ANSI A117.1–2003 standard and recommended by a comment to the draft of the final guidelines, allows the distance between horizontal projections and the gripping surface bottom to be reduced by ⅛ inch for each ½ inch of additional handrail perimeter dimension exceeding 4 inches (505.6, Exception 2). A requirement that bracket or baluster edges have a radius of ⅛ inch minimum has been removed. A similar specification for handrail surface edges in section 505.8 has been replaced with a requirement for "rounded edges."

Comment. Handrail extensions are required at the top and bottom of stairs. In the proposed rule, bottom extensions were required to extend one tread depth beyond the last riser nosing and an additional 12 inches (505.10.3). Comments advised that the requirement for the additional 12 inch segment should be removed, consistent with the ANSI A117.1 standard. Some comments also questioned the need for this segment at the bottom of stairs.

Response. The Board has removed the requirement that handrails extend an additional 12 inches at the bottom of stairs.

Chapter 6: Plumbing Elements and Facilities

Chapter 6 provides criteria for drinking fountains (602), toilet and bathing rooms (603), water closets and toilet compartments (604), urinals (605), lavatories and sinks (606), bathtubs (607), shower compartments (608), grab bars (609), tub and shower seats (610), laundry equipment (611), and saunas and steam rooms (612). Alternate specifications are provided for plumbing elements designed for children's use as exceptions to requirements based on adult dimensions. These exceptions address drinking fountains, water closets, toilet compartments, lavatories and sinks.

602 Drinking Fountains

Specifications for drinking fountains in section 602 address access for people who use wheelchairs (602.2 through 602.6) and for people who do not, but who may have difficulty bending or stooping (602.7). Substantive changes to this section include:

- Removal of references to water coolers (602.1).
- Requiring all wheelchair accessible drinking fountains to provide knee and toe clearance for a forward approach (602.2).
- Lowering the minimum height of drinking fountains for standing persons (602.7).

Comment. The proposed rule, consistent with the original ADAAG, addressed both drinking fountains and water coolers. Comments advised that the guidelines should not address "water coolers," a term which is often used to refer to bottled units that are not plumbed or permanently fixed.

Response. The Board has removed the references to "water coolers" in section 602.1 for clarity and consistency with the scope of the guidelines.

Comment. For wheelchair access, the proposed rule required a forward approach at cantilevered units but allowed a parallel approach at other types of units, such as those that are floor mounted. A forward approach provides easier access than a parallel approach for people using wheelchairs. The Board sought comment on whether it should require a forward approach, which includes knee and toe clearances below the unit, at all wheelchair accessible drinking fountains (Question 24). Commenters overwhelmingly supported such a requirement as more appropriate for wheelchair access.

Response. The Board has revised the rule to require a clear floor space for a

forward approach at all wheelchair accessible drinking fountains (602.2). Corresponding changes have been made to the specifications for spout location (602.5). An existing exception for units designed specifically for children's use permits a parallel approach if certain criteria for spout height and location are met.

Comment. The proposed rule required spouts to provide a flow of water at least 4 inches high "to allow the insertion of a cup or glass." A comment noted that the rationale for this specification is not needed in the text of the requirement and might be misinterpreted as allowing cup dispensers as an alternative to accessible units.

Response. Language concerning the insertion of cups has been removed as unnecessary to the water flow specification. The minimum 4 inch height is intended to allow use of cups for persons who may need to use them. However, providing cup dispensers as an alternative to a compliant unit is not recognized by these guidelines in new construction or alterations.

Comment. Specifications for drinking fountains for standing persons address the height of the spout outlet (602.7). The proposed rule required a height of 39 to 43 inches above the floor or ground, a range that derives from the standard height of models on the market. A drinking fountain manufacturer requested that the minimum height be changed from 39 to 38 inches, consistent with referenced ergonomic data. This commenter advised that a 38 inch height will accommodate units that are intended to serve both adults and children.

Response. The minimum height for the spout outlet of units designed for use by standing persons has been lowered from 39 to 38 inches.

603 Toilet and Bathing Rooms

Section 603 covers toilet and bathing rooms and includes requirements for clear floor space, wheelchair turning space, permitted overlaps of various space requirements, and doors. Doors are not permitted to swing into clear floor space or clearance required for any fixture except under certain conditions (603.2.3). The Board has added clarification to this requirement, previously located in an advisory note, that doors are permitted to swing into the required wheelchair turning space.

The guidelines specify that accessible mirrors be mounted so that the bottom edge of the reflecting surface is no higher than 40 inches (603.3). The ANSI A117.1–2003 standard contains a new requirement that specifies a height of 35 inches maximum for accessible mirrors not located above a lavatory or countertop. This specification was adopted to accommodate persons of short stature. The Board has included a similar requirement in the final rule.

604 Water Closets and Toilet Compartments

Section 604 addresses access to water closets and toilet compartments. Revisions to the requirements for water closets concern:

- Location (604.2).
- Clearance (604.3).
- Grab bars (604.5).
- Flush controls (604.6).
- Dispensers (604.7).
- Toilet compartments (604.8), including those designed for children's use (604.9).

In addition, provisions specific to water closets in residential dwelling units that were located in Chapter 11 in the proposed rule have been incorporated into this section. These include requirements for space at water closets (604.3), seat height (604.4), and grab bars (604.5).

Water closets are to be located so that the centerline is 16 to 18 inches from the side wall compartment partition (604.2). Water closets can be located so that this dimension is met on either the left side or the right side of the fixture. The Board has added clarification in the final rule that water closets shall be arranged for a left-hand or a right-hand approach. The proposed rule specified that water closets in ambulatory accessible stalls (which are required to be 36 inches wide) be "centered." In the final rule, the Board has revised this provision to recognize a range (17 to 19 inches) for the centered location that is consistent in scope (2 inches) with the specification for water closets in wheelchair accessible compartments. A corresponding change has been made to the provisions for water closets designed for children's use (604.9.1).

Comment. Clearance requirements for water closets are covered in section 604.3. The proposed rule stated that no fixtures (other than the water closet) or obstructions were to be located within the clear floor space (604.3.1). Comments noted that this seemed to contradict a subsequent provision that allowed grab bars and dispensers to overlap this space (604.3.2).

Response. Language prohibiting fixtures and obstructions within the required clearances in section 604.3.1 has been removed. Section 604.3.2 recognizes those elements that are permitted to overlap this clearance.

Comment. The proposed rule identified certain elements that could overlap the clear floor space at water closets: associated grab bars, tissue dispensers, accessible routes, clear floor space at other fixtures, and wheelchair turning space (604.3.2). Commenters advised that other elements, such as coat hooks should be included, as well as other types of dispensers, such as those for toilet seat covers. In addition, the new ANSI A117.1 standard includes a reference to sanitary napkin disposal units.

Response. In the list of elements permitted to overlap water closet clearances, the Board has added references to "dispensers," "sanitary napkin disposal units," "coat hooks," and "shelves" (604.3.2).

Comment. Water closets not in compartments require clearance that is at least 60 inches wide and 56 inches deep. Many comments urged the Board to increase this depth so that at least 48 inches is provided in front of the water closet. Others recommended an overall depth of 78 inches.

Response. The Board has not revised the minimum dimensions for the clear floor space at water closets. Other criteria for toilet rooms, including turning space, maneuvering space at doors, and clearances at other fixtures, typically results in additional clearance at water closets not in compartments. The 48 inch specification measured from the leading edge of the water closet is derived from the ANSI A117.1–1992 standard. That specification was removed from the 1998 edition of the ANSI standard because it was extremely difficult to enforce due to the varying installation styles and sizes of water closets. However, the Board has revised the specified depth in residential dwelling units where lavatories are permitted to overlap the space aside water closets.

Other fixtures, such as lavatories, generally are not permitted to overlap the clearance required at water closets. However, in residential dwelling units, an accessible lavatory adjacent to water closets can overlap this space (18 inches minimum from the water closet centerline) if additional space is provided in front of the water closet. Specifically, the depth of the clearance must be at least 66 inches instead of 56 inches (604.3.2, Exception). The proposed rule required this additional space in front of the fixture where only a forward approach to the water closet is provided (1102.11.5.2). It did not require additional space where a side approach to the water closet is provided. Locating lavatories outside the specified water closet clearance allows more options in the approach and transfer to water closets. The overlap of an adjacent lavatory

effectively precludes side transfers to the water closet. The Board believes that additional space where lavatories overlap water closet clearances can be beneficial regardless of the approach direction. In the final rule, the 66 inch minimum depth applies whether a forward or a parallel approach to the water closet is provided. The proposed rule also allowed a minimum width for the clearance of 48 inches instead of 60 inches where a lavatory overlaps the space, regardless of the approach (1102.11.5.2). In effect, however, space at least 60 inches wide is needed in meeting other requirements, such as the clear floor space required at the adjacent lavatory and wheelchair turning space. Consequently, the Board has removed the 48 inch specification in the final rule.

Specifications for grab bars are addressed in section 604.5. Grab bars are required on one side wall and the rear wall. Exceptions from this requirement are provided for residential dwelling units, where grab bars can be installed later so long as the proper reinforcement is installed in walls as part of design and construction (Exception 2), and for holding or housing cells specially designed without protrusions for purposes of suicide prevention (Exception 3). In the proposed rule, these exceptions were located in the chapter on residential dwelling units (1102.11.5.4) and the scoping section for detention and correctional facilities (233.3).

Comment. The proposed rule specified that the rear grab bar be 24 inches long minimum, centered on the water closet, or at least 36 inches long "where wall space permits" (604.5.2). Commenters considered this provision confusing and requested clarification on where the 24 inches would be permitted. Some comments urged removal of the 24 inches specification.

Response. The proposed rule included provisions that make clear floor space requirements at water closets more stringent by not allowing other fixtures, such as lavatories to overlap the space. Saving space by locating a lavatory closer to the water closet on the same plumbing wall could only be accomplished by recessing the lavatory so that it does not overlap the clear floor space at the water closet. A grab bar 36 inches long would limit the amount of space saved in recessing an adjacent lavatory. For clarity, the Board has revised this allowance as an exception. In the final rule, section 604.5.2 requires the rear grab bar to be 36 inches long minimum. An exception allows a 24 inch long minimum grab bar, centered on the water closet, "where wall space does not permit a length 36 inches minimum due to the location of a recessed fixture adjacent to the water closet" (604.5.2, Exception 1).

Comment. Section 604.6 covers flush controls, which must be hand operated or automatic. Hand operated types are subject to requirements for operable parts, including reach ranges, addressed in section 309. The original ADAAG specified that the controls be located on the wide side of the water closet. Comments requested that this specification be restored since controls on the wide side of water closets are easier to access.

Response. The final rule includes a requirement that "flush controls shall be located on the open side of the water closet except in ambulatory accessible compartments' (604.6).

Comment. Requirements for toilet paper dispensers in section 604.7 include specifications for height. They must be mounted at least 1½ inches below grab bars or, according to the proposed rule, at least 12 inches above. Commenters noted that the 12 inch minimum was inconsistent with provisions for grab bars in section 609 which specify a minimum clearance of 15 inches between grab bars and protruding objects above them (609.2). Some commenters felt that toilet paper dispensers should not be allowed above grab bars in any case since the large roll type, which often cannot fit below grab bars, compromise the usability of the grab bar.

Response. In the final rule, the specified clearance between grab bars and dispensers mounted above them has been revised for consistency with the grab bar specifications in section 609. Specifications in section 604.7 concerning this clearance have been removed since the required clearance between dispensers and grab bars is adequately covered in section 609, which, as revised, requires a minimum clearance of 12 inches above grab bars and a minimum clearance of 1½ inches below grab bars (609.3). This may effectively preclude some dispensers from being located above grab bars in view of the minimum mounting height of grab bars (33 inches, measured to the top of the gripping surface) and the maximum height for the dispenser outlet (48 inches). Since some dispensers may be recessed, the Board has added clarification in section 604.7 that dispensers cannot be located behind grab bars.

Section 604.8 provides requirements for wheelchair accessible compartments and those that are designed to accommodate persons with disabilities who are ambulatory.

Comment. Commenters noted that baby changing tables should not be permitted in accessible compartments since they can interfere with access. On the other hand, some comments advised that baby changing tables need to be accessible.

Response. The specified dimensions of toilet compartments provide the minimum amount of space necessary for wheelchair maneuvering into the compartment, positioning at the fixture, and exit from the compartment. Certain elements are permitted to overlap space at water closets, such as grab bars, paper dispensers, and coat hooks (604.3.2). Other elements, including baby changing tables, are not allowed to overlap the minimum amount of space required in compartments. Where such elements are provided in accessible compartments, they must be located outside the minimum space dimensions (when folded up in the case of baby changing tables). In addition, convenience fixtures, such as baby changing tables, must be accessible to persons with disabilities under scoping provisions for operable parts (205) and work surfaces (226). This information is provided in the final rule in an advisory note at section 604.8.1.1.

Comment. Specifications are provided for doors, including their location. The proposed rule specified the location of doors in the front partition, which were required to be hinged 4 inches from the side wall or partition farthest from the water closet (604.8.1.2). Comments suggested that an alternate location in the side partition farthest from the water closet should be allowed, consistent with the original ADAAG. Commenters also pointed out that the specified location should refer to the door opening, instead of the hinge.

Response. Specifications for the location of compartment doors in side partitions are included in the final rule, consistent with the original ADAAG. The specified location in either front and side locations has been revised to apply to the door opening, instead of the hinge.

Comment. The proposed rule referred to ambulatory accessible compartments as "non-wheelchair accessible" compartments. Commenters considered this term confusing since it also encompasses inaccessible compartments. Preference was expressed for "ambulatory accessible" compartments, the term used by the advisory committee.

Response. The term "non-wheelchair accessible" compartments has been replaced with "ambulatory accessible" compartments.

Ambulatory accessible compartments were specified to be 36 inches wide absolute in the proposed rule, consistent with the original ADAAG. Throughout the new guidelines, the Board has sought to specify dimensions as a range instead of in absolute terms where practicable to facilitate compliance without compromising accessibility. The width of ambulatory compartments is specified to ensure that the grab bars required on both sides are simultaneously within reach. In the final rule, the Board has replaced the 36 inch wide specification with a range of 35 to 37 inches.

Section 604.9 provides specifications for water closets designed for children's use. In the proposed rule, this section included criteria for wheelchair accessible compartments. In the final rule, requirements have been integrated in the section covering wheelchair accessible compartments for adults (604.8.1) to reduce redundancy.

605 Urinals

Section 604.5 provides criteria for accessible urinals, including the height and depth, clear floor space, and flush controls.

Comment. In the proposed rule, the Board sought to clarify the requirement in the original ADAAG that accessible urinals have an "elongated" rim by specifying a minimum dimension of 13½ inches, measured from the outer face of the urinal rim to the back of the fixture (605.2). Comments were evenly divided on this new specification.

Response. The Board has retained the minimum depth specification without modification. However, in the final rule scoping for accessible urinals has been revised to apply only where more than one urinal is provided in a toilet or bathing room (213.3.3).

Requirements for urinal flush controls are provided in section 605.4. The proposed rule specified a maximum height of 44 inches (the maximum height for obstructed forward reaches). In the final rule, this requirement has been revised to reference section 309 which provides specifications for operable parts, including accessible reach ranges. This change is consistent with the ANSI A117.1–2003 standard.

606 Lavatories and Sinks

Section 606 provides technical criteria for lavatories and sinks. Various scoping and technical provisions invoke these requirements for lavatories in toilet and bathing facilities and for sinks provided in dwelling unit kitchens, kitchenettes in transient lodging guest rooms, and other spaces, such as break rooms. Revisions made to this section include:

- Clarifying the scope of this section (606.1).
- Adding a new exception that allows a parallel approach at kitchen sinks in spaces where a cook top or conventional range is not provided (606.2, Exception 1).
- Clarifying coverage of metering faucets (606.4).

In addition, allowances specific to lavatories and kitchen sinks in residential dwelling units have been relocated to this section from Chapter 11. These specifications concern clear floor space requirements (606.2, Exception 3) and heights (606.3, Exception 2).

Comment. The proposed rule included references to "lavatory fixtures" and to "vanities." Commenters indicated that such references were redundant or inaccurate and should be removed.

Response. References to "lavatory fixtures" and "vanities" have been removed in the final rule (606.1).

Accessible lavatories and sinks must provide knee and toe clearance for a forward approach (606.2). Consistent with the proposed rule, exceptions from the requirement for forward approach clearances are provided for certain types of spaces and fixtures, such as single-user toilet or bathing facilities accessed only through a private office (Exception 2), lavatories and kitchen sinks in residential dwelling units provided certain conditions to facilitate retrofit for a forward approach are met (Exception 3), and fixtures designed specifically for children 5 years and younger (Exception 5).

Comment. Commenters recommended that a parallel approach should be allowed at kitchen sinks in spaces without a cook top or conventional range, consistent with the ANSI A117.1 standard. Several comments considered a parallel approach to be appropriate at kitchenette sinks in transient lodging guest rooms, consistent with the original ADAAG, and sinks in employee break rooms, since such fixtures are typically used for limited purposes or durations.

Response. The final rule includes an exception, consistent with the ANSI A117.1 standard, that allows a complying parallel approach to kitchen sinks in spaces where a cook top or conventional range is not provided (606.2, Exception 1). This exception also applies to wet bars.

Comment. Faucets, including hand-operated metering faucets, must remain open for at least 10 seconds (606.4). The proposed rule referred to these as "self-closing" faucets. Commenters indicated that "metering" is a descriptor that is more accurate and consistent with plumbing codes.

Response. The reference to "self-closing" faucets has been replaced with "metering" faucets in the final rule.

607 Bathtubs

Specifications for bathtubs in section 607 address clear floor space, seats, grab bars, operable parts, shower spray units, and enclosures. Changes made to this section include:

- Revision of grab bar mounting heights (607.4).
- Integration of provisions for grab bars specific to residential dwelling units that were located in Chapter 11 (607.4, Exception 2).
- Revision of specifications for shower spray units and water temperature (607.6).

Two parallel grab bars are required on the back wall of bathtubs with seats (607.4.1.1) and without seats (607.4.2.1). The proposed rule, consistent with the original ADAAG, specified that the lower grab bar be located 9 inches absolute above the bathtub rim. In finalizing this rule, the Board has sought to specify dimensions as a range instead of in absolute terms where possible to facilitate compliance without compromising accessibility. With respect to the lower grab bar at bathtubs, the specified mounting height has been changed to a range of 8 inches minimum to 10 inches maximum above the rim of the bathtub.

Comment. The guidelines require tubs to have shower spray units that can be used as both a fixed-position shower head and a hand-held shower (607.6). In the proposed rule, the Board included a requirement that shower spray units have a water on/off control for greater access. It was also specified that units deliver water that is thermal shock protected to 120 degrees. Comments from persons with disabilities strongly supported the requirement for the on/off control. However, comments from the plumbing industry indicated that the requirement, as worded, would pose cross connections and thermal shock hazards and would conflict with model codes and industry standards. Comments also noted that delivered water should be "temperature limited" to the specified maximum (120 degrees) for consistency with American Society of Safety Engineers (ASSE) standards.

Response. In response to concerns raised about the on/off control for spray units the Board has modified this requirement to include an on/off control "with a non-positive shut-off." This will prevent cross connections and does not conflict with plumbing codes. In

addition, while the phrase "temperature limited" was not deemed necessary, the specification for water temperature has been revised to require that delivered water be 120 degrees maximum for consistency with ASSE standards. Corresponding revisions have been made to similar requirements for shower compartments (608.6).

608 Shower Compartments

Section 608 addresses transfer showers and roll-in showers and provides specifications for size and clearances, grab bars, seats, operable parts, shower spray units, thresholds, and enclosures. Revisions made to this section address:

- Clearance requirements for roll-in showers (608.2.2).
- Alternate roll-in showers (608.2.3).
- Shower seats (608.4).
- The location and operation of controls, faucets, and spray units (608.5).
- Shower spray units and water temperature (608.6.)
- A new exception for fixed shower heads (608.6).
- Thresholds (608.7).

In addition, provisions specific to showers in residential dwelling units that were located in Chapter 11 have been incorporated into this section. These provisions concern grab bars (608.3, Exception 2) and shower seats (608.4, Exception).

Comment. Specifications for roll-in shower compartments indicate that an accessible lavatory can overlap the required clear floor space opposite the end with a seat and shower controls (608.2.2). Comments recommended that this provision be revised to recognize that a seat may not always be located in a roll-in shower.

Response. The Board has clarified that accessible lavatories are permitted to overlap clear floor space "opposite the shower compartment side where shower controls are positioned or where a seat is positioned" (608.2.2.1, Exception). Clarification is also provided that lavatories can be provided at either end of the space at roll-in showers without seats where controls are mounted on the back wall.

Comment. Specifications are provided for alternate roll-in showers, including their size and the location of entries (608.2.3). Comments indicated that this provision should be more specific in detailing the design illustrated (Figure 608.2.3).

Response. More detail is provided in the final rule for the configuration of alternate roll-in type showers consistent with the intent of the proposed rule. The revised language clarifies the location of the entry at the end of the long side of the compartment (608.2.3).

Comment. Seats are required in transfer compartments and roll-in showers in transient lodging guest rooms (608.4). The proposed rule indicated that transfer compartments may have "attachable or integral seats," while folding seats were specified for roll-in showers provided in transient lodging guest rooms.

Response. The Board has revised the rule to permit "folding or non-folding" seats in transfer compartments. A certain portion of accessible guest rooms are required to have bathrooms with roll-in showers (224.2). The requirement for folding seats has been revised to apply only to those roll-in showers "required" in transient lodging guest rooms. For example, a hotel with 100 guest rooms would be required to have at least 5 guest rooms that are accessible, one of which would have to provide a roll-in shower; the shower provided in this room would be required to have a folding seat, while the other 4 rooms could be equipped with either tubs, transfer showers, roll-in showers with or without seats, or some combination thereof.

Comment. In transfer compartments, controls, faucets, and shower spray units were to be located no more than 15 inches on either side of the seat centerline, according to the proposed rule (608.5.1). Comments indicated that this specification was not consistent with a corresponding figure showing the location on the side closest to the shower opening.

Response. The final rule has been revised to require that controls and operable parts be located 15 inches maximum from the centerline of the seat toward the shower opening. This is consistent with the intent of the specification so that users can activate the controls before entering the shower.

Specifications for controls, faucets, and shower spray units for alternate roll-in showers are provided in section 608.5.3. In the final rule, the Board has clarified these specifications and provided more detail on their location depending on whether the shower is equipped with a seat. In addition, the final rule allows shower controls, faucets, and shower spray units to be located on the wall adjacent to the seat, as proposed, or on the back wall opposite the seat. These revisions are consistent with similar clarifications in the latest edition of ANSI A117.1 standard.

Showers, like bathtubs, are required to be equipped with movable shower spray units that can be used as a fixed-position shower head and a hand-held shower (608.6). Specifications have been revised in the final rule, consistent with similar requirements for bathtubs, in response to concerns raised by commenters about the on/off control and water temperature as specified in the proposed rule, discussed above at section 607.6.

Comment. The original ADAAG allowed fixed shower heads 48 inches high maximum to be used instead of the required hand-held unit in "unmonitored facilities where vandalism is a consideration." This exception had been removed in the proposed rule due to a lack of clarity on the types of facilities that qualify for this exception. Commenters urged the Board to retain this exception due to problems with vandalism which would increase maintenance at accessible transfer showers.

Response. The final rule includes an exception permitting a fixed shower head in certain facilities (608.6, Exception). The Board has limited this exception so that it does not apply to facilities where vandalism is less likely to occur because the use of bathing facilities is controlled or because incidents of vandalism are traceable. These include bathing facilities in medical care facilities, long term care facilities, transient lodging guest rooms, and residential dwelling units.

Comment. The proposed rule specified a maximum threshold height of ½ inch, provided that those greater than ¼ inch are beveled with a slope of 1:2 maximum (608.7). This provision applied to roll-in showers and to transfer showers. Commenters recommended that a higher threshold be permitted for transfer showers since wheelchair maneuvering over the threshold is not necessary in using the shower.

Response. The Board retained the ½-inch threshold height since positioning for transfer to the seat of transfer showers can be aided where a close approach enables footrests to clear the threshold. However, the Board has revised the specification to allow thresholds at transfer compartments to be vertical or rounded instead of beveled. In addition, the Board has provided an exception for existing facilities to address situations where meeting the maximum threshold height, which is typically achieved by recessing shower pans into the floor, is difficult, if not infeasible, due to certain floor slabs. The final rule includes an exception that permits a threshold up to 2 inches high at transfer showers in existing facilities where providing a ½-inch threshold would disturb the

structural reinforcement of the floor slab (608.7, Exception).

609 Grab Bars

Section 609 covers grab bars at water closets, bathtubs, and showers. Specifications address size, spacing, position, surfaces, fittings, and structural strength. Changes to this section address:

- Cross section specifications (609.2).
- Spacing (609.3).
- Location (609.4).
- Surface hazards (609.5).

The proposed rule specified 1¼ to 1½ circular cross sections. Non-circular cross sections were to have maximum cross section dimensions of 2 inches, a perimeter dimension between 4 and 4 1/16 inches, and edges with a ⅛-inch minimum radius. For consistency with specifications for handrails, the Board has revised requirements for size (609.2) and spacing (609.3). In the final rule, the maximum circular cross section has been changed from 1½ inches to 2 inches. Edges must be rounded, and the requirement that edges have a ⅛-inch minimum radius (609.2 in the proposed rule) has been removed. The Board has clarified that the space between grab bars and projecting objects below and at the ends shall be 1½ inches minimum, consistent with criteria for water closets, tubs, and showers (609.3). In addition, the minimum clearance between grab bars and protruding objects above has been changed from 15 inches to 12 inches (609.3), consistent with specifications for toilet paper dispensers included in the proposed rule (604.7) and the ANSI A117.1–2003 standard.

Comment. Commenters pointed out the proposed rule was not clear on whether the height of grab bars was to be measured to the top or to the centerline.

Response. The Board has clarified that the height of grab bars is measured to the top of the gripping surface (609.4).

610 Seats

Requirements for bathtub and shower seats are provided in section 610.

Comment. Specifications are provided for rectangular and L-shaped shower seats (610.3). The Board sought comment on whether one shape is more usable and accessible than the other (Question 25). Comments were evenly divided in supporting one design over the other. Some comments supported both designs or indicated that there was little difference in access or usability between the two.

Response. No changes have been made to the specifications for shower seats. Either rectangular or L-shaped seats may be provided in transfer and roll-in showers.

The guidelines specify the location of seats in tubs, transfer-type showers, and roll-in showers. In the final guidelines, the Board has clarified the location of seats in roll-in showers and alternate roll-in type showers. These changes are consistent with revisions to the placement of shower controls and spray units in alternate roll-in shower stalls (605.8.3).

611 Washing Machines and Clothes Dryers

Section 611 covers washing machines and clothes dryers and provides specifications for clear floor space, operable parts, and height.

Comment. The proposed rule required the door of top loading machines and the door opening of front loading machines to be 34 inches maximum above the floor (611.4). This dimension stems from specifications for obstructed side reaches (308.3). Laundry machine manufacturers stated that this specification is inconsistent with standard industry design, which allows a 36-inch height. Commenters indicated that compliance with the proposed specification would reduce machine capacity and would be difficult to achieve.

Response. The Board has revised the maximum height for doors on top loading machines and the door opening of front loading machines from 34 inches to 36 inches (611.4).

612 Saunas and Steam Rooms

Section 612 provides requirements for saunas and steam rooms and includes requirements for benches and turning space. This section derives from the guidelines the Board developed for recreation facilities and has been included in the final rule without substantive change.

Chapter 7: Communication Elements and Features

Chapter 7 covers communication elements and features, including fire alarm systems (702), signs (703), telephones (704), detectable warnings (705), assistive listening systems (706), automatic teller machines and fare machines (707), and two-way communication systems (708).

702 Fire Alarm Systems

The proposed rule provided detailed specifications for the audible and visual characteristics of fire alarm systems, including the sound level and the color, intensity, flash rate, location, and dispersion of visual appliances. Through coordination with the National Fire Protection Association (NFPA) and ANSI, which were represented on the ADAAG Review Advisory Committee, the proposed criteria were virtually identical to updated requirements in the NFPA 72 (1996) and the ANSI A117.1 standards. However, the Board had proposed a lower maximum sound level for audible alarms (110 decibels instead of 120 decibels) as more appropriate and to guard against tinnitus.

Comment. Comments from the codes community and designers urged the Board to reference the NFPA alarm criteria for purposes of consistency and simplicity, instead of restating very similar requirements in the guidelines.

Response. Since the technical provisions in the proposed rule were substantively identical to the NFPA 72, except for the maximum sound level, the Board has replaced the technical requirements for fire alarm systems with a requirement that such systems comply with NFPA 72, Chapter 4 (702.1). However, the Board has retained the specification that the maximum sound level of audible notification appliances be 110 decibels, as well as an exception for medical care facilities that permits fire alarm systems to be provided in accordance with industry practice. In addition, the Board has clarified that compliant fire alarm systems must be "permanently installed." The Board is not aware of portable systems currently available that meet the referenced NFPA specifications. Information on the referenced NFPA requirements for fire alarm systems is posted on the Board's Web site at www.access-board.gov and in advisory notes.

Comment. Commenters supported limiting the sound level to 110 decibels, as proposed. However, some commenters noted that this did not conform with the maximum of 120 decibels specified in NFPA 72.

Response. The Board has retained the 110 decibel specification as more appropriate, which, as a lower maximum, does not contradict the NFPA 72. In the final rule, the Board has clarified that the maximum sound level applies to the "minimum hearing distance from the audible appliance," which is consistent with the NFPA 72.

Comment. In the proposed rule, the Board sought comment on whether the frequency of audible alarms should be addressed and requested information on the optimal frequency range for people who are hard of hearing along with any available supporting data (Question 26). Most commenters favored a specified frequency range but few provided information, including supporting data, on what the range should be.

Response. The Board has not included in the final rule a specification for the frequency of audible alarms.

703 Signs

Requirements for signs provide specifications for raised characters (703.2), braille characters (703.3), the height and location of signs with tactile characters (703.4), visual characters (703.5), pictograms (703.6), and symbols of accessibility (703.7). This section has been reorganized and simplified in the final rule. Substantive changes include:

- Reorganizing and simplifying criteria for signs required to provide both tactile and visual access (703.2).
- Revising specifications for raised characters that cover height (703.2.5), stroke thickness (703.2.6), and spacing (703.2.7).
- Modifying specifications for braille (703.3 and 703.4.1).
- Recognizing elevator car controls in specifications for the height of visual characters (703.5.6).
- Revising the location of text descriptors of pictograms (703.6.3).

Scoping requirements for signs in section 216 cover room designations, which are required to be tactile, and directional and informational signs which are not required to be tactile but must meet requirements for visual access. The proposed rule specified that tactile signs, where required, meet specifications for both tactile and visual characteristics. The proposed rule also applied specifications based on whether the requirements were met with one sign or separately through two signs. There were some differences between the requirements for combined tactile-visual signs and those provided separately, which represented slight compromises in the desired level considered necessary for signs providing both tactile and visual access. The proposed rule provided criteria where characters are both tactile and visual (703.2) and criteria for tactile characters (703.3) and visual characters (703.4) that are provided separately.

Comment. Commenters considered the section on signs to be unduly complex and redundant and urged the Board to simplify the signage criteria.

Response. The repetition and complexity of the signage section stemmed from detailing requirements separately for signs where one set of character forms meet the tactile and visual specifications and for signs where such criteria are met separately through two set of character forms. Many of the specifications were the same for both types of signs. In the final rule, the Board has simplified the section and removed repetitive specifications while preserving most of the substance of the requirements as proposed. As reorganized, signs required to provide tactile and visual access must meet criteria for tactile characters (703.2), braille (703.3), mounting height and location (703.4), and visual characters (703.5). However, where access is provided through one set of characters, not all the requirements for visual access must be met. This is clarified in an exception which, consistent with the proposed rule, applies only the specifications for finish and contrast to tactile characters that are also visual (703.5, Exception).

Specifications for raised characters in section 703.2 address the depth, case, style or font type, character proportion and height, stroke thickness, and character and line spacing. The proposed rule, consistent with the original ADAAG, specified a character height between 5/8 inch and 2 inches. However, the proposed rule provided a tighter specification (1/2 to 3/4 inch) for raised characters on signs where visual access is provided on a separate sign face because it is believed that smaller characters can be easier to read tactually. Since the specification for combination signs acknowledges that 2 inch characters are readable tactually, setting a different maximum seems unnecessary. The final rule retains the specified range of 5/8 to 2 inches, but an exception allows a 1/2-inch minimum where the same information is provided separately on a visual sign (703.2.5).

In the proposed rule, specifications for stroke thickness were based on the type of character cross section on signs providing both tactile and visual access (703.2.3.5). For characters with rectangular cross sections, a stroke thickness of 10% to 15% of the character height was specified (based on the uppercase "I"). For those with non-rectangular cross sections, the stroke thickness was specified to be 15% maximum of the character height (measured at the top of the cross section) and 10% to 30% (measured at the base). Where tactile and visual characters are provided on separate signs, the proposed rule specified that the stroke thickness of tactile characters be no greater than 15% of the character height (703.3.2.5).

Comment. Comments, including those from the signage industry, considered the specification based on the type of cross section to be unnecessarily complicated. Some comments pointed out that measurement and tactile reading of characters occur at the face, regardless of the cross section shape. Distinctions based on the cross section may be difficult to distinguish and enforce with respect to characters that are raised 1/32 inch, according to commenters. They advised that a single specification would facilitate compliance while having little effect on access.

Response. The Board has simplified the requirement for stroke thickness by relying solely on the specification that was included in the proposed rule for signs with tactile characters only. This specification requires a stroke thickness that is 15% of the character height (based on an uppercase "I"), regardless of the type of cross section (703.2.6).

As with stroke thickness, the proposed rule specified character spacing based on the type of cross section where signs provide both tactile and visual characters (703.2.4). A space of 1/8 inch to 3/8 inch was specified for characters with rectangular cross sections. For those with non-rectangular cross sections, this range applied to the top of the cross section and a range of 1/16 inch to 3/8 inch was permitted at the base. Where visual characters are provided on a separate sign, the proposed rule required spacing of 1/8 inch to 1/4 inch between characters (703.3.3).

Comment. Comments advised that this specification was too restrictive and did not take into account increased spacing for larger size characters (the permitted range allows heights up to 2 inches). It was recommended that spacing based on the stroke thickness of characters will provide proper spacing for tactile recognition and facilitate compliance. Some commenters pointed out that good practice may include varying the space between characters for optimum visual legibility. Some comments recommended a spacing range that was at least as wide as the stroke thickness and no more than four times this width.

Response. In the final rule, the Board has revised the specification for character spacing (703.2.7). As recommended by commenters, the specified spacing range has been broadened to allow spacing up to four times the stroke width of raised characters. The Board has retained the minimum spacing requirements of the proposed guidelines and the distinction between characters with rectangular cross sections (1/8 inch minimum) and those without (1/8 minimum measured at the top and 1/16 minimum measured at the base).

Section 703.3 provides specifications for braille, including the dimensions and position.

Comment. Braille is to be located below the corresponding text. Commenters noted that it is common

practice to locate braille next to the text on some signs, such as room numbers. These comments urged the Board to revise this specification to allow braille placement adjacent to text, as is permitted on elevator car controls.

Response. The Board believes that a uniform location facilitates the use of braille. No changes have been made to the specified position below corresponding text.

Braille does not include different upper and lower case letters. Instead, a character symbol is used to indicate capitalization. In the final rule, the Board has clarified that indication of uppercase letters is to be used only before the first word of sentences, proper nouns and names, individual letters of the alphabet, initials, and acronyms (703.3.1). A similar clarification has been included in the new ANSI A117.1 standard.

The proposed guidelines specified that braille be separated at least ¼ inch from other tactile characters and at least ⅜ inch from raised borders and other decorative elements (703.3.2). In the final rule, the Board has revised the minimum separation between braille and tactile characters from ¼ inch to ⅜ inch for consistency with the ANSI A117.1 standard.

Section 703.4 covers the mounting height and location of signs with tactile characters. Such signs are to be mounted so that the tactile elements (raised characters and braille) are between 48 to 60 inches high, measured to the baseline of characters.

Comment. The proposed rule specified a range of height of 48 to 60 inches for raised characters and a range of 40 to 60 inches for braille. Commenters considered the 40 inch specification too low, as research suggests that braille mounted below 48 inches can be difficult to read. Further, comments noted that the minimum 40 inch height did not correlate with the minimum specified for raised characters.

Response. The Board combined the height and location requirements for raised and braille characters into one section (703.4) for clarification and simplicity. As a result, the height of braille and raised characters are held to the same range: 48 to 60 inches above the floor or ground (703.4.1).

Tactile signs are required to be located alongside the latch side of doors so that clear floor space at least 18 by 18 inches, centered on the tactile characters, is provided outside the door swing (703.4.2). At double doors with two active leafs, signs are to be located on the right-hand side or, if no wall space is available, on the nearest adjacent wall. Signs are permitted on the push side of doors with closers and without hold-open devices.

Comment. A commenter advised that the specification should address double doors with only one active leaf.

Response. The Board has added a provision for double doors with one active leaf which requires the location of signs on the inactive leaf (703.4.2).

Section 703.5 provides specifications for visual characters which address finish and contrast, case, style, character proportions and height, height, stroke thickness, and character and line spacing. As part of the reorganization of the signage requirements, the Board has added an exception, consistent with the proposed rule, which applies only the specifications for finish and contrast (703.5.1) where tactile and visual access are provided through the same characters. Where signs provide tactile and visual access separately, visual characters must comply with all applicable specifications in section 703.5.

Visual characters are required to be located at least 40 inches high (703.5.6). For consistency with specifications for elevators in section 407, the Board has added an exception noting that the 40 inch minimum does not apply to visual characters indicating elevator car controls (703.5.6, Exception).

Section 703.6 contains requirements for pictograms. This section applies to those pictograms, where provided, that are used to label permanent interior rooms and spaces. The specifications of 703.6 do not apply to other types of pictograms, including those specified in section 703.7 to label various accessible elements and spaces. Under 703.6.3, text descriptors with raised and braille characters are required below pictograms. The proposed rule allowed alternative placement adjacent to pictograms. The Board has removed this alternative in the final rule to enhance uniformity in the location of tactile text descriptors.

704 Telephones

Section 704 provides technical criteria for telephones, including provisions for wheelchair access (704.2), volume control (704.3), and TTYs (704.4). Most comments addressed specifications for volume controls and TTYs.

All public telephones are required to be equipped with volume control, as discussed above in section 217. This is consistent with other Board guidelines covering access to telecommunications products issued under section 255 of the Telecommunications Act of 1996, which requires telecommunications products and services to be accessible. Section 704.3 requires volume controls that provide a gain up to at least 20 decibels and an intermediate gain of 12 decibels, and have an automatic reset.

Comment. Persons who are hard of hearing and disability organizations urged an increase in the sound level of phones equipped with volume control. Some commenters specifically recommended a minimum 25 decibels or greater. The Board sought comment from pay telephone manufacturers and providers on the time frame necessary to produce products that meet the proposed specifications for volume control (Question 27). Few comments from industry addressed this question, though other commenters suggested that meeting the proposed volume control specifications should not be difficult under current telephone technology.

Response. The proposed specification was consistent with accessibility guidelines the Board issued under section 255 of the Telecommunications Act and standards issued under section 508 of the Rehabilitation Act Amendments. In rulemaking on the Telecommunications Act Accessibility Guidelines, similar comments were received from persons who are hard of hearing who reported having trouble using public pay telephones because of inadequate receiver amplification levels and who supported adjustable amplification ranging from 18–25 decibels of gain. However, several telephone manufacturers cited the National Technology Transfer and Advancement Act of 1996, which requires the Federal government to make use of technical specifications and practices established by private, voluntary standard-setting bodies, wherever possible.

The ANSI A117.1 standard requires certain public pay telephones to provide 12 decibels of gain minimum and up to 20 decibels maximum and that an automatic reset be provided. In recognition of the National Technology Transfer and Advancement Act, this amplification level was specified in the Telecommunications Act Accessibility Guidelines. The Board has retained the 20 decibel specification in this final rule (704.3) for consistency with the ANSI A117.1 standard, the Telecommunications Act Accessibility Guidelines, and the Board's section 508 standards.

Comment. Mute features on public pay telephones can increase audibility by temporarily disconnecting the telephone's microphone while the user listens through the earpiece so that background noise is not amplified through the earpiece. In the proposed

rule, the Board requested information on the feasibility and cost of equipping new and existing public pay telephones with a mute button and whether such a requirement should be included in the final rule (Question 28). Few comments addressed this issue. Those that did generally supported such a requirement, although information on feasibility and cost was not received.

Response. While the Board believes that mute buttons could benefit all telephone users in noisy environments, particularly those who are hard of hearing, the Board has opted not to establish such a requirement at this time due to the absence of product information and cost data.

The proposed guidelines included a provision that applied the criteria for protruding objects in section 307 to wheelchair accessible telephones and enclosures (704.2.3). The Board has removed this provision as unnecessary in the final rule. Section 307 applies to a variety of building elements, including telephones and enclosures, under the scoping provision for protruding objects (204). This revision is consistent with the ANSI A117.1–2003 standard.

Section 704.4 provides specifications for TTYs. The proposed rule included requirements so that TTYs were accessible to persons who use wheelchairs. This included a requirement that the touch surface of TTY keypads be 30 to 34 inches high (704.4.1).

Comment. Many commenters indicated that TTYs are mounted too low to be used comfortably by people not using wheelchairs. According to these commenters, compliance with wheelchair access provisions greatly compromises their usability by the majority of persons with hearing or speech impairments who do not use wheelchairs. Commenters urged that a higher surface height for TTY keypads be specified. Organizations representing persons who are deaf recommended a keyboard height of 33 to 35 inches where users are expected to stand. A manufacturer of TTY-equipped pay telephones indicated that its products provide TTY keypads at a height of 36 to 40 inches and requested that this range be permitted.

Response. The Board has revised the specified height of TTY keypads from the proposed range of 30 to 34 inches to a minimum of 34 inches (704.4.1). In addition, the Board has removed other specifications concerning wheelchair access, which is consistent with the original ADAAG. These specifications include a requirement that the operable parts of both the TTY and the telephone be accessible according to section 309, which specifies accessible reach ranges, and provide clear floor space for a forward approach to the TTY. However, these changes do not impact the requirements for other types of telephones required to be wheelchair accessible according to section 704.2.

Comment. The proposed rule provided an exception from the height and clearance requirements for TTYs at telephones located in cubicles equipped with fixed seats (704.4.1). As proposed, this exception applied only to assembly occupancies and allowed half of TTYs at telephones with seats not to comply. Comments recommended that this exception apply to other types of facilities since seats at phones may provide a desired convenience for TTY users.

Response. As a result of the changes concerning wheelchair access, the exception applies only to the specified keypad height and allows a height below 34 inches where seats are provided at telephones with TTYs. In the final rule, the Board has broadened this exception to apply to all telephones with seats in any type of facility.

Comment. The requirements for TTYs do not address the height of display screens. Due to the typical character size displayed, users must be in close proximity to the screen. The Board requested information on TTY screen heights that are appropriate for people who use wheelchairs and for standing persons and whether the requirement for ATM display screens is appropriate for TTYs as well (Question 29). Little information was received in response to this question. Respondents to this question reiterated their concern about wheelchair access resulting in TTYs that are too low for persons who are standing. Other commenters recommended that research be conducted to develop information on the appropriate height of display screens.

Response. The Board has not included any specifications concerning the height of TTY display screens in the final rule.

705 Detectable Warnings

Section 705 provides the technical specifications for detectable warnings, a distinctively textured surface of truncated domes identifiable by cane and underfoot. This surfacing is required along the edge of boarding platforms in transit stations. The original ADAAG included a requirement for detectable warnings on the surface of curb ramps to provide a tactile cue for persons with vision impairments of the boundary between sidewalks and streets where the curb face had been removed. It also required them at locations where pedestrian areas blend with vehicular areas without tactile cues, such as curbs or railings, and at reflecting pools. Certain requirements for detectable warnings were temporarily suspended in the original ADAAG and were not included in the proposed rule, as further discussed in section 406 above. Consequently, the requirements in section 705 are required only at boarding platforms in transportation facilities (810.5.2). Revisions made in the final rule include:

- Revising specifications for the diameter and spacing of truncated domes to allow a range (705.1.1 and 705.1.2).
- Clarifying the square grid pattern of truncated domes (705.1.2).
- Simplifying requirements for contrast between detectable warnings and adjoining walking surfaces (705.1.3).
- Removing provisions generally recognizing alternatives to the detectable warnings specified.
- Clarifying the application of the requirements to the edges of boarding platforms (705.2).

The detectable warning criteria specify a pattern of evenly-spaced truncated domes. The Board has added clarification, consistent with provided figures, that the domes be aligned in a square grid pattern (705.1).

Comment. The proposed rule specified that the truncated domes have a diameter of 0.9 inch, measured at the base. A commenter cited research conducted in Japan which indicated that a surface very similar to that specified by section 705 ranked high in detectability. It was recommended; based on this research, that a diameter of 0.4 inch to 0.9 inch be specified for domes, measured at the top. In addition, this commenter recommended that the spacing between domes be revised from an absolute of 2.35 inches to a range of 1.6 to 2.35 inches.

Response. In the final rule, the Board has revised the specification for the diameter and spacing of truncated domes to permit a range of dimensions (705.1.1). A range of 0.9 inch to 1.4 inches is specified for the base diameter. The top diameter range is specified to be 50% to 65% of the base diameter, which approximates the recommended 0.4 inch to 0.9 inch range. The center-to-center spacing of domes has been changed from 2.35 inches absolute, to a range of 1.6 inches minimum to 2.4 inches maximum, with a minimum separation measured at the base of 0.65 inch (705.1.2). The revised base diameter and spacing dimensions will accommodate existing detectable warning products that were previously

deemed to provide an equivalent level of accessibility. ADAAG permits departures that provide equal or greater access as an "equivalent facilitation." The Department of Transportation (DOT), which enforces the ADA's design requirements as they apply to various transportation facilities, reviews requested departures based on equivalent facilitation in consultation with the Board. Over the years, DOT has approved various detectable warning products that differ slightly from the ADAAG specifications. The specifications in the final rule derive from a review of these products and will encompass the variations among products previously approved by DOT under the equivalent facilitation clause.

Detectable warnings are required to contrast visually from adjacent walking surfaces, either light-on-dark or dark-on-light. The proposed rule required the material used to provide contrast be an integral part of the truncated dome surface (705.2.2). This specification was intended to preclude the painting of detectable warning surfaces to meet the contrast requirements since painted surfaces would not be adequately slip resistant. However, requirements for ground and floor surfaces in section 302, which require slip resistance, apply to those surfaces with detectable warnings as well. The Board believes that the requirement for slip resistance in section 302 effectively prevents the painting of detectable warning surfaces. Consequently, it has removed the specification that the material used to provide contrast be an integral part of the detectable warning surface.

Comment. The proposed rule specified that detectable warnings in interior locations differ from adjoining walking surfaces in resiliency or sound-on-cane contact (705.2.3). Commenters considered this provision to be of questionable usefulness and difficult to meet absent a recognized method of measuring resiliency or sound-on-cane contact.

Response. The requirement for contrast in resiliency or sound-on-cane contact between detectable warnings and adjoining walking surfaces in interior locations has been removed in the final rule.

Comment. The proposed rule included provisions that generally recognized alternative tactile surfaces equally detectable underfoot or other designs or technologies that provide equal or superior drop-off warning at boarding platforms (705.3 and 705.4). Commenters opposed these provisions without further guidance or specificity on the type of alternatives that would be acceptable. Some commenters recommended that these provisions were unnecessary in view of the general provision for equivalent facilitation in section 103 permitting departures from this or any other requirement in the guidelines where equal or greater access is provided.

Response. The Board has removed the provisions concerning equivalent products and technologies as an alternative to the detectable warnings specified by section 705. This change is consistent with the effort the Board made in the proposed rule to remove specific provisions concerning equivalent facilitation. The general provision for equivalent facilitation remains the basis upon which alternatives to the specified detectable warnings may be pursued. DOT's ADA regulations provide a process for the review of requested departures as an equivalent facilitation in relation to public transportation facilities.[24]

Section 705.2 specifies that detectable warnings along boarding platform edges be 24 inches wide. In the final rule, the Board has added clarification that the detectable warning is to extend the full length of the public use areas of platforms.

706 Assistive Listening Systems

Section 706 provides specifications for assistive listening systems. Assistive listening systems pick up sound at or close to its source and deliver it to the listener's ear. This more direct transmission improves sound quality by reducing the effects of background noise and reverberation and, as needed, increasing the volume. These devices serve people who are hard of hearing, including those who use hearing aids. Assistive-listening systems are generally categorized by their mode of transmission. Acceptable types of assistive listening systems include induction loops, infrared systems, FM radio frequency systems, hard-wired earphones, and other equivalent devices. A definition for "assistive listening systems" has been included in the final rule (section 106). Provisions address receiver jacks (706.2), compatibility with hearing aids (706.3), and system quality and capability (706.4 through 706.6).

Comment. Receivers are required to have a ⅛-inch standard mono jack so that users can use their own cabling as necessary. The proposed rule allowed other types of jacks where compliant adapters were provided (706.3). Comments strongly supported the requirement for the ⅛-inch mono jack. Some commenters noted that this type of jack should be provided in all cases and that alternative types should not be allowed to avoid issues such as who is responsible for the provision of adapters.

Response. In the final rule, the Board has specified that receivers include a ⅛-inch (3.5 mm) standard mono jack and has removed language concerning other jack types and adapters (706.2).

Section 706.3 specifies that receivers required to be compatible with hearing aids (25%) must be neck loops since this type interfaces with hearing aid T-coils. Many comments supported this provision and no changes to it have been made in the final rule.

The performance of assistive listening systems is a concern among users. The quality and capability of systems largely determine the quality of sound transmission. Sound quality, internal noise, signal-to-noise ratio, signal strength, and boost vary among products. As a result, some systems do not adequately meet the needs of people who are hard of hearing. For example, the boost of some products may amplify sound adequately for people with mild hearing loss but not for those with profound hearing loss.

In the belief that standards should be developed to provide guidance in selecting products of sufficient quality and capability, the Board funded a study on assistive listening systems that was completed in 1999. Conducted by the Lexington Center, this project included collecting information on assistive listening systems, a review of the state-of-the-art with respect to assistive listening systems, and a survey of consumers, service providers, dispensers and manufacturers to determine how effective assistive listening systems are at present and what the major problems, limitations, and complaints are regarding existing systems. With this information, the researchers developed objective means for specifying the overall characteristics of any assistive listening system, from sound source to listener's ear, to be able to predict how well the system will work in practice and to determine objective criteria for establishing guidelines or recommendations for the use of assistive listening systems in public places. The criteria recommended by this research include:

- A signal-to-noise ratio of at least 18 decibels measured at the earphones.
- The capability of receivers to deliver a signal with a sound pressure level of at least 110 decibels and no more than 118 decibels with a dynamic range on the volume control of 50 decibels.

[24] 49 CFR 37.9(d).

• Peak clipping levels at or below 18 decibels down from the peak level of the signal.

Comment. The Board sought comment on whether the criteria developed through the Lexington Center research should be included in the final rule (Question 30). Commenters overwhelmingly supported the inclusion of specifications for the performance and sound quality of assistive listening systems.

Response. The Board has included performance criteria for assistive listening systems based on the Lexington Center research that address the sound pressure level (706.4), signal-to-noise ratio (706.5), and peak clipping level (706.6).

A report from the Lexington Center on this research, "Large Area Assistive Listening Systems: Review and Recommendations," is available from the Board and its Web site at *www.access-board.gov.* Additional resources stemming from the project, including a series of technical bulletins on assistive listening systems, are also available.

707 Automatic Teller Machines and Fare Machines

Section 707 provides specifications for Automatic Teller Machines (ATMs) and fare machines. Requirements address clear floor or ground space (707.2), operable parts (707.3), privacy (707.4), speech output (707.5), input (707.6), display screens (707.7), and braille instructions (707.8). In the final rule, this section has been significantly reorganized and criteria for output and input substantially revised due to comments submitted by persons with disabilities, various disability groups, ATM manufacturers, banking institutions and trade associations, and others.

Comment. Comments from the banking industry opposed the specific criteria proposed for ATMs in favor of a more flexible performance standard. Conversely, many comments from persons with vision impairments supported the proposed specifications or urged the Board to make them more stringent.

Response. The original ADAAG relied on a performance criterion in specifying access to ATMs for people with vision impairments: "instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments" (4.34.5). Based on the level of access provided at ATMs under the original ADAAG, it is the Board's belief, consistent with the ADAAG Review Advisory Committee's recommendations, that a descriptive set of technical criteria is essential to ensure that ATMs are adequately accessible to, and usable by, persons with vision impairments. The Board has taken into consideration concerns raised by industry concerning various specifications, as well as information on improved technological solutions, in finalizing these criteria. A number of revisions have been made to the ATM requirements which are detailed below.

Comment. Section 707 specifically covers ATMs and fare machines. In the proposed rule, the Board sought comment on whether this section should be extended to cover other types of interactive transaction machines (ITMs), such as point-of-sale machines and information kiosks, among others (Question 31). Information was requested on any possible design conflicts between the requirements of this section and any specific types of interactive transaction machines. Comments from disability groups and individuals with disabilities generally supported coverage of ITMs and point-of-sale machines. Most industry commenters opposed such an expansion since, in their opinion, such devices differ in structure and use from ATMs. Comments noted that computers used in point-of-sale machines rarely have the capacity for added functions, especially for speech. Commenters were particularly concerned that manufacturers, installers, and property owners would be held responsible for the content of web-based dynamic information. Several suggested that unlike ATMs, which are considered primarily single-purpose devices, information kiosks are multi-purpose devices that cannot produce audio files anticipating the content of the video display.

Response. The Board has elected not to broaden the scope of the rule to address all types of interactive transaction machines at this time. However, the Board has issued standards covering various types of electronic and information technology purchased by the Federal government under section 508 of the Rehabilitation Act. These standards encompass various types of interactive transaction machines that are procured by the Federal government. The Board intends to monitor the application of the performance-based section 508 standards to ITMs in the Federal sector for its consideration in future updates of these guidelines.

Revisions made to this section include:

• Revising exceptions for drive-up ATMs to also cover drive-up fare machines (707.2, 707.3, and 707.7).

• Modifying specifications for operable parts (707.3).

• Limiting privacy requirements to ATMs (707.4).

• Revamping and clarifying speech output capabilities and specifications (707.5).

• Modifying specifications for input controls (707.6).

• Adding a requirement for braille instructions (707.8).

Sections 707.2 and 707.3 address clear floor or ground space requirements and operable parts, respectively. These provisions include exceptions for drive-up only ATMs. In the final rule, the Board revised these exceptions to cover fare machines as well.

Comment. The proposed rule specified that operable parts be able to be differentiated by sound or touch without activation (707.3). Comments from industry noted that it would be difficult to achieve this requirement in the design of controls activated by touch. Some commenters advised that compliance would be more feasible if the provision recognized an allowable level of force that could be applied without the control being activated. Since many ATMs and fare machines allow users to cancel operations, including when a control is inadvertently activated, commenters questioned the need for this provision.

Response. The Board agrees that keys which enable users to readily clear or correct input errors obviate the need for controls that can be differentiated by sound or touch without activation. In the final rule, the Board has revised the requirement to apply only at ATMs and fare machines that are not equipped with "clear" or "correct" keys.

Section 707.4 ensures an equivalent level of privacy in the use of ATMs for all individuals, including those who use a machine's accessible features. In the final rule, this requirement has been made specific to ATMs, since privacy is generally of less concern in the use of fare machines.

Section 707.5 provides requirements for speech output of ATMs and fare machines.

Comment. ATM manufacturers and the banking industry opposed the specific criteria for audible output in the proposed rule (707.5) and urged the Board to replace them with more flexible performance requirements that would focus on the desired outcome instead of detailing how and to what extent access was to be achieved. Comments from disability groups strongly supported the approach taken

in the proposed rule. Some of these comments requested that the specifications cover the full range of machines used and types of output. For example, some pointed out that certain types of information, such as error messages, are often overlooked in the provision of audible output.

Response. The Board has revised the requirements for audible output to emphasize the minimum performance capabilities necessary for access. This will allow room for technological innovations and improvements in providing access solutions, particularly with respect to audible output. On the other hand, the Board has also retained or added specific criterion so that a minimum level of accessibility is clearly established to avoid confusion or misinterpretation. The final rule clearly requires machines to be speech enabled, as opposed to the proposed rule's call for "audible instructions." As revised, it requires that "all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments." The specification lists particular types of output, such as operating instructions and orientation, visible transaction prompts, user input verification, and error messages. However, the over-arching performance criterion governs, as the list of particulars is not exhaustive. Consistent with the proposed rule, the speech output must be delivered through devices readily available to all users, such as a telephone handset or an industry standard connector (*e.g.*, an audio mini jack to accommodate a user's audio receiver).

Comment. The Board sought information on the availability of ATMs that meet the audible output requirements of the proposed rule and any impact, including costs and technological difficulties, in developing new products that would comply (Question 35). Information was also requested on the practice of redeploying ATM equipment and the impact of the output requirements on this practice. Industry commenters expressed strong concerns about the cost and feasibility of providing speech output for new and refurbished machines. Industry commenters claimed that voice output would be burdensome by necessitating both hardware and significant software investments, including on-going maintenance to support changes in the services offered by the institution. Analysis of industry comments reveals an underlying concern that manufacturers, property owners, installers, and networks must coordinate to provide anything more than limited voice output. According to these comments, such coordination is not customary in the U.S. The banking industry expressed particular concern about the application of the guidelines to ATMs that are refurbished and redeployed. According to the industry, there is a large market for used ATMs, which have an average life of 10 years, though some can last up to 20 years; as new machines are installed in existing locations, those replaced are commonly redeployed elsewhere. Since the specifications apply not only to new ATMs, but to altered machines as well, commenters expressed concern about the cost and feasibility of retrofitting existing machines as part of their relocation. On the other hand, comments from disability groups indicated that satisfactory voice output is not only feasible but is actually being accomplished by various banking institutions, including through the retrofit of existing machines.

Response. Many of the comments submitted by industry concerning the cost and impact of the requirements for audible output appeared based on the provision of recorded human speech. However, the Board intended other alternatives, which are considerably less expensive, such as digitized human speech and synthesized speech. Clarification of these permitted types of output are included in the final rule (707.5). New technologies for text-to-speech synthesis are becoming available that offer less expensive solutions in equipping machines with speech output. Such technologies, which can be installed through software or hardware enhancements, can generate all of the information required to be accessible in audible output. In the past year, the Board has become aware of various banks in different areas of the country that have provided new talking ATMs that take advantage of improved speech output technologies. With respect to refurbished machines, the requirements of these guidelines as they apply to altered elements permit departures where compliance is not technically feasible; in such cases, compliance is required to the maximum extent feasible (202.3, Exception 2). Some industry commenters expressed concern about the proposed requirements and existing machines, including those that are not altered. However, the scope of these guidelines, consistent with the Board's mandate, extends only to new construction and planned alterations and additions. The Board does not generally have jurisdiction over requirements for existing facilities that are otherwise not being altered. Under the ADA, regulations issued by the Department of Justice (DOJ) effectively govern requirements that apply to existing places of public accommodation. How, and to what extent, the Board's guidelines are used for purposes of retrofit, including removal of barriers and provision of program access, is wholly within the purview of DOJ. It is the Board's understanding that DOJ is aware of the concern as raised by various commenters generally and that DOJ plans to address these concerns in its rulemaking to revise its ADA standards pursuant to the Board's final rule.

Comment. In the proposed rule, the Board requested comment on whether ATM manufacturers or banks intend to provide audio output receivers for customers who need them to access audible output and whether customers needing such output could reasonably be expected to provide their own receivers (Question 34). Few comments addressed this question. Several individuals with vision impairments indicated that they carry headphones for talking book players and other audio devices.

Response. The Board has not included any requirements concerning the provision of audio output receivers.

Comment. The proposed rule included an advisory note indicating that audible tones can be used instead of speech for personal input that is not displayed visually for security purposes, such as personal identification numbers (707.5.3). Comments from industry supported this clarification but noted that it would be more appropriately located within the text.

Response. The Board agrees that the advisory note actually functioned as an exception to the requirement for speech output and has added it to the text in the final rule (707.5, Exception 1).

Comment. Comments from persons with disabilities requested that all visually displayed information, including advertisements, should be covered by the requirement for speech output.

Response. The Board disagrees with coverage of extraneous information not needed in the conduct of all available transactions. In the final rule, an exception has been added which notes that advertisements and similar information are not required to be audible unless they convey information that can be used in the transaction being conducted (707.5, Exception 2). This exception helps further clarify the scope of the general performance requirement of 707.5 by describing the type of information that is not covered.

Comment. Comments from industry pointed out that compliance will be difficult and extremely costly, if not impossible, for certain types of machines that cannot support speech synthesis. Some machines cannot "read" or "pronounce" dynamic alphabetic text. Dynamic alphabetic text includes words that cannot be known in advance by the machine or its host. Audible dynamic text requires either pre-recorded files or a text-to-speech synthesizer to convert electronic text into speech using pre-programmed pronunciation rules.

Response. Because it would be impossible to pre-record files to anticipate all the possible dynamic alphabetic combinations in the English language, speech synthesis is the only practicable solution for producing dynamic alphabetic audible output. The Board has added an exception for machines that cannot support speech synthesis. Under this exception, dynamic alphabetic output is not required to be audible (707.5, Exception 3).

Comment. Persons with vision impairments and disability groups indicated that "repeat" and "interrupt" functions greatly facilitate use of speech output. Such commenters also stated that volume control is an important feature in accommodating the full range of users. Industry commenters pointed out that interruption of speech output is critical because such output, even when not accessed through a handset or earphones, is continuously running and will otherwise lengthen the time of all operations and transactions.

Response. The Board has added a provision that machines allow users to repeat or interrupt speech output (707.5.1). An exception allows speech output for any single function to be automatically interrupted once a transaction is selected. This specification replaces a requirement in the proposed rule that users be able to expedite transactions (707.5.4.2). In addition, the Board has included a requirement for a volume control.

Comment. The proposed rule contained a requirement that ATMs dispense paper currency in descending order with the lowest denomination on top (707.5.7). Comments from the banking industry noted that while this requirement is feasible, the denominations of currency dispensed varies depending on which bills are still available in a machine before it is re-supplied.

Response. The Board has removed the requirement for bills to be dispensed in descending order since the order of dispensation will not ensure that users will be able to identify each bill's denomination.

Comment. The proposed rule required that machines have the capability to provide information on receipts in an audible format as well (707.5.8). Some comments from individuals with vision impairments urged the Board to revise this requirement to clearly apply to all data contained on a receipt. Industry representatives, however, advised that the requirement should apply only to essential information concerning a transaction. These comments noted that some information that may not be of interest or use to customers is nevertheless required to appear on printed receipts under Federal mandates. In addition, the banking industry indicated that some ATMs have the capability to provide copies of records, such as bank statements, which should not be subject to the speech output requirements.

Response. The Board has revised the requirement for receipt information to more clearly distinguish the type of information required to be provided through speech output and the type that is not. The final rule requires that speech output devices provide all information on printed receipts, where provided, necessary to complete or verify a transaction, including balance inquiry information and error messages (707.5.2). Extraneous information that may be provided on receipts, such as the machine location and identifier, the date and time, and account numbers is not required to be provided through speech output (Exception 1). In addition, the Board has also exempted receipt information that duplicates audible information on-screen (Exception 2) and printed materials that are not actual receipts, such as copies of bank statements and checks (Exception 3).

Section 707.6 covers input controls, including numeric and function keys.

Comment. The proposed rule required all keys used to operate a machine to be tactually discernable (707.4.2). It included specifications for key surfaces to be raised 1/25 inch minimum and that outer edges have a radius of 1/50 inch maximum (707.4.2). It also required a minimum separation between keys of 1/8 inch and specified a distance between function and numeric keys based on the distance between numeric keys (707.4.3). Comments from industry pointed to these provisions as unduly restrictive and raised questions about supporting data for the specified dimensions. These commenters urged a performance-based requirement as more appropriate.

Response. The Board has revised the final rule to require at least one input control for each function (as opposed to "all keys") to be tactually discernable (707.6.1). Key surfaces are required to be raised from surrounding surfaces, but the proposed 1/25 inch minimum has been removed. In addition, the Board has also added a requirement specific to membrane keys. Such keys must also be tactually discernable from surrounding surfaces and other keys where they are the only method of input provided.

Comment. Comments from persons with disabilities called attention to the importance of access to touch screens at fare machines and ATM machines. The proposed rule provided an exception for the touch screens of video display screens (707.4.2, Exception). This exception was meant to apply only to that method of input, since the Board intended that alternative method of input that is tactually discernable would be provided in addition to the touch screen. Commenters misread this exception as completely exempting touch screens from providing tactually discernable controls.

Response. The Board has removed the exception for touch screens in the proposed rule to avoid misinterpretation of its intent. Instead, the Board has revised the requirement for tactually discernable input controls as applying to those key surfaces that are not on active areas of display screens (707.6.1). All machines with touch screens must have tactually discernable input controls as an additional alternative to those activated by touching the screen.

Comment. The proposed rule specified the arrangement of numeric keys according to the standard 12-key telephone keypad layout, which provides numbers in ascending order (707.4.4). The ATM and banking industries indicated that numbers may be arranged in descending order, similar to the arrangement of numeric keys on standard computer keyboards as required by other national standards, such as those issued in Canada. Since ATM manufacturers operate internationally, consistency with other national standards is a key industry concern.

Response. The final rule requires numeric keys to be arranged in an ascending or descending telephone keypad layout (707.6.2). The number five key is required to be tactually distinct from the other keys (a raised dot is commonly used).

Comment. The proposed rule required function keys to be arranged in a specific order and specified particular tactile symbols and colors for standard keys (707.4.5). Comments from industry

opposed the mandate for a particular key arrangement which it considered impractical due to various factors that influence the design and layout of function keys. Further, these commenters questioned the need for such a requirement in view of provisions concerning the tactile labels of keys and audible operating instructions and orientation. In addition, comments noted that the tactile symbol assigned to "clear" or "correct" keys (vertical line or bar) was inconsistent with the symbol specified by Canadian standards (raised left arrow).

Response. The Board has removed the requirement for function keys to be arranged in a particular horizontal or vertical order, which it considers unnecessary since such keys are to be labeled by standardized tactile symbols. This revision permits manufacturers flexibility in the design of function key layouts. In addition, the Board has changed the required symbol for "clear" or "correct" keys to a raised left arrow for consistency with Canadian standards (707.6.3.2).

Comment. The Board specified colors for standard function keys in the proposed rule and sought comment on the appropriateness of this specification, particularly for people who are color blind (Question 32). Few comments addressed this question. Instead most commenters pointed out that the specified colors did not correlate with standards used in Canada.

Response. Since many ATM manufacturers operate internationally, the Board has elected to withdraw its color specification for function keys to avoid conflict with other existing national standards.

Comment. ATMs often reject input when maximum time intervals are exceeded. Users are at risk of having the ATM card withheld and may encounter additional transaction charges due to repeated attempts to access the machine. The Board sought comment on whether it should include a specific requirement that would allow users to extend the maximum time intervals between transactions beyond the amount of time typically allotted (Question 33). Commenters from the banking industry and ATM manufacturers noted that ATMs include standard features that ask if users want more time to conduct transactions. The requirements for speech output will ensure that such questions are accessible to users with vision impairments.

Response. The Board has not included a requirement for extending transaction time intervals in view of industry practice.

Section 707.7 addresses visual display screens and provides specifications for the screen height and the legibility of visual characters. An exception is provided for drive-up ATMs, which the Board modified in the final rule to also cover drive-up fare machines (707.7, Exception). Few comments addressed these provisions and no further substantive changes have been made.

Comment. Persons with vision impairments requested the inclusion of a specific requirement for braille instructions. While braille instructions for full use of the machine are not necessary in view of the speech output requirements, these comments noted that instructions indicating how the speech mode is activated are needed in tactile form. For example, some machines may provide a jack through which users can access speech output by connecting personal earphones or other types of audio receivers. Without braille instructions, users may not readily determine the method for accessing speech output, which otherwise would only be tactually indicated by the jack itself.

Response. The Board has included a requirement for braille instructions on initiating the speech mode (707.8).

708 Two-Way Communication Systems

This section provides criteria for two-way communication systems where they are provided to gain admittance to a facility or to restricted areas within a facility. These systems must provide audible and visual signals so that they are accessible to people with vision or hearing impairments. As part of the integration of requirements for residential dwelling units from a separate chapter, provisions specific to communication systems in such facilities have been relocated to this section (708.4). No further changes have been made to section 708.

One of the technical provisions requires that handsets, where provided, have cords long enough (at least 29 inches) to accommodate people using wheelchairs (708.3). The proposed guidelines included an exception from this requirement for communication systems located at inaccessible entrances. The Board has removed this exception in the final rule, consistent with the new ANSI A117.1 standard. This action was taken in view of situations where an entrance may be inaccessible, but a two-way communication serving it is on an accessible route. In such cases, the availability of a two-way communication system may be of particular benefit to people unable to access an entrance.

Captioning

ADAAG and the Department of Justice's ADA regulations do not require captioning of movies for persons who are deaf. However, various technologies have been developed to provide open or closed captioning for movie theaters. One closed caption method for making movies accessible is a system that synchronizes captions and action by projecting reverse text images onto a wall behind an audience. The reverse text is then reflected by transparent screens at individual seats where movie goers can read the script on the screen and view the movie through the screen simultaneously. This type of auxiliary aid and others may require built-in features to make them usable.

Comment. In the proposed rule, the Board requested information on other types of captioning as it relates to the built environment and preferences among users (Question 36). Specifically, the Board sought information regarding the technical provisions that would be necessary to include in ADAAG to facilitate or augment the use of auxiliary aids such as captioning and videotext displays. Most comments from people with disabilities and disability-organizations supported a requirement for captioning. However, most of these commenters stated a strong preference for open captioning over closed captioning because it provides easier viewing and seating flexibility. Some commenters expressed concerns about the reliability or convenience of particular closed captioning systems. Comments from the movie theater industry pointed out that the Department of Justice's ADA regulations issued under title III state that movie theaters are not required to present open captioned films, but are encouraged to voluntarily provide closed captioning.[25]

Response. In the final rule, the Board has not included a requirement for built-in features that can help support the provision of captioning technologies.

Convenience Food Restaurants

Convenience food restaurants, otherwise known as fast food restaurants, often provide people with the opportunity to order food from a drive-through facility. These facilities usually require voice intercommunication. The Department of Justice (DOJ) has required restaurants to accept orders at pick-up windows when

[25] 28 CFR part 36, section 36.303.

the communications system is not accessible to people who are deaf or hard of hearing.

Comment. The Board requested comment on whether accessible communication should be required at drive-through facilities (Question 37). Few comments addressed this question. Disability groups representing people who are deaf supported a requirement to ensure an equivalent level of access. Comments from the restaurant industry opposed such a requirement in favor of the approach taken by DOJ. Industry comments expressed concern about a mandated design solution's potential cost and the impact on drive-through communication devices.

Response. The Board believes that further information needs to be developed on the technologies available to provide access for persons who are deaf to communication devices at drive-through facilities before specifying a requirement in these guidelines. A requirement for such access has not been included in the final rule.

Chapter 8: Special Rooms, Spaces, and Elements

Chapter 8 covers various types of elements, rooms and spaces, including assembly areas (802), dressing, fitting, and locker rooms (803), kitchens and kitchenettes (804), medical care and long-term care facilities (805), transient lodging guest rooms (806), holding and housing cells in detention and correctional facilities (807), courtrooms (808), residential dwelling units (809), transportation facilities (810), and storage (811). In the final rule, requirements from other chapters have been relocated to this chapter. These include requirements for:

- Courtrooms at 808 (relocated from 232).
- Residential dwelling units at 809 (relocated from Chapter 11).
- Transportation facilities at 810 (relocated from Chapter 10).
- Storage at 811(relocated from 905).

Substantive changes to these sections are discussed below.

802 Wheelchair Spaces, Companion Seats, and Designated Aisle Seats

Section 802 provides requirements for wheelchair spaces, companion seats, and designated aisle seats in assembly areas. Requirements have been reorganized and renumbered. Substantive changes include:

- Revision of requirements for the approach to, and overlap of, wheelchair spaces (802.1.4 and 802.1.5).
- Clarification of lines of sight specifications for wheelchair spaces (802.2).
- New requirements for companion seats (802.3).
- Revision of criteria for designated aisles seats (802.4).

Comment. Wheelchair spaces may be placed side-by-side, as reflected in specifications for width that are specific to adjoining spaces. The proposed rule specified that the approach to a wheelchair space could pass through one adjoining wheelchair space, but not others (802.5). This was done to limit the inconvenience to those occupying wheelchair spaces who would otherwise have to move, possibly from the space or row entirely, to accommodate others traveling to and from other wheelchair spaces in the same row. Comments from persons with disabilities urged that the rule be modified to prohibit travel through any wheelchair space.

Response. In the final rule, the Board has modified specifications for the approach to wheelchair spaces so that travel through any wheelchair space is not required in accessing a wheelchair space (802.1.4). As a result, accessible routes cannot overlap wheelchair spaces.

Comment. The Board sought comment on whether it should clearly prohibit circulation paths (not just accessible routes) from overlapping wheelchair spaces (Question 38). Persons with disabilities overwhelmingly supported such a change to ensure that people using wheelchair spaces do not have to shift or move out of the way of other pedestrian traffic while occupying spaces. Comments from industry noted that such a requirement would increase space requirements at wheelchair seating areas.

Response. The Board agrees with the majority of comments that persons using wheelchair spaces should not have to contend with overlapping pedestrian traffic. Nor should occupied spaces obstruct circulation paths, particularly means of egress. A requirement that wheelchair spaces not overlap circulation paths is included in the final rule (802.1.5). This requirement is intended to apply only to the circulation path width required by applicable building and fire codes and helps ensure consistency between accessibility and life safety criteria. Such codes generally do not permit wheelchair spaces to block the required width of a circulation path. In various situations, the new requirement is expected to have modest impacts. For example, where a main circulation path located in front of a seating row with a wheelchair space is wider than required by applicable building and fire codes, the wheelchair space may overlap the portion of the path width provided in excess of code requirements. Where a main circulation path is located behind a seating row with a wheelchair space that is entered from the back, the aisle in front of the row may need be to be wider in order not to block the required circulation path to the other seats in the row, or a mid-row opening may need to be provided to access the required circulation path to the other seats.

In the proposed rule, the Board posed several questions concerning the requirements for the dispersion of wheelchair spaces (which were located in section 802.6). These requirements have been revised and relocated to the scoping section for wheelchair spaces at section 221. As discussed above, the Board has clarified the intent of the proposed rule in calling for a choice in viewing angles comparable to that provided other spectators. In addition, the Board removed a criterion for dispersion based on a comparable choice in admission prices. In the final rule, it is required that wheelchair spaces be dispersed so that persons using them have "choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators" (221.2.3). Like the proposed rule, specifications are provided for horizontal (side to side) and vertical (front to back) dispersion. Wheelchair spaces must be located at "varying distances from the screen, performance area, or playing field" to achieve effective vertical dispersion. Exceptions from the requirements for horizontal and vertical dispersion requirements are provided for assembly areas with 300 seats or fewer.

Section 802.2 covers lines of sight to the screen, performance area, or playing field for persons using wheelchair spaces. These technical provisions address sight lines over seated and standing spectators. The Board has revised these requirements (located in section 802.9 in the proposed rule). In the proposed rule, it was specified that wheelchair space sight lines be "comparable" to those provided "in the seating area in closest proximity to the location of the wheelchair spaces, but not in the same row." In venues where people are expected to stand at their seats during events, wheelchair spaces were to be located so that users have lines of sight over standing spectators comparable to those provided others in nearby seats not in the same row.

Comment. The proposed rule required that wheelchair spaces offer lines of sight "comparable" to those provided other spectators (802.9). Corresponding elevation drawings (Figures 802.9.1 and

802.9.2) illustrated lines of sight over the head of persons in the preceding row. Designers of assembly facilities expressed concern that these requirements, as illustrated, might be read to require this kind of sight line in all cases. However, a conventional practice is to design seating so that lines of sight are provided between, not over, the heads of persons in the preceding row through staggered seating. Generally, where the sight line is between the heads in the row immediately in front, it is also over the head of the second row. According to these commenters, comparable access at wheelchair seating should be based on the type of sight line (over heads or between heads) provided at inaccessible seats.

Response. The final rule has been modified to clarify what constitutes comparable lines of sight over seated spectators (802.2.1) and standing spectators (802.2.2). Specifically, the revised specifications distinguish between sight lines provided over and between heads of spectators in the row ahead. Where lines of sight over the heads of spectators in the first row in front is provided, then those occupying wheelchair spaces must also be provided lines of sight over the heads of spectators in the first row in front of the spaces (802.2.1.1). A similar requirement for equivalency is specified where sight lines are provided over the shoulders and between the heads of spectators in the first row in front (802.2.1.2). Parallel provisions are provided for assembly areas where spectators are expected to stand during events (802.2.2.1 and 802.2.2.2).

Section 802.3 addresses companion seats, which are required to be paired with wheelchair spaces (221.3). In the final rule, the Board has clarified that companion seats are to be located to provide shoulder alignment with adjacent wheelchair spaces (802.3.1). Consistent with the ANSI A117.1–2003 standard, the provision in the final rule specifies that shoulder alignment is to be measured 36 inches from the front of the wheelchair space and that the floor surface of companion seats is to be at the same elevation as that of wheelchair spaces. In the proposed rule (802.7), companion seats were required to be "readily removable." As discussed above in section 221, the final rule allows, but does not require, companion seats to be removable (802.3.2). In addition, the Board has added a requirement that companion seats be "equivalent in quality, size, and comfort and amenities" to seating in the immediate area (802.3.2). Amenities include, but are not limited to, cup holders, arm rests, and storage pockets.

Section 802.4 provides technical criteria for designated aisle seats. These seats are intended to provide access for people with disabilities who do not need or prefer wheelchair spaces.

Comment. The proposed rule required that such seats have removable or folding armrests or no armrests on the aisle side. Comments noted that this should apply only where armrests are provided on seats in the same area. Comments from persons with disabilities felt that armrests should be required at designated aisle seats if other seats have armrests. Facility operators noted that it is not practical to provide removable armrests because they become misplaced, lost, or stolen over time.

Response. Requirements for armrests have been revised to apply only where armrests are provided on seating in the immediate area. Armrests on the aisle side of the seat are required to be folding or retractable. Complying armrests are not required where no armrests are provided on seats.

803 Dressing, Fitting, and Locker Rooms

Requirements for dressing rooms, fitting rooms, and locker rooms are contained in section 803.

Comment. Section 803.2 requires wheelchair turning space in accessible rooms. In the proposed rule, an exception to this provision noted that a portion of this space (6 inches maximum) could extend under partitions or openings without doors that provide toe clearance at least 9 inches high. Many comments opposed this exception since, as written, it would allow a 6-inch portion of the 5-foot turning space on both sides to be located beyond two side partitions, possibly resulting in dressing or fitting rooms that are only 4 feet wide.

Response. This exception concerning wheelchair turning space has been removed in the final rule (803.2). Requirements for wheelchair turning space in section 304 specify dimensions and recognize knee and toe space. However, permitted overlaps are limited. For example, an object with knee and toe clearance can overlap only one arm or the base of T-shaped turning space (304.3.2).

The proposed rule prohibited doors from swinging into the turning space (803.3). In the final rule, the Board has revised this requirement for consistency with the ANSI A117.1 standard. As revised, this provision permits doors to swing into the room where wheelchair space beyond the arc of the door swing is provided. This specification is consistent with provisions for single-user toilet rooms and bathrooms (603.2.3, Exception 2).

804 Kitchens and Kitchenettes

Requirements in section 804 apply to kitchens and kitchenettes, including those provided in transient lodging guest rooms and residential dwelling units. They also apply to spaces, such as employee break rooms, located in other facility types. In the final rule, requirements specific to kitchens in residential dwelling units have been folded into this section as part of the integration of the chapter on residential dwelling units (Chapter 11) into the rest of the document. Certain requirements intended only for dwelling unit kitchens have been modified accordingly. For example, requirements for clearances in pass through and U-shaped kitchens apply only to kitchens with cooktops or conventional ranges (804.2), and specified kitchen work surfaces are required only in kitchens in residential dwelling units (804.3). This reorganization does not substantively change the requirements of section 804 as they apply to kitchens not located in residential dwelling units. These include requirements for sinks (804.4), storage (804.5), and appliances (804.6).

Substantive changes apply primarily to requirements for dwelling unit kitchens. These revisions concern:

- Clearances in pass through kitchens (804.2.1).
- Storage (804.5).
- Operable parts of appliances (804.6.2).
- Oven controls (804.6.5).

Clearances for pass through kitchens address counters, appliances, or cabinets on two opposing sides. In the final rule, this provision has been revised to more clearly address situations where counters, appliances, or cabinets are opposite a parallel wall. In addition, the Board has changed references to "galley kitchens" with "pass through kitchens" for clarity.

At least 50% of shelf space in storage facilities is required to be accessible (804.5). This is consistent with the proposed rule with respect to kitchens generally, but differs from proposed specifications for dwelling unit kitchens, which only addressed clear floor space at cabinets (1102.12.5). The final rule clarifies access requirements for storage in dwelling unit kitchens that is consistent with specifications for other types of kitchens.

Requirements for appliances include provisions for operable parts (804.6.2), which are required to be accessible according to section 309. Section 309

includes specifications for clear floor space (309.2), height (309.3), and operating characteristics (309.4). The proposed rule contained an exception for controls mounted on range hoods. This provision has been replaced by an exception to general scoping provisions for operable parts that addresses redundant controls (205.1, Exception 6). In the addition, the Board has added exceptions for appliance doors and door latching devices in section 804.6.2.

Comment. Operable parts must be designed so they can be operated with one hand and without tight grasping, pinching, twisting of the wrist, or more than 5 pounds of force (309.4). Appliance manufacturers called attention to various appliances that cannot be easily redesigned to meet the maximum 5 pounds of force. At refrigerator and freezer doors, a tight seal is necessary for energy efficiency, as required by other Federal laws, which may result in an opening force that exceeds 5 pounds of force. The latch used to secure dishwasher doors and create a water-tight seal also typically requires a force that may exceed 5 pounds which would be difficult and costly to reduce.

Response. The final rule provides an exception under which appliance doors and their latching devices are not required to comply with the specified operating characteristics for operable parts in section 309.4, including the maximum pounds of force for operation (804.6.2, Exception 1).

Comment. Accessible reach ranges specify a minimum height of 15 inches (308.3) for unobstructed reaches. The appliance industry called attention to certain types of doors that, when fully open, cannot easily meet this specification, such as dishwasher doors and doors of ovens and broilers that are part of free-standing ranges. Compliance with the reach range requirement when the door is fully open would severely impact the design and size of such appliances.

Response. The Board has included an exception for bottom-hinged appliance doors, which do not have to be within reach range requirements specified in 309.3 when open (804.6.2, Exception 2).

Ovens are required to have controls on front panels (804.6.5.3). A specification that these controls be to the side of the door has been removed in the final rule as unnecessarily restrictive.

805 Medical Care and Long-Term Care Facilities

Section 805 addresses access to patient or resident sleeping rooms in medical care and long-term care facilities. Revisions made to this section include:

- Removing a stipulation that wheelchair turning space not extend beneath beds (805.2).
- Clarifying fixture requirements in accessible toilet and bathing rooms (805.4).

Comment. Wheelchair turning space is required in patient rooms and resident sleeping rooms. The proposed rule prohibited this space from extending under beds (805.2). Commenters opposed this requirement, noting that it is inconsistent with specifications for wheelchair turning space in section 304 which recognize knee and toe clearances for specified portions of the turning space. Commenters questioned why space at beds are held to a higher standard. A similar requirement was included for transient lodging guest rooms (806.2.6) and holding and housing cells (807.2.1).

Response. For consistency with specifications for wheelchair turning space in section 304, the Board has removed the requirement prohibiting beds from overlapping this space. Beds can overlap turning space up to six inches where adequate toe clearance (9 inches high minimum) is provided. This change was also made for transient lodging guest rooms and holding and housing cells.

The Board has added clarification that toilet and bathing rooms provided as part of a patient or resident sleeping room contain at least one water closet, lavatory, and bathtub or shower (805.4).

806 Transient Lodging Guest Rooms

Section 806 addresses access to accessible guest rooms (806.2) and those guest rooms that provide access to persons who are deaf or hard of hearing (806.3). Substantive changes made to this section revise requirements for:

- Vanity counter spaces in accessible toilet or bathing rooms (806.2.4.1).
- Wheelchair turning space (806.2.6).
- Visual alarms (806.3.1).
- Telephones (806.3.2).

Comment. Requirements for accessible toilet and bathing rooms include a provision for vanity counter top spaces, which in the past have been omitted from accessible guest rooms even where provided for inaccessible rooms. This provision requires accessible vanity counter tops at lavatories in accessible guest rooms if vanity counter tops are provided in other guest rooms (806.2.4.1). The proposed rule required the vanity top in accessible rooms to be at least 2 square feet. Industry commenters considered this specification unduly restrictive while persons with disabilities considered it inadequate in ensuring equivalent access. The proposed rule also applied requirements for reach ranges and operable parts (sections 308 and 309) which would have effectively required knee and toe clearances below the vanities.

Response. The Board has removed the minimum surface requirement (2 square feet) for vanity counter tops. The revised provision requires vanity counter top space in accessible rooms to be comparable, in terms of size and proximity to lavatories, to those provided in other rooms of the same type. In addition, the requirement for compliance with sections 308 and 309 has been removed in the final rule. This change is consistent with the ANSI A117.1 standard.

A provision in section 806.2.6 prohibiting beds from overlapping wheelchair turning space has been removed for consistency with specifications for such space in section 304, as discussed above in section 805.2.

Guest rooms required to have accessible communication features are required to have visual alarms. As discussed above in section 702, technical requirements for visual alarms in the proposed rule have been replaced with references to criteria in the NFPA 72. Corresponding revisions have been made to the provision for visual alarms in guest rooms (806.3.1). This provision references both the visual and audible criteria for alarms in the NFPA standards.

Guest rooms providing communication access are also subject to requirements for notification devices and telephones (806.3.2). Telephones must have volume control. Also, telephones must be served by an accessible outlet not more than 4 feet away to facilitate use of TTYs. In the proposed rule, both of these requirements applied to "permanently installed" telephones. The Board has removed the term "permanently installed" because it is the Board's understanding that the Department of Justice will clarify the application of the guidelines to permanently installed elements in its rulemaking to update its standards for consistency with these guidelines.

807 Holding Cells and Housing Cells

This section provides requirements for cells or rooms required to be accessible in detention or correctional facilities and judicial facilities. Revisions made to this section include:

- Removing a provision that wheelchair turning space not extend beneath beds (807.2.1).

• Clarifying fixture requirements in accessible toilet and bathing rooms (807.2.4).

• Relocating requirements for drinking fountains to the general scoping provision (211.1).

• Revising requirements for telephone volume controls (807.3.2).

A provision in section 807.2.1 prohibiting beds from overlapping wheelchair turning space has been removed for consistency with specifications for such space in section 304, as discussed above in section 805.2.

The Board has added clarification that at least one water closet, lavatory, and bathtub or shower, where provided, must be accessible (807.2.4). In addition, a requirement for drinking fountains has been removed (807.2.4 in the proposed rule) due to revisions made to the scoping provisions for drinking fountains in section 211, as discussed above.

Telephones, where provided within cells, must be equipped with volume controls (807.3.2). In the proposed rule, this requirement applied to telephones that are "permanently installed." As discussed above in section 806, the Board has removed this qualifier for consistency with the rest of the document.

808 Courtrooms

Section 808 provides requirements for courtrooms. These requirements have been relocated without substantive change from the scoping section for judicial facilities (231).

809 Residential Dwelling Units

The format and structure of these guidelines are designed to encourage an approach to accessibility that is more integrated than that of the original ADAAG. As a result, distinctions between facility types are minimized both in terms of substance and structure. The Board has sought to further this approach and to make the document more internally consistent by folding those remaining chapters specific to a facility type (residential and transportation) into the other chapters which apply to facilities more generally. Section 809 is based on requirements for residential dwelling units contained in Chapter 11 in the proposed rule. Other provisions have been integrated into other chapters as appropriate. In some cases, the Board determined that scoping or technical provisions applicable to facilities generally were sufficient without the addition of language specific to residential facilities. Most of the provisions, including those in section 809, have not been substantively changed. Those that have are discussed at the new location. The following list identifies the new location of the provisions that were contained in Chapter 11:

• 1101.1 and 1102.1 Scoping, covered by 233.

• 1102.2 Primary Entrance, now at 206.4.6.

• 1102.3 Accessible Route, now at 809.2.

• 1102.4 Walking Surfaces, covered generally by 403.

• 1102.5 Doors and Doorways, now at 206.5.4.

• 1102.6 Ramps, covered generally by 405.

• 1102.7 Private Residence Elevators, now at 206.6 (scoping) and 409 (technical).

• 1102.8 Platform Lifts, covered generally by 206.7 (scoping) and 410 (technical).

• 1102.9 Operable Parts, now at 205.

• 1102.10 Washing Machines and Clothes Dryers, covered generally by 214.

• 1102.11 Toilet and Bathing Facilities, now at 809.4 and Chapter 6.

• 1102.12 Kitchens, now at 809.3 and 804.

• 1102.13 Windows, covered generally by 229.

• 1102.14 Storage Facilities, covered generally by 225 (scoping) and 811 (technical).

• 1103 Dwelling Units with Accessible Communication Features, now at 809.5 and 708.4.

Comment. Several commenters expressed concern about these requirements and their relationship to those issued by the Department of Housing and Urban Development under the Fair Housing Act.[26] These commenters urged the Board and the Department of Justice to clarify which types of housing facilities are subject to the ADA and to make the requirements consistent with the Fair Housing Accessibility Guidelines.[27] Other commenters recommended that the Board reconcile differences with the standards for residential facilities contained in the ANSI A117.1 standard.

Response. This rule updates guidelines used to enforce the design requirements of the ADA and the ABA. While the ADA does not generally cover private residential facilities, its coverage is interpreted as extending to housing owned and operated by State and local governments. Under the ADA, the Department of Justice determines the application of the guidelines to residential facilities. In addition, the ABA, which applies to federally funded facilities, may apply to public housing and other types of residential facilities that are designed, built, or altered with Federal funds. Section 809 serves to update the requirements for dwelling units contained in the current ABA requirements, the Uniform Federal Accessibility Standards (UFAS), while providing new criteria in the ADA guidelines. Both the ADA and ABA establish design requirements for new construction and alterations that ensure full access for persons with disabilities. This mandate is considerably different than that established by the Fair Housing Act, which applies to covered multi-family housing in the private and public sectors. Consequently, the level of access specified by the ADA and ABA guidelines differs from that specified by the Fair Housing Accessibility Guidelines. The requirements proposed by the Board derive from guidelines for residential facilities contained in the ANSI A117.1–1998 standard. However, in both the proposed and final rule, the Board has found it necessary to deviate from the ANSI A117.1 in limited areas. The Board intends to continue to work with the ANSI A117 Committee to reconcile differences between both documents in this and other areas.

The proposed rule, consistent with the ANSI A117.1–1998 standard, required all toilet and bathing facilities to comply in accessible dwelling units. The new ANSI standard requires that at least one toilet and bathing facility be accessible. The ANSI Committee adopted this change due to concerns about the impact of full scoping in light of revisions to its technical requirements for toilet and bathrooms. The technical revisions it approved are consistent with those finalized by the Board in this rulemaking. The Board also had concerns about the application of the proposed requirement to certain types of housing, such as group homes. In the final rule, the Board has revised the provision (809.4) to require access to at least one toilet and bathing facility, consistent with the ANSI A117.1–2003 standard.

Other comments concerning provisions for residential dwelling units that have been relocated to other sections are discussed at the new location.

[26] The Fair Housing Amendments Act of 1988 expanded coverage of Title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3620) to prohibit discriminatory housing practices based on handicap and familial status.

[27] 24 CFR part 100.

810 Transportation Facilities In the final rule, provisions in Chapter 10 for transportation facilities have been integrated into other chapters. Most of these requirements are now located in section 810, but some provisions have been integrated into other sections:

- 1001.1 Scope, now at 218.
- 1002.1 through 1002.4, Bus Stops and Terminals, located at 810.2 through 810.4.
- 1002.5 Bus Stop Siting, now at 209.
- 1003.1 Facilities and Stations, now at 218.
- 1003.2 New Construction, now at 218.
- 1003.2.1 Station Entrances, now at 206.4.4.
- 1003.2.2 Signs, now at 810.6.
- 1003.2.3 Fare Machines and Gates, covered generally by 220 (Fare Machines) and 206.5 (Gates).
- 1003.2.4 Detectable Warnings, now at 810.5.
- 1003.2.5 Rail-to-Platform Height, now at 810.5.
- 1003.2.6 TTYs, now at 217.4.7.
- 1003.2.7 Track Crossings, now at 810.10.
- 1003.2.8 Public Address Systems, now at 810.7.
- 1003.2.9 Clocks, now at 810.8.
- 1003.2.10 Escalators, now at 810.9.
- 1003.2.11 Direct Connections, now at 206.4.4.
- 1003.3 Existing Facilities, now at 218.
- 1003.3.1 Accessible Route, covered generally by 206 (Accessible Routes) and by 810.9 (Escalators).
- 1003.3.2 Rail-to-Platform Height, now at 810.5.
- 1003.3.3 Direct Connections, now at 206.4.
- 1004.2 TTYs (in airports), now at 217.4.7.
- 1004.3 Terminal Information Systems (in airports), now at 810.7.
- 1004.4 Clocks (in airports), now at 810.8.

Section 810 provides requirements for bus boarding and alighting areas (810.2), bus shelters (810.3), and bus signs (810.4). Revisions address:

- Bus boarding and alighting areas, including specified dimensions (810.2.2).
- Clarification of requirements for bus shelters (810.3).

Comment. Specifications in 810.2 for bus stops applied to "bus stop pads" in the proposed rule. Comments noted that this reference has been misinterpreted as applying to the vehicle space for buses which are sometimes provided with concrete pads, instead of to adjacent boarding areas.

Response. For clarity, the Board has applied requirements to "bus stop boarding and alighting areas" instead of to "bus stop pads.".

Comment. Bus stop boarding and alighting areas are required to be at least 96 inches long and 60 inches wide. The proposed rule specified that these dimensions were required to "the maximum extent allowed by legal or site constraints" (1002.2.2). Comments considered this language unclear or unnecessary.

Response. The reference to legal or site constraints was intended to cover existing conditions that would effectively preclude sizing boarding and alighting areas to the minimum dimensions specified, such as narrow sidewalks. The Board has removed this language in section 810.2.2 in favor of a general scoping provision for alterations (202.3) which recognizes instances where compliance is not technically feasible. In such cases, compliance is required to the maximum extent feasible.

Section 810.3 addresses bus shelters, which are required to provide wheelchair space. The Board has included clarification that this space be located "entirely within the shelter" so that persons occupying the space can be adequately sheltered from the elements.

Requirements for rail stations and airports are provided in sections 810.5 through 810.10. Most of these provisions apply specifically to rail stations, but some are applicable to airports as well, such as requirements for public address systems (810.7) and clocks (810.8). Revisions made to these provisions address:

- Rail platforms (810.5).
- Rail station signs (810.6).
- Public address systems (810.7).
- Escalators (810.9).
- Track crossings (810.10).

Comment. Commenters advised that the specifications should address platforms for light rail vehicles which should be allowed to conform to the grade of the street.

Response. The Board has explicitly specified that rail platforms shall slope no more than 1:48 in any direction, consistent with cross slope provisions for walking surfaces in section 403. An exception has been added for platforms at existing tracks or tracks laid in existing roadways (810.5.1). Such platforms are permitted to have a slope parallel to the track that is equal to the slope (grade) of the roadway or existing track.

Rail platform requirements include specifications for detectable warnings along platform boarding edges not protected by screens or guards (810.5.2). The Board has added clarification that detectable warnings be provided "along the full length of the public use area of the platform."

The proposed rule, consistent with the original ADAAG, provided specifications for the coordination of vehicles and platforms, including maximum changes in level (plus or minus 5/8-inch) and horizontal gaps (3 inches for rail vehicles, 1 inch for automated guideway systems). Alternate specifications were provided for existing vehicles and stations. These requirements are paralleled in the Board's ADA Accessibility Guidelines for Transportation Vehicles.[28] For simplicity, the Board has replaced requirements in section 810.5 with references to these specifications as contained in the guidelines for transportation vehicles (810.5.3). This revision does not substantively change the requirements for the coordination of platforms and vehicle floors.

Comment. The referenced vehicle guidelines (like those of the proposed rule) permit the use of mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or manually deployed devices where it is not operationally or structurally feasible to meet the specified changes in level or horizontal gaps. In the case of commuter and intercity rail systems, this is often due to track that is also used by freight trains because the passage of oversized freight precludes a high level platform. The American Railway Engineering and Maintenance of Way Association had previously recommended a new platform height of 8 inches above top of rail. This height allows for freight passage while reducing the height of the first step of a rail car above the platform. Often a portable step stool is used to make up the height difference between a lower platform and the first step. Negotiating such a step can be difficult for ambulatory passengers, especially since handrails are usually not available. Also, requiring the 8 inch height would reduce the vertical travel distance for a lift. The Board sought comment on whether new platforms for commuter or intercity rail stations should have a height of 8 inches above top of rail (Question 47). Most comments supported such a requirement.

Response. The Board had added a requirement that low level platforms be at least 8 inches above top of rail (810.5.3). An exception intended for light rail systems allows a height below 8 inches where vehicles are boarded from sidewalks or at street level.

[28] 36 CFR part 1192.

Comment. Section 810.6 addresses requirements for station signage, including signs at entrances, route and destination signs, and station names. These provisions reference requirements for tactile and visual characteristics in section 703. Commenters urged the Board to recognize audible signs as an alternative to tactile signs since they can provide equal or greater access to information.

Response. The Board has added an exception under which entrance, route, and destination signs do not have to comply with visual and tactile specifications where certain audible sign technologies are provided. The exception specifically recognizes those technologies that involve hand-held receivers, activation by users, or detection of people in proximity to the sign.

Comment. Requirements for route and destination signs are subject to specifications for visual signs in section 703, including character height (810.6.2). The proposed rule allowed certain signs to have a 3 inch minimum height where space is limited and a 1½ inch height for characters on signs not essential to the use of the transit system (1003.2.2.3, Exception). Comments pointed out that this exception should allow characters to be less than 3 inches high for consistency with the character heights specified for signs generally in section 703.

Response. The Board has corrected this exception so that characters are not required to be more than 3 inches high where sign space is limited. This would apply to conditions where signs are more than 10 feet above the ground or floor and the viewing distance is 21 feet or more (the only types of signs required by section 703.5 to have characters more than 3 inches high). The Board has removed as unnecessary the exception for signs not essential to the use of the transit system, such as exit street names.

Section 810.7 covers public address systems in rail stations and airports. The proposed rule required that where public address systems are provided to convey information to the public, a means of conveying the same or equivalent information to persons who are deaf or hard of hearing be provided. The Board has simplified this provision so that it requires "the same or equivalent information * * * in a visual format."

Comment. In the proposed rule, the Board sought information for its use in future rulemaking to update the Board's transportation vehicle guidelines. Specifically, the Board requested information on technologies for providing train announcements, including station announcements and emergency announcements, in a visual format so that this information is conveyed to people who are deaf or hard of hearing (Question 46). Recommendations included use of message boards for verbal announcements and visual signals, such as a flashing light, or audible signals such as bells and chimes. Some commenters recommended that this issue be revisited in rulemaking specific to the vehicle guidelines.

Response. The Board intends to further explore this issue during rulemaking to update its accessibility guidelines for transportation vehicles.

Comment. Escalators must have a clear width of 32 inches minimum (810.9). The original ADAAG contained a requirement that at least two contiguous treads be level beyond the comb plate at the top and bottom before risers begin to form (ADAAG 10.3.1(16)). It also required color contrast on treads. Both provisions were removed in the proposed rule as recommended by the advisory committee, which questioned the need for such criteria in guidelines for accessibility. Comments requested that these specifications be restored for greater access. Commenters noted that the required color contrast benefits persons with low vision.

Response. In the final rule, the Board has added a reference to relevant provisions in the ASME A17.1 Safety Code for Elevators and Escalators instead of providing its own specification (810.9). This will ensure consistency with the safety code. The ASME code requires steps to be demarcated by yellow lines 2 inches wide maximum along the back and sides of steps (ASME A17.1, section 6.1.3.5.6). It also requires at least two flat steps and no more than four flat steps at the entrance and exit of every escalator (ASME A17.1, section 6.1.3.6.5). Consistent with the original ADAAG, an exception from these requirements is provided for existing escalators in key stations (810.9, Exception).

Section 810.10 addresses track crossings at transportation facilities. The proposed rule required route surfaces to be level with the rail top, but permitted a 2½ inch gap at the inner edge of rails to accommodate wheel flanges (1003.2.7). Where this gap is not practicable, an above-grade or below-grade accessible route was specified. In the final rule, the Board has simplified this provision by applying specifications for accessible routes. An exception preserves the permitted 2½ inch gap for wheel flanges.

811 Storage

Requirements in section 811 address storage. In the proposed rule, these provisions had been provided in Chapter 9 (section 905), which addresses built-in furnishings and equipment. These provisions have been moved to Chapter 8, which the Board considers a more appropriate location because it covers accessible spaces and elements. Provisions of this section address clear floor or ground space (811.2), the height of storage elements (811.3), and operable parts, such as storage hardware (811.4). In the final rule, the Board has clarified the application of the height specifications in section 811.3 to storage elements and has removed specific references to clothes rods and hooks, which it considers redundant. No substantive changes have been made to the criteria for storage.

Chapter 9: Built-In Elements

Chapter 9 covers built-in elements, including dining surfaces and work surfaces (902), benches (903), and sales and service counters (904). Changes made to this section include:

- Clarification of provisions for benches concerning clear floor or ground space (903.2), back support (903.4), and height (903.5).
- Addition of a requirement for check writing surfaces at check-out aisles (904.3.3).
- Clarification of requirements for accessible sales and service counters that are less than 36 inches long (904.4.1).
- Revision of requirements for communication devices where security glazing is provided (904.6).
- Relocation of provisions for storage from section 905 to Chapter 8 (811).

902 Dining Surfaces and Work Surfaces

Section 902 provides specifications for seating at dining and work surfaces. Clear floor space is required for a forward approach (902.2), and a surface height of 28 to 34 inches is specified (902.3). Alternate specifications for surfaces designed for children's use are also provided (902.4).

Comment. Commenters expressed concern about use of the terms "dining surfaces" and "work surfaces" and urged the Board to include definitions of the terms in the final rule. Comments considered the term "dining surfaces" insufficient in covering bars where only drinks are consumed. Questions were also raised about the term "work surfaces" which some commenters thought might be misconstrued as

applying only to surfaces in employee work areas. Some commenters considered the term too limiting and questioned whether it would apply, as they felt it should, to surfaces used for purposes not necessarily considered "work," such as counters that support credit card readers or video games. These comments urged the requirement to be modified to apply to all built-in tables and counters used by the public for any purpose.

Response. The Board has clarified the application of this section by revising scoping provisions for accessible dining and work surfaces, as discussed above in section 226. The term dining surface has been clarified as applying to those dining surfaces used "for the consumption of food or drink" (226.1). In addition, the Board has indicated in the ADA scoping provisions that the types of work surfaces covered do not include those surfaces used by employees since elements of work stations subject to the ADA are not required to comply with these guidelines (226.1). A similar clarification is not provided in ABA scoping provisions since work stations covered by the ABA are fully subject to the guidelines.

Comment. Persons with disabilities considered the 34 inch maximum height too high for surfaces used for any length of time. These commenters recommended that where only a portion of counters are made accessible, the accessible height should be 31 inches maximum. Some commenters also recommended a higher minimum height of 29 inches instead of 28 inches to allow a more comfortable knee clearance.

Response. The Board has not revised the specified height for dining and work surfaces or the minimum clearances for knee and toe space required below since it believes further research is needed on these long-standing specifications, particularly in relation to people who use scooters and other powered mobility aids. Research on powered mobility aids the Board is currently sponsoring through the Rehabilitation Engineering Research Center on Universal Design will provide information on various fundamental specifications the Board may use in future updates of the guidelines.

903 Benches

Specifications for benches address clear floor or ground space (903.2), size (903.3), back support (903.4), height (903.5), structural strength (903.6), and slip resistance in wet locations (903.7).

Comment. The proposed rule specified that the wheelchair space be positioned so that it provides a parallel approach to an end of the bench seat (903.2). Commenters indicated that this provision could be misinterpreted as allowing the space to be provided in front of the bench at one end. Comments suggested clarifying that the clear floor or ground space is to be located parallel to the short axis of the bench.

Response. The Board has clarified that the clear floor or ground space is to be "parallel to the short axis of the bench."

Comment. The proposed rule required back support to be provided that extends vertically from a point no more than 2 inches above the bench to a height of at least 18 inches above the bench and that extends horizontally at least 42 inches (903.3). Commenters recommended clarification on the permitted horizontal distance of the back support from the rear edge of the seat. It was also recommended that the criteria for back support, which were included in the specifications for bench size, be relocated into a separate provision specific to back support.

Response. In the final rule, the specifications for back support have been clarified and relocated to a separate provision (903.4). The Board has added clarification that the back support may be located up to 2½ inches from the rear edge of the seat, measured horizontally. This specification is similar to one provided for shower seats (610.3). In addition, clarification has been added that the dimensions for back support are measured from the surface of the seat.

Comment. Commenters requested clarification as to whether walls can be used to provide back support where the seat is attached to walls. Most of these comments urged the Board to clearly allow the use of walls in providing back support. This would be consistent with an advisory note in the proposed rule which made reference to "dressing rooms where benches are fixed to the wall for back support" (Advisory 903.3).

Response. It was the Board's intent in the proposed rule to allow the use of walls for back support where benches are attached to walls. In the final rule, the Board has added clarification to the text of the requirement stating that benches shall provide back support or shall be affixed to the wall (903.4).

Comment. The proposed rule specified that the bench seat be 17 to 19 inches above the floor or ground (903.4). Commenters noted that this specification should be clarified as applying to the height as measured at the top of the seat surface.

Response. In the final rule, the specification for height (renumbered as 903.5) has been revised as applying to the top of the bench seat surface.

904 Sales and Service Counters

This section covers the approach to counters (904.2), check-out aisles (904.3), sales and service counters (904.4), food service lines (904.5), and security glazing (904.6).

Comment. Specifications are provided for the counter surface height of check-out aisles, including the height of counter edge protection, which is limited to 2 inches above the counter surface (904.3.2). Commenters requested that clarification be added that the edge protection height limitation applies only to the aisle of the check-out counter.

Response. The Board has added clarification that the specified height for edge protection at check-out aisle counters applies to the aisle side of the counter (904.3.2).

Comment. The counter surface of check-out aisle counters is required to be 38 inches high maximum. Comments from persons with disabilities considered 38 inches to be too high.

Response. The Board has clarified requirements for check-out aisles by adding a provision specific to check-writing surfaces (904.3.3). Under this requirement, the height of check-writing surfaces, where provided, is to comply with the height of work surfaces addressed in section 902.3 (34 inches maximum), consistent with the Board's intent in the proposed rule.

Comment. Accessible sales or services counters, or portions of them, must be no higher than 36 inches where either a parallel or forward approach is provided (904.4). Comments from persons with disabilities considered this too high to be used as a writing surface. Where only a portion of a counter is made accessible, these commenters advised that the maximum height should be 32 inches. Comments from the retail industry advised that a higher surface height is needed to accommodate various types of counters, such as glass display cases, which are typically manufactured at a height of 38 inches.

Response. The Board has retained the specified height of 36 inches for sales and service counters, which is consistent with the original ADAAG, to accommodate both persons who use wheelchairs and those that do not. Even where only a portion of the counter is accessible, in some cases that portion may serve as the transaction area for all customers. In the final rule, the Board has clarified that the accessible portion of counters must extend the full depth of the counter (904.4.1 and 904.4.2), consistent with the new ANSI A117.1

standard. Where a parallel approach is provided, the accessible portion must be at least 36 inches long. The Board has added an exception that where a provided counter surface is less than 36 inches long, the entire surface shall be accessible to clarify that in such cases the counter does not have to be lengthened (904.4.1, Exception).

Section 904.6 requires that where counter or teller windows have security glazing to separate personnel from the public, at least one of each type must provide a method to facilitate voice communication.

Comment. The proposed rule referenced examples of acceptable methods (grilles, slats, talk-through baffles, intercoms, and telephone handset devices) and required access both for persons who use wheelchairs and for persons who may have difficulty bending or stooping. Commenters indicated that access for persons who have difficulty bending or stooping is unclear absent specific technical criteria. Such criteria should be provided or the requirement removed according to these comments. In addition, it was recommended that the requirement for volume control for "hand-operable communication devices" be revised for clarity as applying to telephone handset devices.

Response. The requirement that methods to facilitate voice communication be accessible both to persons who use wheelchairs and to persons who may have difficulty bending or stooping has been removed in the final rule (904.6). The Board has also clarified that the requirement for volume controls applies to telephone handset devices, where provided. In addition, the Board has relocated information concerning acceptable types of communication methods to the corresponding advisory note which is a more appropriate location for this kind of information.

Chapter 10: Recreation Facilities

Chapter 10 contains technical provisions for various types of recreation facilities. These requirements were developed separately from this rulemaking and have been incorporated into the final rule without substantive change. Sections of this chapter address:

- Amusement rides (1002).
- Recreational boating facilities (1003).
- Exercise machines (1004).
- Fishing piers and platforms (1005).
- Golf facilities (1006).
- Miniature golf facilities (1007).
- Play areas (1008).
- Swimming pools, wading pools, and spas (1009).
- Shooting facilities with firing positions (1010).

1002 Amusement Rides

Provisions for amusement rides require either a wheelchair space on the ride, a ride seat designed for transfer, or a device designed for transfer to the ride. This section also addresses access at loading and unloading areas and provides criteria for wheelchair spaces, ride seats designed for transfer, and transfer devices.

1003 Recreational Boating Facilities

This section provides requirements for gangways, boating piers at boat launch ramps, and boat slips. Requirements for accessible routes and ramps are applied to gangways, but exceptions to criteria for maximum rise and slope, handrail extensions, and level landings are provided.

1004 Exercise Machines

This section requires clear floor space for transfer to, or use of, exercise machines.

1005 Fishing Piers and Platforms

Specifications for fishing piers and platforms address accessible routes, railings, edge protection, clear floor space, and turning space.

1006 Golf Facilities

Provisions of this section recognize that access to golf courses is typically achieved through the use of golf cars. Golf car passages are permitted in lieu of accessible routes throughout golf courses. Technical criteria are provided for golf car passages, accessible routes, teeing grounds, putting greens, and weather shelters.

1007 Miniature Golf Facilities

This section covers miniature golf courses and contains specifications for accessible routes that take into account design conventions for miniature golf courses, such as carpeted play surfaces and curbs. All level areas of an accessible hole where a ball may come to rest are to be within golf club reach of the accessible route.

1008 Play Areas

The play area specifications address accessible routes, ground level and elevated play components, play structures, and ground surfaces.

1009 Swimming Pools, Wading Pools, and Spas

This section addresses access to swimming pools, wading pools, and spas. Specifications are provided for various means of providing pool access, including pool lifts, sloped entries, transfer walls, transfer systems, and stairs.

1010 Shooting Facilities With Firing Positions

This section requires turning space at firing positions required to be accessible.

Regulatory Process Matters

Executive Order 12866: Regulatory Planning and Review

This final rule has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866. The Board has prepared a regulatory assessment for the final rule. The assessment has been placed in the docket and is available for public inspection. The assessment is also available on the Board's web site at *www.access-board.gov*. The assessment is summarized below.

Benefits

Since the enactment of the Americans with Disabilities Act (ADA), accessibility requirements have been increasingly incorporated in the model codes. The Board worked collaboratively with the International Code Council (ICC) and the ANSI A117 Committee to harmonize the final rule with the International Building Code, which was initially published in 2000 and was revised in 2003, and the ICC/ANSI A117.1 Standard on Accessible and Usable Buildings and Facilities, which is referenced in the International Building Code. The International Building Code has been adopted statewide by 28 States, and by local governments in another 15 States.

Harmonizing the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) with the International Building Code and the ICC/ANSI A117.1 standard promotes increased compliance, efficiency, and economic growth. It is difficult and time consuming for business owners, builders, developers, and architects to deal with different accessibility requirements at the Federal, State, and local government levels. Differing requirements can contribute to mistakes resulting in litigation and costly retrofitting of facilities after they are constructed. The ADA authorizes the Department of Justice (DOJ) to certify State or local codes that meet or exceed Federal accessibility requirements. State and local governments that adopt the International Building Code will find it easier to have their codes certified, and more State and local governments are expected to submit their codes to DOJ

for certification. In jurisdictions where codes have been certified by DOJ, business owners, builders, developers, and architects can rely on their State or local government building plan approval and inspection processes as a "check-point" for ensuring that their facilities comply with Federal accessibility requirements. Potential mistakes can be corrected early in the construction process when adjustments can be made easily and inexpensively compared to costly retrofitting after a facility is constructed. Compliance with a certified code is also rebuttable evidence of compliance with Federal accessibility requirements in litigation to enforce the ADA.

The Board also revised some requirements in the existing guidelines for the ADA and the ABA to reduce the impacts on facilities, including lowering the number of wheelchair spaces and assistive listening devices required in large sports facilities; exempting small raised press boxes in sports facilities from the accessible route requirements; exempting parking lots with a few parking spaces from signage requirements for accessible parking spaces; and reducing the number of toilet rooms required to be accessible where multiple single user toilet rooms are clustered at the same location.

Regulatory Alternatives That Eliminate Impacts Estimated for the Proposed Rule

The regulatory assessment for the proposed rule estimated that the rule would have an annual impact of $87.5 million on newly constructed office buildings, hotels, and sports stadiums and arenas. The Board adopted alternatives in the final rule that eliminate these impacts as shown in Table 1.

TABLE 1.—ALTERNATIVES THAT ELIMINATE IMPACTS ESTIMATED FOR THE PROPOSED RULE

Proposed rule	Final rule
Visible alarms required in all employee work areas, including individual offices. Estimated cost: $16 million annually.	Visible alarms required in public and common use areas, which is consistent with existing guidelines. Where employee work areas have audible alarm coverage, wiring system required to be designed so that visible alarms can be added to the system as needed.
Communication features required in 50 percent of hotel guest rooms. Estimated cost: $31 million annually.	Existing guidelines retained, which require substantially less than 50 percent of hotel guest rooms to provide communication features.
Elevators and platform lifts required to be provided in sufficient number, capacity, and speed so that persons using wheelchair spaces and designated aisle seats have equivalent level of service as persons in the same seating area who can use stairs. Estimated cost: $1.5 million annually.	Existing guidelines retained, which require at least one accessible route to connect each story and mezzanine in multi-story facilities.
Wheelchair spaces and designated aisle seats required to be dispersed vertically on each accessible level. Estimated cost: $33.5 million annually.	Wheelchair spaces required to be dispersed vertically at varying distances from the screen, performance area, or playing field, which is consistent with existing guidelines.
Companion seats required to be readily removable and to provide additional wheelchair spaces. Estimated cost: $4 million annually.	Companion seats permitted to be removable, but not required to provide additional wheelchair spaces.
One percent of seats required to be designated aisle seats; 25 percent of designated aisle seats required to be on an accessible route; and rest of designated aisle seats required to be not more than two rows from an accessible route. Estimated cost: $1.5 million annually.	Five percent of aisle seats required to be designated aisle seats and to be aisle seats closest to accessible routes.

Baseline

The assessment compares the final rule to ADAAG and the International Building Code in order to evaluate the potential impacts of the rule. In the absence of the final rule, newly constructed and altered facilities covered by the ADA would have to comply with ADAAG as initially issued in 1991, which has been adopted as enforceable standards by DOJ. Many newly constructed and altered facilities covered by the ABA are also required to comply with ADAAG when it provides a greater level of accessibility compared to the Uniform Federal Accessibility Standards (UFAS). Comparing the final rule to ADAAG is the upper bound of the range of potential impacts. The International Building Code has been adopted statewide by 28 States and by local governments in another 15 States. In the absence of the final rule, newly constructed and altered facilities are required to comply with the International Building Code in jurisdictions that have adopted the model code. Comparing the final rule to the International Building Code is the lower bound of the range of potential impacts, and assumes that facilities covered by the ADA or the ABA are also required to comply with equivalent requirements in the International Building Code. The actual impacts will be between the lower and upper bound of the range.

Potential Impacts of Final Rule

The final rule reorganizes and renumbers ADAAG, and rewrites the text to be clearer and easier to understand. Most of the scoping and technical requirements in ADAAG have not been changed. An independent codes expert compared the final rule and ADAAG to identify revisions that add new features or space to a facility, or present design challenges. The codes expert identified 27 revisions that are expected to have minimal impacts on the new construction and alteration of facilities, including adding scoping requirements and exceptions for common use circulation paths in employee work areas; revising scoping requirements for public entrances; referencing the International Building Code for accessible means of egress; adding scoping requirements for dwelling units with mobility features in Federal, State, and local government housing; lowering the high side reach; and adding technical requirements for automated teller machines and fare machines.

The codes expert also identified 14 revisions that are expected to have monetary impacts on the new construction and alteration of facilities. An independent cost estimator prepared cost estimates for these revisions using standard industry procedures. The revisions that are expected to have monetary impacts on the new construction and alteration of facilities are summarized in Table 2.

TABLE 2.—REVISIONS WITH MONETARY IMPACTS ON NEW CONSTRUCTION AND ALTERATIONS

Final rule	ADAAG	International building code	Unit cost
Where circulation path directly connects assembly seating area and performing area, accessible route required to directly connect both areas.	Accessible route required to connect assembly seating area and performing area.	IBC 2000 & 2003 have equivalent requirements to final rule.	Will vary from $0 to $15,674 depending on specific design of facility.
Where platform lift serves as part of accessible means of egress, standby power required.	No requirement	IBC 2003 has equivalent requirement to final rule.	Will vary from $0 to $2,353 depending on specific design of facility.
One in every 6 accessible parking spaces required to be van accessible.	One in every 8 accessible parking spaces required to be van accessible.	IBC 2003 has equivalent requirement to final rule.	$75 to $344.
Toilet rooms with 6 or more toilet compartments, or combination of 6 or more water closets and urinals, required to provide ambulatory accessible toilet compartment with grab bars.	Toilet rooms with 6 or more toilet compartments required to provide ambulatory accessible toilet compartment with grab bars.	IBC 2000 & 2003 have equivalent requirements to final rule.	$145.
Private facilities required to provide public TTY in building with 4 or more public telephones and on floor with 4 or more public telephones. Government facilities required to provide public TTY in building with public telephone and on floor with public telephone Private and government facilities required to provide public TTY on site with 4 or more public telephones, and in bank of 4 or more public telephones. Banks of public telephones located within 200 feet of, and on same floor as, another bank of telephones with public TTY exempt. Bus or rail station with public telephone at entrance required to provide public TTY. Public rest stops with public telephone required to provide public TTY	Private facilities with 4 or more public telephones required to provide public TTY.. Government facilities with public telephone in public use area of building required to provide public TTY. Rail stations with 4 or more public telephones at entrance required to provide public TTY.	IBC 2000 (Appendix E) has equivalent requirement to final rule for private facilities. IBC 2003 (Appendix E) has equivalent requirement to final rule for private and government facilities	$2,320.
At least one operable window in accessible rooms required to comply with technical requirements for operable parts. Hotel guest rooms that are not required to provide mobility features and dwelling units are exempt.	No requirement	IBC 2000 & 2003 have equivalent requirements to final rule for certain occupancies.	$505.
Two-way communication systems at entrances required to provide audible and visual signals.	No requirement	No equivalent requirement to final rule.	$1,392.
Automatic doors serving accessible means of egress required to provide maneuvering clearance or to have standby power.	No requirement	No equivalent requirement to final rule.	$2,353.
Doors on platform lifts required to be power operated. Platform lifts serving only 2 landings and with self-closing doors on opposite sides exempt.	Doors required to provide maneuvering clearance or to be power operated.	IBC 2000 & 2003 have equivalent requirements to final rule.	Will vary from $0 to $569 depending on specific design of facility.
Minimum clearance at water closet in accessible single user toilet rooms: 60 × 56 inches.	Minimum clearance at water closet in accessible single user toilet rooms based on approach: Forward: 48 × 60 inches; Parallel: 48 × 56 inches; Both forward and parallel: 60 × 56 inches.	IBC 2000 & 2003 have equivalent requirements to final rule, except for dwelling units.	$286 for dwelling units $667 for other facilities.

TABLE 2.—REVISIONS WITH MONETARY IMPACTS ON NEW CONSTRUCTION AND ALTERATIONS—Continued

Final rule	ADAAG	International building code	Unit cost
Shower spray unit with on-off control required in bathtubs and shower compartments in accessible toilet rooms and bathing rooms.	Shower spray unit required in bathtubs and shower compartments in accessible toilet rooms and bathing rooms.	No equivalent requirement to final rule.	$161.
Minimum clearance between opposing base cabinets, countertops, appliances, or walls in accessible galley kitchens where two entries not provided: 60 inches. Kitchens without cooktop or conventional range exempt.	Minimum clearance between opposing base cabinets, countertops, appliances, or walls in accessible galley kitchens: 40 inches.	No equivalent requirement to final rule.	$993.
Comparable vanity countertop space required in hotel guest rooms with mobility features.	No requirement	No equivalent requirement to final rule.	$752.
Two percent of dwelling units in Federal, State, and local government housing required to provide communication features.	No requirement	No equivalent requirement to final rule.	$96 for visual signal if door bell and peephole provided. $322 for doorbell with visual signal and peephole. $353 for TTY connection if voice communication system provided at entrance.

National Costs

Office buildings, hotels, hospitals and nursing homes, and Federal, State, and local government housing will be affected by many of the revisions in Table 2, and are likely to experience relatively higher monetary impacts than other facilities. The assessment estimates the national costs of the revisions on these facilities based on annual construction data. The national costs are summarized in Table 3.

TABLE 3.—NATIONAL COSTS FOR FACILITIES LIKELY TO EXPERIENCE RELATIVELY HIGHER MONETARY IMPACTS

Facility	National costs compared to	
	ADAAG upper bound (millions)	International building code lower bound (millions)
Office Buildings	$1.5	$0.7
Hotels	$6.2	$4.1
Hospitals & Nursing Homes	$13.6	$2.4–$2.9
Government Housing	$5.4	$5.4
Total	$26.7	$12.6–$13.1

The assessment also estimates the additional costs imposed on individual facilities as a percentage of total construction costs as shown in Table 4.

TABLE 4.—ADDITIONAL COSTS FOR INDIVIDUAL FACILITIES

Facility	Additional costs as percentage of total construction costs compared to	
	ADAAG upper bound (percent)	international building code lower bound (percent)
Office Buildings	0.02 to 0.10	0.01 to 0.08
Hotels	0.06 to 0.50	0.04 to 0.30
Hospitals & Nursing Homes	0.02	0.00
Government Housing	0.01	0.01

The final rule will potentially impact the new construction and alteration of other types of facilities. Industry reports estimate $152 billion of non-residential building construction projects were started in 2002; and government reports estimate $264 billion of non-residential building construction work and $6 billion of Federal, State and local government housing construction work was installed in 2002. In order to be considered an economically significant

regulatory action (*i.e.*, annual impact on the economy of $100 million or more), the final rule would need to have impacts ranging from 0.04 percent to 0.07 percent of industry and government construction estimates. The final rule will have impacts within or above this range on office buildings and hotels, and it is likely that the impacts on some other facilities will be within or above this range. Although the impacts are not significant for an individual facility, when added together across the economy the impacts can be economically significant. Because an extremely low threshold of impacts on individual facilities can render the final rule economically significant, and because the benefits of the final rule are unquantifiable but substantial, the Board has classified the final rule as an economically significant regulatory action.

The final rule will also affect leased postal facilities. When the United States Postal Service enters into a new lease for a postal facility, including previously occupied space, it will have to comply with the accessibility requirements in the final rule for facilities leased by Federal agencies, including providing accessible customer service counters and van accessible parking spaces. The United States Postal Service leases 27,000 postal facilities, and estimates that it will cost $9,234 per facility to comply with the final rule. The United States Postal Service enters into an average of 1,661 new leases per year for postal facilities, and estimates it will cost $15.3 million annually for leased postal facilities to comply with the final rule.

Regulatory Flexibility Act

For the proposed rule, the Board certified that the rule had no significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The Board based the determination on the regulatory assessment prepared for the proposed rule under Executive Order 12866 which showed that, except for large sports facilities, the rule added less than 0.5 percent to the total construction costs of the affected facilities compared to ADAAG; the 1998 edition of the ICC/ANSI A117.1 Standard on Accessible and Usable Buildings and Facilities; and the new International Building Code, which was under development and was expected to be widely adopted by State and local governments.

The Small Business Administration and business groups objected to the certification of no significant economic impact. They noted that the ICC/ANSI A117.1 standard is a voluntary consensus standard, and there was no factual information presented in the regulatory assessment for the proposed rule showing the ICC/ANSI A117.1 standard had actually been adopted by State and local governments. Since the proposed rule was published in November 1999, the new International Building Code has been published. The 2000 and 2003 editions of the International Building Code reference the 1998 edition of the ICC/ANSI A117.1 standard for technical requirements. The International Building Code has been adopted statewide by 28 States, and by local governments in another 15 States.

For the final rule, the regulatory assessment evaluates the impacts of the rule by separately comparing the revisions to ADAAG and the International Building Code. The assessment estimates the additional costs of the revisions as a percentage of the total construction costs for office buildings, hotels, hospitals and nursing homes, and Federal, State, and local government housing. These facilities are likely to experience relatively higher monetary impacts than other facilities. The final rule adds 0.01 to 0.5 percent to the total construction costs of the facilities compared to ADAAG; and 0.00 to 0.3 percent to the total construction costs of the facilities compared to the International Building Code. These monetary impacts are not significant for individual facilities.

The Small Business Administration and business groups request the Board to analyze the impacts of the final rule on alterations to existing facilities. The impacts will be facility specific and will depend on the elements and spaces that are altered in an existing facility. The regulatory assessment examines the impacts of the revisions that have monetary impacts on alterations to existing facilities by answering a series of questions about whether the element or space is typically altered; whether the element or space is part of the "path of travel" serving a primary function area; and whether the general exception for technical infeasibility may apply to alterations of the element or space. The regulatory assessment also includes alteration projects in the national cost estimates of the revisions.

Finally, the Small Business Administration and business groups request the Board to analyze the impacts of the final rule on the obligation of businesses under the ADA to remove architectural and communication barriers in existing facilities, where it is readily achievable. DOJ will revise the accessibility standards for the ADA after this final rule is published. Business groups are concerned that, when the accessibility standards for the ADA are revised, existing facilities that were constructed or altered in compliance with earlier accessibility standards will have to undergo "barrier removal" and meet any new or different scoping and technical requirements in the revised accessibility standards. Business groups recommend that existing facilities constructed or altered in compliance with earlier accessibility standards be "grandfathered" for purposes of "barrier removal." The Board acknowledges that "barrier removal" obligations need to be clarified when the accessibility standards are revised. However, the Board has no authority to issue regulations regarding "barrier removal" obligations. DOJ is the agency responsible for issuing regulations regarding "barrier removal" obligations, and is required to analyze the impacts of any new or different scoping and technical requirements on "barrier removal" obligations when the accessibility standards are revised.

On the basis of the regulatory assessment for the final rule, the Board certifies that the final rule has no significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

Executive Order 13132: Federalism

The final rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The final rule is issued pursuant to the ADA and the ABA to ensure that facilities covered by those laws are readily accessible to and usable by people with disabilities. Ensuring the civil rights of groups that have been subject to discrimination has long been recognized as a national issue and a proper function of the Federal government. The ADA was enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to ensure that the Federal government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. 12101 (b) (1) and (3). The ADA recognizes the authority of State and local governments to enact and enforce laws that "provide greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. 12201 (b). The ABA applies to federally financed facilities. The final rule has been harmonized with model codes and standards that are adopted by State and local governments to regulate building

construction. The Board consulted with State and local governments throughout the rulemaking process. State and local governments were on the advisory committee which recommended revisions to the guidelines, participated in public hearings, and submitted comments on the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to rules that enforce the constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the ADA and the ABA, an assessment of the rules impacts on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

List of Subjects

36 CFR Part 1190

Buildings and facilities, Individuals with disabilities.

36 CFR Part 1191

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

Emil H. Frankel,

Chair, Architectural and Transportation Barriers Compliance Board.

■ For the reasons stated in the preamble, under the authority of 29 U.S.C. 792(b)(3) and 42 U.S.C. 12204, the Architectural and Transportation Barriers Compliance Board amends chapter XI of Title 36 of the Code of Federal Regulations as follows:

PART 1190—[REMOVED]

■ 1. Part 1190 is removed.

■ 2. Part 1191 is revised to read as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES; ARCHITECTURAL BARRIERS ACT (ABA) ACCESSIBILITY GUIDELINES

Sec.

Authority: 29 U.S.C. 792(b)(3); 42 U.S.C. 12204.

§ 1191.1 Accessibility guidelines.

(a) The accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act are set forth in Appendices B and D to this part. The guidelines serve as the basis for accessibility standards adopted by the Department of Justice and the Department of Transportation under the Americans with Disabilities Act.

(b) The accessibility guidelines for buildings and facilities covered by the Architectural Barriers Act are set forth in Appendices C and D to this part. The guidelines serve as the basis for accessibility standards adopted by the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service under the Architectural Barriers Act.

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Appendix B to Part 1191—Americans with Disabilities Act: Scoping

ADA CHAPTER 1: APPLICATION AND ADMINISTRATION

101 Purpose

101.1 General. This document contains scoping and technical requirements for *accessibility* to *sites*, *facilities*, *buildings*, and *elements* by individuals with disabilities. The requirements are to be applied during the design, construction, *additions* to, and *alteration* of *sites*, *facilities*, *buildings*, and *elements* to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990 (ADA).

> **Advisory 101.1 General.** In addition to these requirements, covered entities must comply with the regulations issued by the Department of Justice and the Department of Transportation under the Americans with Disabilities Act. There are issues affecting individuals with disabilities which are not addressed by these requirements, but which are covered by the Department of Justice and the Department of Transportation regulations.

101.2 Effect on Removal of Barriers in Existing Facilities. This document does not address existing *facilities* unless *altered* at the discretion of a covered entity. The Department of Justice has authority over existing *facilities* that are subject to the requirement for removal of barriers under title III of the ADA. Any determination that this document applies to existing *facilities* subject to the barrier removal requirement is solely within the discretion of the Department of Justice and is effective only to the extent required by regulations issued by the Department of Justice.

102 Dimensions for Adults and Children

The technical requirements are based on adult dimensions and anthropometrics. In addition, this document includes technical requirements based on children's dimensions and anthropometrics for drinking fountains, water closets, toilet compartments, lavatories and sinks, dining surfaces, and work surfaces.

103 Equivalent Facilitation

Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed, provided they result in substantially equivalent or greater *accessibility* and usability.

> **Advisory 103 Equivalent Facilitation.** The responsibility for demonstrating equivalent facilitation in the event of a challenge rests with the covered entity. With the exception of transit facilities, which are covered by regulations issued by the Department of Transportation, there is no process for certifying that an alternative design provides equivalent facilitation.

104 Conventions

104.1 Dimensions. Dimensions that are not stated as "maximum" or "minimum" are absolute.

104.1.1 Construction and Manufacturing Tolerances. All dimensions are subject to conventional industry tolerances except where the requirement is stated as a range with specific minimum and maximum end points.

Advisory 104.1.1 Construction and Manufacturing Tolerances. Conventional industry tolerances recognized by this provision include those for field conditions and those that may be a necessary consequence of a particular manufacturing process. Recognized tolerances are not intended to apply to design work.

It is good practice when specifying dimensions to avoid specifying a tolerance where dimensions are absolute. For example, if this document requires "1½ inches," avoid specifying "1½ inches plus or minus X inches."

Where the requirement states a specified range, such as in Section 609.4 where grab bars must be installed between 33 inches and 36 inches above the floor, the range provides an adequate tolerance and therefore no tolerance outside of the range at either end point is permitted.

Where a requirement is a minimum or a maximum dimension that does not have two specific minimum and maximum end points, tolerances may apply. Where an element is to be installed at the minimum or maximum permitted dimension, such as "15 inches minimum" or "5 pounds maximum", it would not be good practice to specify "5 pounds (plus X pounds) or 15 inches (minus X inches)." Rather, it would be good practice to specify a dimension less than the required maximum (or more than the required minimum) by the amount of the expected field or manufacturing tolerance and not to state any tolerance in conjunction with the specified dimension.

Specifying dimensions in design in the manner described above will better ensure that facilities and elements accomplish the level of accessibility intended by these requirements. It will also more often produce an end result of strict and literal compliance with the stated requirements and eliminate enforcement difficulties and issues that might otherwise arise. Information on specific tolerances may be available from industry or trade organizations, code groups and building officials, and published references.

104.2 Calculation of Percentages. Where the required number of *elements* or *facilities* to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such *elements* or *facilities* shall be provided. Where the determination of the required size or dimension of an *element* or *facility* involves ratios or percentages, rounding down for values less than one half shall be permitted.

104.3 Figures. Unless specifically stated otherwise, figures are provided for informational purposes only.

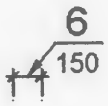
Convention	Description
	dimension showing English units (in inches unless otherwise specified) above the line and SI units (in millimeters unless otherwise specified) below the line
	dimension for small measurements
	dimension showing a range with minimum - maximum
min	minimum
max	maximum
>	greater than
≥	greater than or equal to
<	less than
≤	less than or equal to
	boundary of clear floor space or maneuvering clearance
	centerline
	a permitted element or its extension
	direction of travel or approach
	a wall, floor, ceiling or other element cut in section or plan
	a highlighted element in elevation or plan
	location zone of element, control or feature

Figure 104
Graphic Convention for Figures

105 Referenced Standards

105.1 General. The standards listed in 105.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, NW, Washington, DC; at the Department of Transportation, 400 Seventh Street, SW, Room 10424, Washington DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

105.2 Referenced Standards. The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

105.2.1 ANSI/BHMA. Copies of the referenced standards may be obtained from the Builders Hardware Manufacturers Association, 355 Lexington Avenue, 17th floor, New York, NY 10017 (http://www.buildershardware.com).

ANSI/BHMA A156.10-1999 American National Standard for Power Operated Pedestrian Doors (see 404.3).

ANSI/BHMA A156.19-1997 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

ANSI/BHMA A156.19-2002 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

Advisory 105.2.1 ANSI/BHMA. ANSI/BHMA A156.10-1999 applies to power operated doors for pedestrian use which open automatically when approached by pedestrians. Included are provisions intended to reduce the chance of user injury or entrapment.

ANSI/BHMA A156.19-1997 and A156.19-2002 applies to power assist doors, low energy power operated doors or low energy power open doors for pedestrian use not provided for in ANSI/BHMA A156.10 for Power Operated Pedestrian Doors. Included are provisions intended to reduce the chance of user injury or entrapment.

105.2.2 ASME. Copies of the referenced standards may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016 (http://www.asme.org).

ASME A17.1- 2000 Safety Code for Elevators and Escalators, including ASME A17.1a-2002 Addenda and ASME A17.1b-2003 Addenda (see 407.1, 408.1, 409.1, and 810.9).

ASME A18.1-1999 Safety Standard for Platform Lifts and Stairway Chairlifts, including ASME A18.1a-2001 Addenda and ASME A18.1b-2001 Addenda (see 410.1).

ASME A18.1-2003 Safety Standard for Platform Lifts and Stairway Chairlifts, (see 410.1).

Advisory 105.2.2 ASME. ASME A17.1-2000 is used by local jurisdictions throughout the United States for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators and escalators. The majority of the requirements apply to the operational machinery not seen or used by elevator passengers. ASME A17.1 requires a two-way means of emergency communications in passenger elevators. This means of communication must connect with emergency or authorized personnel and not an automated answering system. The communication system must be push button activated. The activation button must be permanently identified with the word "HELP." A visual indication acknowledging the establishment of a communications link to authorized personnel must be provided. The visual indication must remain on until the call is terminated by authorized personnel. The building location, the elevator car number, and the need for assistance must be provided to authorized personnel answering the emergency call. The use of a handset by the communications system is prohibited. Only the authorized personnel answering the call can terminate the call. Operating instructions for the communications system must be provided in the elevator car.

The provisions for escalators require that at least two flat steps be provided at the entrance and exit of every escalator and that steps on escalators be demarcated by yellow lines 2 inches wide maximum along the back and sides of steps.

ASME A18.1-1999 and ASME A18.1-2003 address the design, construction, installation, operation, inspection, testing, maintenance and repair of lifts that are intended for transportation of persons with disabilities. Lifts are classified as: vertical platform lifts, inclined platform lifts, inclined stairway chairlifts, private residence vertical platform lifts, private residence inclined platform lifts, and private residence inclined stairway chairlifts.

This document does not permit the use of inclined stairway chairlifts which do not provide platforms because such lifts require the user to transfer to a seat.

ASME A18.1 contains requirements for runways, which are the spaces in which platforms or seats move. The standard includes additional provisions for runway enclosures, electrical equipment and wiring, structural support, headroom clearance (which is 80 inches minimum), lower level access ramps and pits. The enclosure walls not used for entry or exit are required to have a grab bar the full length of the wall on platform lifts. Access ramps are required to meet requirements similar to those for ramps in Chapter 4 of this document.

Each of the lift types addressed in ASME A18.1 must meet requirements for capacity, load, speed, travel, operating devices, and control equipment. The maximum permitted height for operable parts is consistent with Section 308 of this document. The standard also addresses attendant operation. However, Section 410.1 of this document does not permit attendant operation.

105.2.3 ASTM. Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (http://www.astm.org).

ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 1008.2.6.2).

ASTM F 1292-04 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment (see 1008.2.6.2).

ASTM F 1487-01 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 106.5).

ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 1008.2.6.1).

Advisory 105.2.3 ASTM. ASTM F 1292-99 and ASTM F 1292-04 establish a uniform means to measure and compare characteristics of surfacing materials to determine whether materials provide a safe surface under and around playground equipment. These standards are referenced in the play areas requirements of this document when an accessible surface is required inside a play area use zone where a fall attenuating surface is also required. The standards cover the minimum impact attenuation requirements, when tested in accordance with Test Method F 355, for surface systems to be used under and around any piece of playground equipment from which a person may fall.

ASTM F 1487-01 establishes a nationally recognized safety standard for public playground equipment to address injuries identified by the U.S. Consumer Product Safety Commission. It defines the use zone, which is the ground area beneath and immediately adjacent to a play structure or play equipment designed for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting a play structure or equipment. The play areas requirements in this document reference the ASTM F 1487 standard when defining accessible routes that overlap use zones requiring fall attenuating surfaces. If the use zone of a playground is not entirely surfaced with an accessible material, at least one accessible route within the use zone must be provided from the perimeter to all accessible play structures or components within the playground.

ASTM F 1951-99 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. Surface materials that comply with this standard and are located in the use zone must also comply with ASTM F 1292. The test methods in this standard address access for children and adults who may traverse the surfacing to aid children who are playing. When a surface is tested it must have an average work per foot value for straight propulsion and for turning less than the average work per foot values for straight propulsion and for turning, respectively, on a hard, smooth surface with a grade of 7% (1:14).

105.2.4 ICC/IBC. Copies of the referenced standard may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041 (www.iccsafe.org).

International Building Code, 2000 Edition (see 207.1, 207.2, 216.4.2, 216.4.3, and 1005.2.1).

International Building Code, 2001 Supplement (see 207.1 and 207.2).

International Building Code, 2003 Edition (see 207.1, 207.2, 216.4.2, 216.4.3, and 1005.2.1).

Advisory 105.2.4 ICC/IBC. International Building Code (IBC)-2000 (including 2001 Supplement to the International Codes) and IBC-2003 are referenced for means of egress, areas of refuge, and railings provided on fishing piers and platforms. At least one accessible means of egress is required for every accessible space and at least two accessible means of egress are required where more than one means of egress is required. The technical criteria for accessible means of egress allow the use of exit stairways and evacuation elevators when provided in conjunction with horizontal exits or areas of refuge. While typical elevators are not designed to be used during an emergency evacuation, evacuation elevators are designed with standby power and other features according to the elevator safety standard and can be used for the evacuation of individuals with disabilities. The IBC also provides requirements for areas of refuge, which are fire-rated spaces on levels above or below the exit discharge levels where people unable to use stairs can go to register a call for assistance and wait for evacuation.

The recreation facilities requirements of this document references two sections in the IBC for fishing piers and platforms. An exception addresses the height of the railings, guards, or handrails where a fishing pier or platform is required to include a guard, railing, or handrail higher than 34 inches (865 mm) above the ground or deck surface.

105.2.5 NFPA. Copies of the referenced standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, (http://www.nfpa.org).

NFPA 72 National Fire Alarm Code, 1999 Edition (see 702.1 and 809.5.2).

NFPA 72 National Fire Alarm Code, 2002 Edition (see 702.1 and 809.5.2).

Advisory 105.2.5 NFPA. NFPA 72-1999 and NFPA 72-2002 address the application, installation, performance, and maintenance of protective signaling systems and their components. The NFPA 72 incorporates Underwriters Laboratory (UL) 1971 by reference. The standard specifies the characteristics of audible alarms, such as placement and sound levels. However, Section 702 of these requirements limits the volume of an audible alarm to 110 dBA, rather than the maximum 120 dBA permitted by NFPA 72-1999.

NFPA 72 specifies characteristics for visible alarms, such as flash frequency, color, intensity, placement, and synchronization. However, Section 702 of this document requires that visual alarm appliances be permanently installed. UL 1971 specifies intensity dispersion requirements for visible alarms. In particular, NFPA 72 requires visible alarms to have a light source that is clear or white and has polar dispersion complying with UL 1971.

106 Definitions

106.1 General. For the purpose of this document, the terms defined in 106.5 have the indicated meaning.

> **Advisory 106.1 General.** Terms defined in Section 106.5 are italicized in the text of this document.

106.2 Terms Defined in Referenced Standards. Terms not defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act, but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated.

106.3 Undefined Terms. The meaning of terms not specifically defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

106.5 Defined Terms.

Accessible. A *site*, *building*, *facility*, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a *building* or *facility* that provides an *accessible* route to an area of refuge, a horizontal exit, or a *public way*.

Addition. An expansion, extension, or increase in the gross floor area or height of a *building* or *facility*.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or *alteration* of *buildings* and *facilities*.

Alteration. A change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*.

Amusement Attraction. Any *facility*, or portion of a *facility*, located within an amusement park or theme park which provides amusement without the use of an amusement device. Amusement attractions include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. A system that moves persons through a fixed course within a defined area for the purpose of amusement.

Amusement Ride Seat. A seat that is built-in or mechanically fastened to an *amusement ride* intended to be occupied by one or more passengers.

Area of Sport Activity. That portion of a room or *space* where the play or practice of a sport occurs.

Assembly Area. A *building* or *facility*, or portion thereof, used for the purpose of entertainment, educational or civic gatherings, or similar purposes. For the purposes of these requirements, *assembly areas* include, but are not limited to, classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Assistive Listening System (ALS). An amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical *space* between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.

Boarding Pier. A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.

Boat Launch Ramp. A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

Boat Slip. That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Catch Pool. A pool or designated section of a pool used as a terminus for water slide flumes.

Characters. Letters, numbers, punctuation marks and typographic symbols.

Children's Use. Describes *spaces* and *elements* specifically designed for use primarily by people 12 years old and younger.

Circulation Path. An exterior or interior way of passage provided for pedestrian travel, including but not limited to, *walks*, hallways, courtyards, elevators, platform lifts, *ramps*, stairways, and landings.

Closed-Circuit Telephone. A telephone with a dedicated line such as a house phone, courtesy phone or phone that must be used to gain entry to a *facility*.

Common Use. Interior or exterior *circulation paths*, rooms, *spaces*, or *elements* that are not for *public use* and are made available for the shared use of two or more people.

Cross Slope. The slope that is perpendicular to the direction of travel (see *running slope*).

Curb Ramp. A short *ramp* cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other *elements* to warn of hazards on a *circulation path*.

Element. An architectural or mechanical component of a *building*, *facility*, *space*, or *site*.

Elevated Play Component. A *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

Employee Work Area. All or any portion of a *space* used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not *employee work areas*.

Entrance. Any access point to a *building* or portion of a *building* or *facility* used for the purpose of entering. An *entrance* includes the approach *walk*, the vertical access leading to the *entrance* platform, the *entrance* platform itself, vestibule if provided, the entry door or gate, and the hardware of the entry door or gate.

Facility. All or any portion of *buildings*, structures, *site* improvements, *elements*, and pedestrian routes or *vehicular ways* located on a *site*.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. *Gangways* that connect to vessels are not addressed by this document.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Level Play Component. A *play component* that is approached and exited at the ground level.

Key Station. Rapid and light rail stations, and commuter rail stations, as defined under criteria established by the Department of Transportation in 49 CFR 37.47 and 49 CFR 37.51, respectively.

Mail Boxes. Receptacles for the receipt of documents, packages, or other deliverable matter. *Mail boxes* include, but are not limited to, post office boxes and receptacles provided by commercial mail-receiving agencies, apartment *facilities*, or schools.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a *vehicular way*.

Mezzanine. An intermediate level or levels between the floor and ceiling of any *story* with an aggregate floor area of not more than one-third of the area of the room or *space* in which the level or levels are located. *Mezzanines* have sufficient elevation that *space* for human occupancy can be provided on the floor below.

Occupant Load. The number of persons for which the means of egress of a *building* or portion of a *building* is designed.

Operable Part. A component of an *element* used to insert or withdraw objects, or to activate, deactivate, or adjust the *element*.

Pictogram. A pictorial symbol that represents activities, *facilities*, or concepts.

Play Area. A portion of a *site* containing *play components* designed and constructed for children.

Play Component. An *element* intended to generate specific opportunities for play, socialization, or learning. *Play components* are manufactured or natural; and are stand-alone or part of a composite play structure.

Private Building or Facility. A place of public accommodation or a commercial *building* or *facility* subject to title III of the ADA and 28 CFR part 36 or a transportation *building* or *facility* subject to title III of the ADA and 49 CFR 37.45.

Public Building or Facility. A *building* or *facility* or portion of a *building* or *facility* designed, constructed, or *altered* by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR part 35 or to title II of the ADA and 49 CFR 37.41 or 37.43.

Public Entrance. An *entrance* that is not a *service entrance* or a *restricted entrance*.

Public Use. Interior or exterior rooms, *spaces*, or *elements* that are made available to the public. *Public use* may be provided at a *building* or *facility* that is privately or publicly owned.

Public Way. Any street, alley or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated or otherwise permanently appropriated to the public for *public use* and which has a clear width and height of not less than 10 feet (3050 mm).

Qualified Historic Building or Facility. A *building* or *facility* that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law.

Ramp. A walking surface that has a *running slope* steeper than 1:20.

Residential Dwelling Unit. A unit intended to be used as a residence, that is primarily long-term in nature. *Residential dwelling units* do not include *transient lodging*, inpatient medical care, licensed long-term care, and detention or correctional *facilities*.

Restricted Entrance. An *entrance* that is made available for *common use* on a controlled basis but not *public use* and that is not a *service entrance*.

Running Slope. The slope that is parallel to the direction of travel (see *cross slope*).

Self-Service Storage. *Building* or *facility* designed and used for the purpose of renting or leasing individual storage *spaces* to customers for the purpose of storing and removing personal property on a self-service basis.

Service Entrance. An *entrance* intended primarily for delivery of goods or services.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Soft Contained Play Structure. A play structure made up of one or more *play components* where the user enters a fully enclosed play environment that utilizes pliable materials, such as plastic, netting, or fabric.

Space. A definable area, such as a room, toilet room, hall, *assembly area*, *entrance*, storage room, alcove, courtyard, or lobby.

Story. That portion of a *building* or *facility* designed for human occupancy included between the upper surface of a floor and upper surface of the floor or roof next above. A *story* containing one or more *mezzanines* has more than one floor level.

Structural Frame. The columns and the girders, beams, and trusses having direct connections to the columns and all other members that are essential to the stability of the *building* or *facility* as a whole.

Tactile. An object that can be perceived using the sense of touch.

Technically Infeasible. With respect to an *alteration* of a *building* or a *facility*, something that has little likelihood of being accomplished because existing structural conditions would require removing or *altering* a load-bearing member that is an essential part of the *structural frame*; or because other existing physical or *site* constraints prohibit modification or *addition* of *elements*, *spaces*, or features that are in full and strict compliance with the minimum requirements.

Teeing Ground. In golf, the starting place for the hole to be played.

Transfer Device. Equipment designed to facilitate the transfer of a person from a wheelchair or other mobility aid to and from an *amusement ride seat*.

Transient Lodging. A *building* or *facility* containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature. *Transient lodging* does not include *residential dwelling units* intended to be used as a residence, inpatient medical care *facilities*, licensed long-term care *facilities*, detention or correctional *facilities*, or *private buildings or facilities* that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor.

Transition Plate. A sloping pedestrian walking surface located at the end(s) of a *gangway*.

TTY. An abbreviation for teletypewriter. Machinery that employs interactive text-based communication through the transmission of coded signals across the telephone network. *TTYs* may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. *TTYs* are also called text telephones.

Use Zone. The ground level area beneath and immediately adjacent to a play structure or play equipment that is designated by ASTM F 1487 (incorporated by reference, see "Referenced Standards" in Chapter 1) for unrestricted circulation around the play equipment and where it is predicted that a user would land when falling from or exiting the play equipment.

Vehicular Way. A route provided for vehicular traffic, such as in a street, driveway, or parking *facility*.

Walk. An exterior prepared surface for pedestrian use, including pedestrian areas such as plazas and courts.

Wheelchair Space. *Space* for a single wheelchair and its occupant.

Work Area Equipment. Any machine, instrument, engine, motor, pump, conveyor, or other apparatus used to perform work. As used in this document, this term shall apply only to equipment that is permanently installed or built-in in *employee work areas. Work area equipment* does not include passenger elevators and other accessible means of vertical transportation.

ADA CHAPTER 2: SCOPING REQUIREMENTS

201 Application

201.1 Scope. All areas of newly designed and newly constructed *buildings* and *facilities* and *altered* portions of existing *buildings* and *facilities* shall comply with these requirements.

> **Advisory 201.1 Scope.** These requirements are to be applied to all areas of a facility unless exempted, or where scoping limits the number of multiple elements required to be accessible. For example, not all medical care patient rooms are required to be accessible; those that are not required to be accessible are not required to comply with these requirements. However, common use and public use spaces such as recovery rooms, examination rooms, and cafeterias are not exempt from these requirements and must be accessible.

201.2 Application Based on Building or Facility Use. Where a *site*, *building*, *facility*, room, or *space* contains more than one use, each portion shall comply with the applicable requirements for that use.

201.3 Temporary and Permanent Structures. These requirements shall apply to temporary and permanent *buildings* and *facilities*.

> **Advisory 201.3 Temporary and Permanent Structures.** Temporary buildings or facilities covered by these requirements include, but are not limited to, reviewing stands, temporary classrooms, bleacher areas, stages, platforms and daises, fixed furniture systems, wall systems, and exhibit areas, temporary banking facilities, and temporary health screening facilities. Structures and equipment directly associated with the actual processes of construction are not required to be accessible as permitted in 203.2.

202 Existing Buildings and Facilities

202.1 General. *Additions* and *alterations* to existing *buildings* or *facilities* shall comply with 202.

202.2 Additions. Each *addition* to an existing *building* or *facility* shall comply with the requirements for new construction. Each *addition* that affects or could affect the usability of or access to an area containing a primary function shall comply with 202.4.

202.3 Alterations. Where existing *elements* or *spaces* are *altered*, each *altered element* or *space* shall comply with the applicable requirements of Chapter 2.

EXCEPTIONS: 1. Unless required by 202.4, where *elements* or *spaces* are *altered* and the *circulation path* to the *altered element* or *space* is not *altered*, an *accessible* route shall not be required.

2. In *alterations*, where compliance with applicable requirements is *technically infeasible*, the *alteration* shall comply with the requirements to the maximum extent feasible.

3. *Residential dwelling units* not required to be *accessible* in compliance with a standard issued pursuant to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with 202.3.

Advisory 202.3 Alterations. Although covered entities are permitted to limit the scope of an alteration to individual elements, the alteration of multiple elements within a room or space may provide a cost-effective opportunity to make the entire room or space accessible. Any elements or spaces of the building or facility that are required to comply with these requirements must be made accessible within the scope of the alteration, to the maximum extent feasible. If providing accessibility in compliance with these requirements for people with one type of disability (e.g., people who use wheelchairs) is not feasible, accessibility must still be provided in compliance with the requirements for people with other types of disabilities (e.g., people who have hearing impairments or who have vision impairments) to the extent that such accessibility is feasible.

202.3.1 Prohibited Reduction in Access. An *alteration* that decreases or has the effect of decreasing the *accessibility* of a *building* or *facility* below the requirements for new construction at the time of the *alteration* is prohibited.

202.3.2 Extent of Application. An *alteration* of an existing *element*, *space*, or area of a *building* or *facility* shall not impose a requirement for *accessibility* greater than required for new construction.

202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of 202.3, an *alteration* that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the *altered* area, including the rest rooms, telephones, and drinking fountains serving the *altered* area, are readily *accessible* to and usable by individuals with disabilities, unless such *alterations* are disproportionate to the overall *alterations* in terms of cost and scope as determined under criteria established by the Attorney General. In existing transportation *facilities*, an area of primary function shall be as defined under regulations published by the Secretary of the Department of Transportation or the Attorney General.

EXCEPTION: *Residential dwelling units* shall not be required to comply with 202.4.

Advisory 202.4 Alterations Affecting Primary Function Areas. An area of a building or facility containing a major activity for which the building or facility is intended is a primary function area. Department of Justice ADA regulations state, "Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area." (28 CFR 36.403 (f)(1)). See also Department of Transportation ADA regulations, which use similar concepts in the context of public sector transportation facilities (49 CFR 37.43 (e)(1)).

There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk-in safe are primary function areas.

Advisory 202.4 Alterations Affecting Primary Function Areas (Continued). Also, mixed use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.

202.5 Alterations to Qualified Historic Buildings and Facilities. *Alterations* to a *qualified historic building* or *facility* shall comply with 202.3 and 202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for *accessible* routes, *entrances*, or toilet *facilities* would threaten or destroy the historic significance of the *building* or *facility*, the exceptions for *alterations* to *qualified historic buildings or facilities* for that *element* shall be permitted to apply.

Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception. State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted. Public entities have an additional obligation to achieve program accessibility under the Department of Justice ADA regulations. See 28 CFR 35.150. These regulations require public entities that operate historic preservation programs to give priority to methods that provide physical access to individuals with disabilities. If alterations to a qualified historic building or facility to achieve program accessibility would threaten or destroy the historic significance of the building or facility, fundamentally alter the program, or result in undue financial or administrative burdens, the Department of Justice ADA regulations allow alternative methods to be used to achieve program accessibility. In the case of historic preservation programs, such as an historic house museum, alternative methods include using audio-visual materials to depict portions of the house that cannot otherwise be made accessible. In the case of other qualified historic properties, such as an historic government office building, alternative methods include relocating programs and services to accessible locations. The Department of Justice ADA regulations also allow public entities to use alternative methods when altering qualified historic buildings or facilities in the rare situations where the State Historic Preservation Officer determines that it is not feasible to provide physical access using the exceptions permitted in Section 202.5 without threatening or destroying the historic significance of the building or facility. See 28 CFR 35.151(d).

Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception (Continued). The AccessAbility Office at the National Endowment for the Arts (NEA) provides a variety of resources for museum operators and historic properties including: the Design for Accessibility Guide and the Disability Symbols. Contact NEA about these and other resources at (202) 682-5532 or www.arts.gov.

203 General Exceptions

203.1 General. *Sites, buildings, facilities,* and *elements* are exempt from these requirements to the extent specified by 203.

203.2 Construction Sites. Structures and *sites* directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage, and construction trailers shall not be required to comply with these requirements or to be on an *accessible* route. Portable toilet units provided for use exclusively by construction personnel on a construction *site* shall not be required to comply with 213 or to be on an *accessible* route.

203.3 Raised Areas. Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers, or life guard stands shall not be required to comply with these requirements or to be on an *accessible* route.

203.4 Limited Access Spaces. *Spaces* accessed only by ladders, catwalks, crawl *spaces*, or very narrow passageways shall not be required to comply with these requirements or to be on an *accessible* route.

203.5 Machinery Spaces. *Spaces* frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an *accessible* route. Machinery *spaces* include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility *facilities*.

203.6 Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an *accessible* route.

203.7 Detention and Correctional Facilities. In detention and correctional *facilities*, *common use* areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with 232, shall not be required to comply with these requirements or to be on an *accessible* route.

203.8 Residential Facilities. In residential *facilities*, *common use* areas that do not serve *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall not be required to comply with these requirements or to be on an *accessible* route.

203.9 Employee Work Areas. *Spaces* and *elements* within *employee work areas* shall only be required to comply with 206.2.8, 207.1, and 215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the *employee work area. Employee work areas*, or portions of *employee work areas*, that are less than 300 square feet (28 m^2) and elevated 7 inches (180 mm) or more above the finish floor or ground where the elevation is essential to the function of the *space* shall not be required to comply with these requirements or to be on an *accessible* route.

> **Advisory 203.9 Employee Work Areas.** Although areas used exclusively by employees for work are not required to be fully accessible, consider designing such areas to include non-required turning spaces, and provide accessible elements whenever possible. Under the ADA, employees with disabilities are entitled to reasonable accommodations in the workplace; accommodations can include alterations to spaces within the facility. Designing employee work areas to be more accessible at the outset will avoid more costly retrofits when current employees become temporarily or permanently disabled, or when new employees with disabilities are hired. Contact the Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov for information about title I of the ADA prohibiting discrimination against people with disabilities in the workplace.

203.10 Raised Refereeing, Judging, and Scoring Areas. Raised structures used solely for refereeing, judging, or scoring a sport shall not be required to comply with these requirements or to be on an *accessible* route.

203.11 Water Slides. Water slides shall not be required to comply with these requirements or to be on an *accessible* route.

203.12 Animal Containment Areas. Animal containment areas that are not for *public use* shall not be required to comply with these requirements or to be on an *accessible* route.

> **Advisory 203.12 Animal Containment Areas.** Public circulation routes where animals may travel, such as in petting zoos and passageways alongside animal pens in State fairs, are not eligible for the exception.

203.13 Raised Boxing or Wrestling Rings. Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an *accessible* route.

203.14 Raised Diving Boards and Diving Platforms. Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an *accessible* route.

204 Protruding Objects

204.1 General. Protruding objects on *circulation paths* shall comply with 307.

EXCEPTIONS: 1. Within *areas of sport activity*, protruding objects on *circulation paths* shall not be required to comply with 307.

2. Within *play areas*, protruding objects on *circulation paths* shall not be required to comply with 307 provided that ground level *accessible* routes provide vertical clearance in compliance with 1008.2.

205 Operable Parts

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 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.

7. Cleats and other boat securement devices shall not be required to comply with 309.3.

8. Exercise machines and exercise equipment shall not be required to comply with 309.

Advisory 205.1 General. Controls covered by 205.1 include, but are not limited to, light switches, circuit breakers, duplexes and other convenience receptacles, environmental and appliance controls, plumbing fixture controls, and security and intercom systems.

206 Accessible Routes

206.1 General. *Accessible* routes shall be provided in accordance with 206 and shall comply with Chapter 4.

206.2 Where Required. *Accessible* routes shall be provided where required by 206.2.

206.2.1 Site Arrival Points. At least one *accessible* route shall be provided within the *site* from *accessible* parking *spaces* and *accessible* passenger loading zones; public streets and sidewalks; and public transportation stops to the *accessible building* or *facility entrance* they serve.

EXCEPTIONS: 1. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by 202.5, no more than one *accessible* route from a *site* arrival point to an *accessible entrance* shall be required.

2. An *accessible* route shall not be required between *site* arrival points and the *building* or *facility entrance* if the only means of access between them is a *vehicular way* not providing pedestrian access.

Advisory 206.2.1 Site Arrival Points. Each site arrival point must be connected by an accessible route to the accessible building entrance or entrances served. Where two or more similar site arrival points, such as bus stops, serve the same accessible entrance or entrances, both bus stops must be on accessible routes. In addition, the accessible routes must serve all of the accessible entrances on the site.

Advisory 206.2.1 Site Arrival Points Exception 2. Access from site arrival points may include vehicular ways. Where a vehicular way, or a portion of a vehicular way, is provided for pedestrian travel, such as within a shopping center or shopping mall parking lot, this exception does not apply.

206.2.2 Within a Site. At least one *accessible* route shall connect *accessible buildings*, *accessible facilities*, *accessible elements*, and *accessible spaces* that are on the same *site*.

EXCEPTION: An *accessible* route shall not be required between *accessible buildings*, *accessible facilities, accessible elements,* and *accessible spaces* if the only means of access between them is a *vehicular way* not providing pedestrian access.

Advisory 206.2.2 Within a Site. An accessible route is required to connect to the boundary of each area of sport activity. Examples of areas of sport activity include: soccer fields, basketball courts, baseball fields, running tracks, skating rinks, and the area surrounding a piece of gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. Where multiple sports fields or courts are provided, an accessible route is required to each field or area of sport activity.

206.2.3 Multi-Story Buildings and Facilities. At least one *accessible* route shall connect each *story* and *mezzanine* in multi-*story buildings* and *facilities*.

EXCEPTIONS: 1. In *private buildings or facilities* that are less than three *stories* or that have less than 3000 square feet (279 m^2) per *story*, an *accessible* route shall not be required to connect *stories* provided that the *building* or *facility* is not a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation, an airport passenger terminal, or another type of *facility* as determined by the Attorney General.

2. Where a two *story public building or facility* has one *story* with an *occupant load* of five or fewer persons that does not contain *public use space*, that *story* shall not be required to be connected to the *story* above or below.

3. In detention and correctional *facilities*, an *accessible* route shall not be required to connect *stories* where cells with mobility features required to comply with 807.2, all *common use* areas serving cells with mobility features required to comply with 807.2, and all *public use* areas are on an *accessible* route.

4. In residential *facilities,* an *accessible* route shall not be required to connect *stories* where *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, all *common use* areas serving *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, and *public use* areas serving *residential dwelling units* are on an *accessible* route.

5. Within multi-*story transient lodging* guest rooms with mobility features required to comply with 806.2, an *accessible* route shall not be required to connect *stories* provided that *spaces* complying with 806.2 are on an *accessible* route and sleeping accommodations for two persons minimum are provided on a *story* served by an accessible route.

6. In air traffic control towers, an *accessible* route shall not be required to serve the cab and the floor immediately below the cab.

7. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by 202.5, an *accessible* route shall not be required to *stories* located above or below the *accessible story.*

Advisory 206.2.3 Multi-Story Buildings and Facilities. Spaces and elements located on a level not required to be served by an accessible route must fully comply with this document. While a mezzanine may be a change in level, it is not a story. If an accessible route is required to connect stories within a building or facility, the accessible route must serve all mezzanines.

Advisory 206.2.3 Multi-Story Buildings and Facilities Exception 4. Where common use areas are provided for the use of residents, it is presumed that all such common use areas "serve" accessible dwelling units unless use is restricted to residents occupying certain dwelling units. For example, if all residents are permitted to use all laundry rooms, then all laundry rooms "serve" accessible dwelling units. However, if the laundry room on the first floor is restricted to use by residents on the first floor, and the second floor laundry room is for use by occupants of the second floor, then first floor accessible units are "served" only by laundry rooms on the first floor. In this example, an accessible route is not required to the second floor provided that all accessible units and all common use areas serving them are on the first floor.

206.2.3.1 Stairs and Escalators in Existing Buildings. In *alterations* and *additions*, where an escalator or stair is provided where none existed previously and major structural modifications are necessary for the installation, an *accessible* route shall be provided between the levels served by the escalator or stair unless exempted by 206.2.3 Exceptions 1 through 7.

206.2.4 Spaces and Elements. At least one *accessible* route shall connect *accessible building* or *facility entrances* with all *accessible spaces* and *elements* within the *building* or *facility* which are otherwise connected by a *circulation path* unless exempted by 206.2.3 Exceptions 1 through 7.

EXCEPTIONS: 1. Raised courtroom stations, including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations shall not be required to provide vertical access provided that the required clear floor *space*, maneuvering *space*, and, if appropriate, electrical service are installed at the time of initial construction to allow future installation of a means of vertical access complying with 405, 407, 408, or 410 without requiring substantial reconstruction of the *space.*

2. In *assembly areas* with fixed seating required to comply with 221, an *accessible* route shall not be required to serve fixed seating where *wheelchair spaces* required to be on an *accessible* route are not provided.

3. *Accessible* routes shall not be required to connect *mezzanines* where *buildings* or *facilities* have no more than one story. In addition, *accessible* routes shall not be required to connect stories or *mezzanines* where multi-story *buildings* or *facilities* are exempted by 206.2.3 Exceptions 1 through 7.

Advisory 206.2.4 Spaces and Elements. Accessible routes must connect all spaces and elements required to be accessible including, but not limited to, raised areas and speaker platforms.

Advisory 206.2.4 Spaces and Elements Exception 1. The exception does not apply to areas that are likely to be used by members of the public who are not employees of the court such as jury areas, attorney areas, or witness stands.

206.2.5 Restaurants and Cafeterias. In restaurants and cafeterias, an *accessible* route shall be provided to all dining areas, including raised or sunken dining areas, and outdoor dining areas.

EXCEPTIONS: 1. In *buildings or facilities* not required to provide an *accessible* route between *stories*, an *accessible* route shall not be required to a *mezzanine* dining area where the *mezzanine* contains less than 25 percent of the total combined area for seating and dining and where the same decor and services are provided in the *accessible* area.

2. In *alterations*, an *accessible* route shall not be required to existing raised or sunken dining areas, or to all parts of existing outdoor dining areas where the same services and decor are provided in an *accessible space* usable by the public and not restricted to use by people with disabilities.

3. In sports *facilities,* tiered dining areas providing seating required to comply with 221 shall be required to have *accessible* routes serving at least 25 percent of the dining area provided that *accessible* routes serve seating complying with 221 and each tier is provided with the same services.

Advisory 206.2.5 Restaurants and Cafeterias Exception 2. Examples of "same services" include, but are not limited to, bar service, rooms having smoking and non-smoking sections, lotto and other table games, carry-out, and buffet service. Examples of "same decor" include, but are not limited to, seating at or near windows and railings with views, areas designed with a certain theme, party and banquet rooms, and rooms where entertainment is provided.

206.2.6 Performance Areas. Where a *circulation path* directly connects a performance area to an assembly seating area, an *accessible* route shall directly connect the assembly seating area with the performance area. An *accessible* route shall be provided from performance areas to ancillary areas or *facilities* used by performers unless exempted by 206.2.3 Exceptions 1 through 7.

206.2.7 Press Boxes. Press boxes in *assembly areas* shall be on an *accessible* route.

EXCEPTIONS: 1. An *accessible* route shall not be required to press boxes in bleachers that have points of entry at only one level provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

2. An *accessible* route shall not be required to free-standing press boxes that are elevated above grade 12 feet (3660 mm) minimum provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

Advisory 206.2.7 Press Boxes Exception 2. Where a facility contains multiple assembly areas, the aggregate area of the press boxes in each assembly area is to be calculated separately. For example, if a university has a soccer stadium with three press boxes elevated 12 feet (3660 mm) or more above grade and each press box is 150 square feet (14 m^2), then the aggregate area of the soccer stadium press boxes is less than 500 square feet (46 m^2) and Exception 2 applies to the soccer stadium. If that same university also has a football stadium with two press boxes elevated 12 feet (3660 mm) or more above grade and one press box is 250 square feet (23 m^2), and the second is 275 square feet (26 m^2), then the aggregate area of the football stadium press boxes is more than 500 square feet (46 m^2) and Exception 2 does not apply to the football stadium.

206.2.8 Employee Work Areas. *Common use circulation paths* within *employee work areas* shall comply with 402.

EXCEPTIONS: 1. *Common use circulation paths* located within *employee work areas* that are less than 1000 square feet (93 m^2) and defined by permanently installed partitions, counters, casework, or furnishings shall not be required to comply with 402.

2. *Common use circulation paths* located within *employee work areas* that are an integral component of *work area equipment* shall not be required to comply with 402.

3. *Common use circulation paths* located within exterior *employee work areas* that are fully exposed to the weather shall not be required to comply with 402.

Advisory 206.2.8 Employee Work Areas Exception 1. Modular furniture that is not permanently installed is not directly subject to these requirements. The Department of Justice ADA regulations provide additional guidance regarding the relationship between these requirements and elements that are not part of the built environment. Additionally, the Equal Employment Opportunity Commission (EEOC) implements title I of the ADA which requires non-discrimination in the workplace. EEOC can provide guidance regarding employers' obligations to provide reasonable accommodations for employees with disabilities.

Advisory 206.2.8 Employee Work Areas Exception 2. Large pieces of equipment, such as electric turbines or water pumping apparatus, may have stairs and elevated walkways used for overseeing or monitoring purposes which are physically part of the turbine or pump. However, passenger elevators used for vertical transportation between stories are not considered "work area equipment" as defined in Section 106.5.

206.2.9 Amusement Rides. *Amusement rides* required to comply with 234 shall provide *accessible* routes in accordance with 206.2.9. *Accessible* routes serving *amusement rides* shall comply with Chapter 4 except as modified by 1002.2.

206.2.9.1 Load and Unload Areas. Load and unload areas shall be on an *accessible* route. Where load and unload areas have more than one loading or unloading position, at least one loading and unloading position shall be on an *accessible* route.

206.2.9.2 Wheelchair Spaces, Ride Seats Designed for Transfer, and Transfer Devices. When *amusement rides* are in the load and unload position, *wheelchair spaces* complying with 1002.4, *amusement ride seats* designed for transfer complying with 1002.5, and *transfer devices* complying with 1002.6 shall be on an *accessible* route.

206.2.10 Recreational Boating Facilities. *Boat slips* required to comply with 235.2 and *boarding piers* at *boat launch ramps* required to comply with 235.3 shall be on an *accessible* route. *Accessible* routes serving recreational boating *facilities* shall comply with Chapter 4, except as modified by 1003.2.

206.2.11 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but no fewer than one of each type of bowling lane, shall be on an *accessible* route.

206.2.12 Court Sports. In court sports, at least one *accessible* route shall directly connect both sides of the court.

206.2.13 Exercise Machines and Equipment. Exercise machines and equipment required to comply with 236 shall be on an *accessible* route.

206.2.14 Fishing Piers and Platforms. Fishing piers and platforms shall be on an *accessible* route. *Accessible* routes serving fishing piers and platforms shall comply with Chapter 4 except as modified by 1005.1.

206.2.15 Golf Facilities. At least one *accessible* route shall connect *accessible elements* and *spaces* within the boundary of the golf course. In addition, *accessible* routes serving golf car rental areas; bag drop areas; course weather shelters complying with 238.2.3; course toilet rooms; and practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges complying with 238.3 shall comply with Chapter 4 except as modified by 1006.2.

EXCEPTION: *Golf car passages* complying with 1006.3 shall be permitted to be used for all or part of *accessible* routes required by 206.2.15.

206.2.16 Miniature Golf Facilities. Holes required to comply with 239.2, including the start of play, shall be on an *accessible* route. *Accessible* routes serving miniature golf *facilities* shall comply with Chapter 4 except as modified by 1007.2.

206.2.17 Play Areas. *Play areas* shall provide *accessible* routes in accordance with 206.2.17. *Accessible* routes serving *play areas* shall comply with Chapter 4 except as modified by 1008.2.

206.2.17.1 Ground Level and Elevated Play Components. At least one *accessible* route shall be provided within the *play area*. The *accessible* route shall connect *ground level play components* required to comply with 240.2.1 and *elevated play components* required to comply with 240.2.2, including entry and exit points of the *play components*.

206.2.17.2 Soft Contained Play Structures. Where three or fewer entry points are provided for *soft contained play structures*, at least one entry point shall be on an *accessible* route. Where

four or more entry points are provided for *soft contained play structures*, at least two entry points shall be on an *accessible* route.

206.3 Location. *Accessible* routes shall coincide with or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior.

> **Advisory 206.3 Location.** The accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby. Additionally, accessible vertical interior circulation must be in the same area as stairs and escalators, not isolated in the back of the facility.

206.4 Entrances. *Entrances* shall be provided in accordance with 206.4. *Entrance* doors, doorways, and gates shall comply with 404 and shall be on an *accessible* route complying with 402.

EXCEPTIONS: 1. Where an *alteration* includes *alterations* to an *entrance*, and the *building* or *facility* has another *entrance* complying with 404 that is on an *accessible* route, the *altered entrance* shall not be required to comply with 206.4 unless required by 202.4.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by 202.5, no more than one *public entrance* shall be required to comply with 206.4. Where no *public entrance* can comply with 206.4 under criteria established in 202.5 Exception, then either an unlocked *entrance* not used by the public shall comply with 206.4; or a locked *entrance* complying with 206.4 with a notification system or remote monitoring shall be provided.

206.4.1 Public Entrances. In addition to *entrances* required by 206.4.2 through 206.4.9, at least 60 percent of all *public entrances* shall comply with 404.

206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a *building* or *facility entrance*, each direct access to the *building* or *facility entrance* shall comply with 404.

206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a *building* or *facility*, at least one direct *entrance* to the *building* or *facility* from each tunnel or walkway shall comply with 404.

206.4.4 Transportation Facilities. In addition to the requirements of 206.4.2, 206.4.3, and 206.4.5 through 206.4.9, transportation *facilities* shall provide *entrances* in accordance with 206.4.4.

206.4.4.1 Location. In transportation *facilities*, where different *entrances* serve different transportation fixed routes or groups of fixed routes, at least one *public entrance* shall comply with 404.

EXCEPTION: *Entrances* to *key stations* and existing intercity rail stations retrofitted in accordance with 49 CFR 37.49 or 49 CFR 37.51 shall not be required to comply with 206.4.4.1.

206.4.4.2 Direct Connections. Direct connections to other *facilities* shall provide an *accessible* route complying with 404 from the point of connection to boarding platforms and all transportation system *elements* required to be *accessible*. Any *elements* provided to facilitate future direct connections shall be on an *accessible* route connecting boarding platforms and all transportation system *elements* required to be *accessible*.

EXCEPTION: In *key stations* and existing intercity rail stations, existing direct connections shall not be required to comply with 404.

206.4.4.3 Key Stations and Intercity Rail Stations. *Key stations* and existing intercity rail stations required by Subpart C of 49 CFR part 37 to be *altered*, shall have at least one *entrance* complying with 404.

206.4.5 Tenant Spaces. At least one *accessible entrance* to each tenancy in a *facility* shall comply with 404.

EXCEPTION: *Self-service storage facilities* not required to comply with 225.3 shall not be required to be on an accessible route.

206.4.6 Residential Dwelling Unit Primary Entrance. In *residential dwelling units*, at least one primary *entrance* shall comply with 404. The primary *entrance* to a *residential dwelling unit* shall not be to a bedroom.

206.4.7 Restricted Entrances. Where *restricted entrances* are provided to a *building* or *facility*, at least one *restricted entrance* to the *building* or *facility* shall comply with 404.

206.4.8 Service Entrances. If a *service entrance* is the only *entrance* to a *building* or to a tenancy in a *facility*, that *entrance* shall comply with 404.

206.4.9 Entrances for Inmates or Detainees. Where *entrances* used only by inmates or detainees and security personnel are provided at judicial *facilities*, detention *facilities*, or correctional *facilities*, at least one such *entrance* shall comply with 404.

206.5 Doors, Doorways, and Gates. Doors, doorways, and gates providing user passage shall be provided in accordance with 206.5.

206.5.1 Entrances. Each *entrance* to a *building* or *facility* required to comply with 206.4 shall have at least one door, doorway, or gate complying with 404.

206.5.2 Rooms and Spaces. Within a *building* or *facility*, at least one door, doorway, or gate serving each room or *space* complying with these requirements shall comply with 404.

206.5.3 Transient Lodging Facilities. In *transient lodging facilities*, *entrances*, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

206.5.4 Residential Dwelling Units. In *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4, all doors and doorways providing user passage shall comply with 404.

206.6 Elevators. Elevators provided for passengers shall comply with 407. Where multiple elevators are provided, each elevator shall comply with 407.

EXCEPTIONS: 1. In a *building* or *facility* permitted to use the exceptions to 206.2.3 or permitted by 206.7 to use a platform lift, elevators complying with 408 shall be permitted.

2. Elevators complying with 408 or 409 shall be permitted in multi-*story residential dwelling units*.

206.6.1 Existing Elevators. Where *elements* of existing elevators are *altered*, the same *element* shall also be *altered* in all elevators that are programmed to respond to the same hall call control as the *altered* elevator and shall comply with the requirements of 407 for the *altered element*.

206.7 Platform Lifts. Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an *accessible* route in new construction in accordance with 206.7. Platform lifts shall be permitted as a component of an *accessible* route in an existing *building* or *facility*.

206.7.1 Performance Areas and Speakers' Platforms. Platform lifts shall be permitted to provide *accessible* routes to performance areas and speakers' platforms.

206.7.2 Wheelchair Spaces. Platform lifts shall be permitted to provide an *accessible* route to comply with the *wheelchair space* dispersion and line-of-sight requirements of 221 and 802.

206.7.3 Incidental Spaces. Platform lifts shall be permitted to provide an *accessible* route to incidental *spaces* which are not *public use spaces* and which are occupied by five persons maximum.

206.7.4 Judicial Spaces. Platform lifts shall be permitted to provide an *accessible* route to: jury boxes and witness stands; raised courtroom stations including, judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations; and to depressed areas such as the well of a court.

206.7.5 Existing Site Constraints. Platform lifts shall be permitted where existing exterior *site* constraints make use of a *ramp* or elevator infeasible.

Advisory 206.7.5 Existing Site Constraints. This exception applies where topography or other similar existing site constraints necessitate the use of a platform lift as the only feasible alternative. While the site constraint must reflect exterior conditions, the lift can be installed in the interior of a building. For example, a new building constructed between and connected to two existing buildings may have insufficient space to coordinate floor levels and also to provide ramped entry from the public way. In this example, an exterior or interior platform lift could be used to provide an accessible entrance or to coordinate one or more interior floor levels.

206.7.6 Guest Rooms and Residential Dwelling Units. Platform lifts shall be permitted to connect levels within *transient lodging* guest rooms required to provide mobility features complying with 806.2 or *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4.

206.7.7 Amusement Rides. Platform lifts shall be permitted to provide *accessible* routes to load and unload areas serving *amusement rides*.

206.7.8 Play Areas. Platform lifts shall be permitted to provide *accessible* routes to *play components* or *soft contained play structures*.

206.7.9 Team or Player Seating. Platform lifts shall be permitted to provide *accessible* routes to team or player seating areas serving *areas of sport activity*.

> **Advisory 206.7.9 Team or Player Seating.** While the use of platform lifts is allowed, ramps are recommended to provide access to player seating areas serving an area of sport activity.

206.7.10 Recreational Boating Facilities and Fishing Piers and Platforms. Platform lifts shall be permitted to be used instead of *gangways* that are part of *accessible* routes serving recreational boating *facilities* and fishing piers and platforms.

206.8 Security Barriers. Security barriers, including but not limited to, security bollards and security check points, shall not obstruct a required *accessible* route or *accessible means of egress*.

EXCEPTION: Where security barriers incorporate *elements* that cannot comply with these requirements such as certain metal detectors, fluoroscopes, or other similar devices, the *accessible* route shall be permitted to be located adjacent to security screening devices. The *accessible* route shall permit persons with disabilities passing around security barriers to maintain visual contact with their personal items to the same extent provided others passing through the security barrier.

207 Accessible Means of Egress

207.1 General. Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

EXCEPTIONS: 1. Where means of egress are permitted by local *building* or life safety codes to share a common path of egress travel, *accessible means of egress* shall be permitted to share a common path of egress travel.

2. Areas of refuge shall not be required in detention and correctional *facilities*.

207.2 Platform Lifts. Standby power shall be provided for platform lifts permitted by section 1003.2.13.4 of the International Building Code (2000 edition and 2001 Supplement) or section 1007.5 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to serve as a part of an *accessible means of egress*.

208 Parking Spaces

208.1 General. Where parking *spaces* are provided, parking *spaces* shall be provided in accordance with 208.

EXCEPTION: Parking *spaces* used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or vehicular impound shall not be required to comply with 208 provided that lots accessed by the public are provided with a passenger loading zone complying with 503.

208.2 Minimum Number. Parking *spaces* complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking *facility* is provided on a *site*, the number of *accessible spaces* provided on the *site* shall be calculated according to the number of *spaces* required for each parking *facility*.

Table 208.2 Parking Spaces

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Advisory 208.2 Minimum Number. The term "parking facility" is used Section 208.2 instead of the term "parking lot" so that it is clear that both parking lots and parking structures are required to comply with this section. The number of parking spaces required to be accessible is to be calculated separately for each parking facility; the required number is not to be based on the total number of parking spaces provided in all of the parking facilities provided on the site.

208.2.1 Hospital Outpatient Facilities. Ten percent of patient and visitor parking *spaces* provided to serve hospital outpatient *facilities* shall comply with 502.

> **Advisory 208.2.1 Hospital Outpatient Facilities.** The term "outpatient facility" is not defined in this document but is intended to cover facilities or units that are located in hospitals and that provide regular and continuing medical treatment without an overnight stay. Doctors' offices, independent clinics, or other facilities not located in hospitals are not considered hospital outpatient facilities for purposes of this document.

208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Twenty percent of patient and visitor parking *spaces* provided to serve rehabilitation *facilities* specializing in treating conditions that affect mobility and outpatient physical therapy *facilities* shall comply with 502.

> **Advisory 208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities.** Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations.

208.2.3 Residential Facilities. Parking *spaces* provided to serve residential facilities shall comply with 208.2.3.

208.2.3.1 Parking for Residents. Where at least one parking *space* is provided for each *residential dwelling unit*, at least one parking *space* complying with 502 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking *spaces* provided for each *residential dwelling unit* exceeds one parking *space* per *residential dwelling unit*, 2 percent, but no fewer than one *space,* of all the parking *spaces* not covered by 208.2.3.1 shall comply with 502.

208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table 208.2.

208.2.4 Van Parking Spaces. For every six or fraction of six parking *spaces* required by 208.2 to comply with 502, at least one shall be a van parking *space* complying with 502.

208.3 Location. Parking *facilities* shall comply with 208.3

208.3.1 General. Parking *spaces* complying with 502 that serve a particular *building* or *facility* shall be located on the shortest *accessible* route from parking to an *entrance* complying with 206.4. Where parking serves more than one *accessible entrance*, parking *spaces* complying with 502 shall be dispersed and located on the shortest *accessible* route to the *accessible entrances.* In parking

facilities that do not serve a particular *building* or *facility*, parking *spaces* complying with 502 shall be located on the shortest *accessible* route to an *accessible* pedestrian *entrance* of the parking *facility*.

EXCEPTIONS: 1. All van parking *spaces* shall be permitted to be grouped on one level within a multi-*story* parking *facility*.

2. Parking *spaces* shall be permitted to be located in different parking *facilities* if substantially equivalent or greater *accessibility* is provided in terms of distance from an *accessible entrance* or *entrances*, parking fee, and user convenience.

Advisory 208.3.1 General Exception 2. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

208.3.2 Residential Facilities. In residential *facilities* containing *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4, parking *spaces* provided in accordance with 208.2.3.1 shall be located on the shortest *accessible* route to the *residential dwelling unit entrance* they serve. *Spaces* provided in accordance with 208.2.3.2 shall be dispersed throughout all types of parking provided for the *residential dwelling units*.

EXCEPTION: Parking *spaces* provided in accordance with 208.2.3.2 shall not be required to be dispersed throughout all types of parking if substantially equivalent or greater *accessibility* is provided in terms of distance from an *accessible entrance*, parking fee, and user convenience.

Advisory 208.3.2 Residential Facilities Exception. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

209 Passenger Loading Zones and Bus Stops

209.1 General. Passenger loading zones shall be provided in accordance with 209.

209.2 Type. Where provided, passenger loading zones shall comply with 209.2.

209.2.1 Passenger Loading Zones. Passenger loading zones, except those required to comply with 209.2.2 and 209.2.3, shall provide at least one passenger loading zone complying with 503 in every continuous 100 linear feet (30 m) of loading zone *space*, or fraction thereof.

209.2.2 Bus Loading Zones. In bus loading zones restricted to use by designated or specified public transportation vehicles, each bus bay, bus stop, or other area designated for lift or *ramp* deployment shall comply with 810.2.

Advisory 209.2.2 Bus Loading Zones. The terms "designated public transportation" and "specified public transportation" are defined by the Department of Transportation at 49 CFR 37.3 in regulations implementing the Americans with Disabilities Act. These terms refer to public transportation services provided by public or private entities, respectively. For example, designated public transportation vehicles include buses and vans operated by public transit agencies, while specified public transportation vehicles include tour and charter buses, taxis and limousines, and hotel shuttles operated by private entities.

209.2.3 On-Street Bus Stops. On-street bus stops shall comply with 810.2 to the maximum extent practicable.

209.3 Medical Care and Long-Term Care Facilities. At least one passenger loading zone complying with 503 shall be provided at an *accessible entrance* to licensed medical care and licensed long-term care *facilities* where the period of stay exceeds twenty-four hours.

209.4 Valet Parking. Parking *facilities* that provide valet parking services shall provide at least one passenger loading zone complying with 503.

209.5 Mechanical Access Parking Garages. Mechanical access parking garages shall provide at least one passenger loading zone complying with 503 at vehicle drop-off and vehicle pick-up areas.

210 Stairways

210.1 General. Interior and exterior stairs that are part of a means of egress shall comply with 504.

EXCEPTIONS: 1. In detention and correctional *facilities*, stairs that are not located in *public use* areas shall not be required to comply with 504.

2. In *alterations*, stairs between levels that are connected by an *accessible* route shall not be required to comply with 504, except that handrails complying with 505 shall be provided when the stairs are *altered.*

3. In *assembly areas*, aisle stairs shall not be required to comply with 504.

4. Stairs that connect *play components* shall not be required to comply with 504.

Advisory 210.1 General. Although these requirements do not mandate handrails on stairs that are not part of a means of egress, State or local building codes may require handrails or guards.

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.

212 Kitchens, Kitchenettes, and Sinks

212.1 General. Where provided, kitchens, kitchenettes, and sinks shall comply with 212.

212.2 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

212.3 Sinks. Where sinks are provided, at least 5 percent, but no fewer than one, of each type provided in each *accessible* room or *space* shall comply with 606.

EXCEPTION: Mop or service sinks shall not be required to comply with 212.3.

213 Toilet Facilities and Bathing Facilities

213.1 General. Where toilet *facilities* and bathing *facilities* are provided, they shall comply with 213. Where toilet *facilities* and bathing *facilities* are provided in *facilities* permitted by 206.2.3 Exceptions 1 and 2 not to connect *stories* by an *accessible* route, toilet *facilities* and bathing *facilities* shall be provided on a *story* connected by an *accessible* route to an *accessible entrance*.

213.2 Toilet Rooms and Bathing Rooms. Where toilet rooms are provided, each toilet room shall comply with 603. Where bathing rooms are provided, each bathing room shall comply with 603.

EXCEPTIONS: 1. In *alterations* where it is *technically infeasible* to comply with 603, *altering* existing toilet or bathing rooms shall not be required where a single unisex toilet room or bathing room complying with 213.2.1 is provided and located in the same area and on the same floor as existing inaccessible toilet or bathing rooms.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by 202.5, no fewer than one toilet room for each sex complying with 603 or one unisex toilet room complying with 213.2.1 shall be provided.

3. Where multiple single user portable toilet or bathing units are clustered at a single location, no more than 5 percent of the toilet units and bathing units at each cluster shall be required to comply with 603. Portable toilet units and bathing units complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1.

4. Where multiple single user toilet rooms are clustered at a single location, no more than 50 percent of the single user toilet rooms for each use at each cluster shall be required to comply with 603.

Advisory 213.2 Toilet Rooms and Bathing Rooms. These requirements allow the use of unisex (or single-user) toilet rooms in alterations when technical infeasibility can be demonstrated. Unisex toilet rooms benefit people who use opposite sex personal care assistants. For this reason, it is advantageous to install unisex toilet rooms in addition to accessible single-sex toilet rooms in new facilities.

Advisory 213.2 Toilet Rooms and Bathing Rooms Exceptions 3 and 4. A "cluster" is a group of toilet rooms proximate to one another. Generally, toilet rooms in a cluster are within sight of, or adjacent to, one another.

213.2.1 Unisex (Single-Use or Family) Toilet and Unisex Bathing Rooms. Unisex toilet rooms shall contain not more than one lavatory, and two water closets without urinals or one water closet and one urinal. Unisex bathing rooms shall contain one shower or one shower and one bathtub, one lavatory, and one water closet. Doors to unisex toilet rooms and unisex bathing rooms shall have privacy latches.

213.3 Plumbing Fixtures and Accessories. Plumbing fixtures and accessories provided in a toilet room or bathing room required to comply with 213.2 shall comply with 213.3.

213.3.1 Toilet Compartments. Where toilet compartments are provided, at least one toilet compartment shall comply with 604.8.1. In addition to the compartment required to comply with 604.8.1, at least one compartment shall comply with 604.8.2 where six or more toilet compartments are provided, or where the combination of urinals and water closets totals six or more fixtures.

Advisory 213.3.1 Toilet Compartments. A toilet compartment is a partitioned space that is located within a toilet room, and that normally contains no more than one water closet. A toilet compartment may also contain a lavatory. A lavatory is a sink provided for hand washing. Full-height partitions and door assemblies can comprise toilet compartments where the minimum required spaces are provided within the compartment.

213.3.2 Water Closets. Where water closets are provided, at least one shall comply with 604.

213.3.3 Urinals. Where more than one urinal is provided, at least one shall comply with 605.

213.3.4 Lavatories. Where lavatories are provided, at least one shall comply with 606 and shall not be located in a toilet compartment.

213.3.5 Mirrors. Where mirrors are provided, at least one shall comply with 603.3.

213.3.6 Bathing Facilities. Where bathtubs or showers are provided, at least one bathtub complying with 607 or at least one shower complying with 608 shall be provided.

213.3.7 Coat Hooks and Shelves. Where coat hooks or shelves are provided in toilet rooms without toilet compartments, at least one of each type shall comply with 603.4. Where coat hooks or shelves are provided in toilet compartments, at least one of each type complying with 604.8.3 shall be provided in toilet compartments required to comply with 213.3.1. Where coat hooks or shelves are provided in bathing *facilities*, at least one of each type complying with 603.4 shall serve fixtures required to comply with 213.3.6.

214 Washing Machines and Clothes Dryers

214.1 General. Where provided, washing machines and clothes dryers shall comply with 214.

214.2 Washing Machines. Where three or fewer washing machines are provided, at least one shall comply with 611. Where more than three washing machines are provided, at least two shall comply with 611.

214.3 Clothes Dryers. Where three or fewer clothes dryers are provided, at least one shall comply with 611. Where more than three clothes dryers are provided, at least two shall comply with 611.

215 Fire Alarm Systems

215.1 General. Where fire alarm systems provide audible alarm coverage, alarms shall comply with 215.

EXCEPTION: In existing *facilities*, visible alarms shall not be required except where an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed.

> **Advisory 215.1 General.** Unlike audible alarms, visible alarms must be located within the space they serve so that the signal is visible. Facility alarm systems (other than fire alarm systems) such as those used for tornado warnings and other emergencies are not required to comply with the technical criteria for alarms in Section 702. Every effort should be made to ensure that such alarms can be differentiated in their signal from fire alarms systems and that people who need to be notified of emergencies are adequately safeguarded. Consult local fire departments and prepare evacuation plans taking into consideration the needs of every building occupant, including people with disabilities.

215.2 Public and Common Use Areas. Alarms in *public use* areas and *common use* areas shall comply with 702.

215.3 Employee Work Areas. Where *employee work areas* have audible alarm coverage, the wiring system shall be designed so that visible alarms complying with 702 can be integrated into the alarm system.

215.4 Transient Lodging. Guest rooms required to comply with 224.4 shall provide alarms complying with 702.

215.5 Residential Facilities. Where provided in *residential dwelling units* required to comply with 809.5, alarms shall comply with 702.

216 Signs

216.1 General. Signs shall be provided in accordance with 216 and shall comply with 703.

EXCEPTIONS: 1. *Building* directories, menus, seat and row designations in *assembly areas*, occupant names, *building* addresses, and company names and logos shall not be required to comply with 216.

2. In parking *facilities*, signs shall not be required to comply with 216.2, 216.3, and 216.6 through 216.12.

3. Temporary, 7 days or less, signs shall not be required to comply with 216.

4. In detention and correctional *facilities*, signs not located in *public use* areas shall not be required to comply with 216.

216.2 Designations. Interior and exterior signs identifying permanent rooms and *spaces* shall comply with 703.1, 703.2, and 703.5. Where *pictograms* are provided as designations of permanent interior

rooms and *spaces*, the *pictograms* shall comply with 703.6 and shall have text descriptors complying with 703.2 and 703.5.

EXCEPTION: Exterior signs that are not located at the door to the *space* they serve shall not be required to comply with 703.2.

> **Advisory 216.2 Designations.** Section 216.2 applies to signs that provide designations, labels, or names for interior rooms or spaces where the sign is not likely to change over time. Examples include interior signs labeling restrooms, room and floor numbers or letters, and room names. Tactile text descriptors are required for pictograms that are provided to label or identify a permanent room or space. Pictograms that provide information about a room or space, such as "no smoking," occupant logos, and the International Symbol of Accessibility, are not required to have text descriptors.

216.3 Directional and Informational Signs. Signs that provide direction to or information about interior *spaces* and *facilities* of the *site* shall comply with 703.5.

> **Advisory 216.3 Directional and Informational Signs.** Information about interior spaces and facilities includes rules of conduct, occupant load, and similar signs. Signs providing direction to rooms or spaces include those that identify egress routes.

216.4 Means of Egress. Signs for means of egress shall comply with 216.4.

216.4.1 Exit Doors. Doors at exit passageways, exit discharge, and exit stairways shall be identified by *tactile* signs complying with 703.1, 703.2, and 703.5.

> **Advisory 216.4.1 Exit Doors.** An exit passageway is a horizontal exit component that is separated from the interior spaces of the building by fire-resistance-rated construction and that leads to the exit discharge or public way. The exit discharge is that portion of an egress system between the termination of an exit and a public way.

216.4.2 Areas of Refuge. Signs required by section 1003.2.13.5.4 of the International Building Code (2000 edition) or section 1007.6.4 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to provide instructions in areas of refuge shall comply with 703.5.

216.4.3 Directional Signs. Signs required by section 1003.2.13.6 of the International Building Code (2000 edition) or section 1007.7 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to provide directions to *accessible means of egress* shall comply with 703.5.

216.5 Parking. Parking *spaces* complying with 502 shall be identified by signs complying with 502.6.

EXCEPTIONS: 1. Where a total of four or fewer parking *spaces*, including *accessible* parking *spaces*, are provided on a *site*, identification of *accessible* parking *spaces* shall not be required.

2. In residential *facilities*, where parking *spaces* are assigned to specific *residential dwelling units*, identification of *accessible* parking *spaces* shall not be required.

216.6 Entrances. Where not all *entrances* comply with 404, *entrances* complying with 404 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Directional signs complying with 703.5 that indicate the location of the nearest *entrance* complying with 404 shall be provided at *entrances* that do not comply with 404.

> **Advisory 216.6 Entrances.** Where a directional sign is required, it should be located to minimize backtracking. In some cases, this could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.

216.7 Elevators. Where existing elevators do not comply with 407, elevators complying with 407 shall be clearly identified with the International Symbol of *Accessibility* complying with 703.7.2.1.

216.8 Toilet Rooms and Bathing Rooms. Where existing toilet rooms or bathing rooms do not comply with 603, directional signs indicating the location of the nearest toilet room or bathing room complying with 603 within the *facility* shall be provided. Signs shall comply with 703.5 and shall include the International Symbol of *Accessibility* complying with 703.7.2.1. Where existing toilet rooms or bathing rooms do not comply with 603, the toilet rooms or bathing rooms complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Where clustered single user toilet rooms or bathing *facilities* are permitted to use exceptions to 213.2, toilet rooms or bathing *facilities* complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1 unless all toilet rooms and bathing *facilities* comply with 603.

216.9 TTYs. Identification and directional signs for public *TTYs* shall be provided in accordance with 216.9.

216.9.1 Identification Signs. Public *TTYs* shall be identified by the International Symbol of *TTY* complying with 703.7.2.2.

216.9.2 Directional Signs. Directional signs indicating the location of the nearest public *TTY* shall be provided at all banks of public pay telephones not containing a public *TTY.* In addition, where signs provide direction to public pay telephones, they shall also provide direction to public *TTYs.* Directional signs shall comply with 703.5 and shall include the International Symbol of *TTY* complying with 703.7.2.2.

216.10 Assistive Listening Systems. Each *assembly area* required by 219 to provide *assistive listening systems* shall provide signs informing patrons of the availability of the *assistive listening system.* Assistive listening signs shall comply with 703.5 and shall include the International Symbol of Access for Hearing Loss complying with 703.7.2.4.

EXCEPTION: Where ticket offices or windows are provided, signs shall not be required at each *assembly area* provided that signs are displayed at each ticket office or window informing patrons of the availability of *assistive listening systems.*

216.11 Check-Out Aisles. Where more than one check-out aisle is provided, check-out aisles complying with 904.3 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Where check-out aisles are identified by numbers, letters, or functions, signs identifying

check-out aisles complying with 904.3 shall be located in the same location as the check-out aisle identification.

EXCEPTION: Where all check-out aisles serving a single function comply with 904.3, signs complying with 703.7.2.1 shall not be required.

216.12 Amusement Rides. Signs identifying the type of access provided on *amusement rides* shall be provided at entries to queues and waiting lines. In addition, where *accessible* unload areas also serve as *accessible* load areas, signs indicating the location of the *accessible* load and unload areas shall be provided at entries to queues and waiting lines.

> **Advisory 216.12 Amusement Rides.** Amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider, and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats, or transfer systems, and need not meet the sign requirements in 216.12. The load and unload areas of these rides must, however, be on an accessible route and must provide turning space.

217 Telephones

217.1 General. Where coin-operated public pay telephones, coinless public pay telephones, public *closed-circuit telephones*, public courtesy phones, or other types of public telephones are provided, public telephones shall be provided in accordance with 217 for each type of public telephone provided. For purposes of this section, a bank of telephones shall be considered to be two or more adjacent telephones.

> **Advisory 217.1 General.** These requirements apply to all types of public telephones including courtesy phones at airports and rail stations that provide a free direct connection to hotels, transportation services, and tourist attractions.

217.2 Wheelchair Accessible Telephones. Where public telephones are provided, wheelchair *accessible* telephones complying with 704.2 shall be provided in accordance with Table 217.2.

EXCEPTION: Drive-up only public telephones shall not be required to comply with 217.2.

Table 217.2 Wheelchair Accessible Telephones

Number of Telephones Provided on a Floor, Level, or Exterior Site	Minimum Number of Required Wheelchair Accessible Telephones
1 or more single units	1 per floor, level, and exterior *site*
1 bank	1 per floor, level, and exterior *site*
2 or more banks	1 per bank

217.3 Volume Controls. All public telephones shall have volume controls complying with 704.3.

217.4 TTYs. *TTYs* complying with 704.4 shall be provided in accordance with 217.4.

Advisory 217.4 TTYs. Separate requirements are provided based on the number of public pay telephones provided at a bank of telephones, within a floor, a building, or on a site. In some instances one TTY can be used to satisfy more than one of these requirements. For example, a TTY required for a bank can satisfy the requirements for a building. However, the requirement for at least one TTY on an exterior site cannot be met by installing a TTY in a bank inside a building. Consideration should be given to phone systems that can accommodate both digital and analog transmissions for compatibility with digital and analog TTYs.

217.4.1 Bank Requirement. Where four or more public pay telephones are provided at a bank of telephones, at least one public *TTY* complying with 704.4 shall be provided at that bank.

EXCEPTION: *TTYs* shall not be required at banks of telephones located within 200 feet (61 m) of, and on the same floor as, a bank containing a public *TTY*.

217.4.2 Floor Requirement. *TTYs* in *public buildings* shall be provided in accordance with 217.4.2.1. *TTYs* in *private buildings* shall be provided in accordance with 217.4.2.2.

217.4.2.1 Public Buildings. Where at least one public pay telephone is provided on a floor of a *public building*, at least one public *TTY* shall be provided on that floor.

217.4.2.2 Private Buildings. Where four or more public pay telephones are provided on a floor of a *private building*, at least one public *TTY* shall be provided on that floor.

217.4.3 Building Requirement. *TTYs* in *public buildings* shall be provided in accordance with 217.4.3.1. *TTYs* in *private buildings* shall be provided in accordance with 217.4.3.2.

217.4.3.1 Public Buildings. Where at least one public pay telephone is provided in a *public building*, at least one public *TTY* shall be provided in the *building*. Where at least one public pay telephone is provided in a *public use* area of a *public building*, at least one public *TTY* shall be provided in the *public building* in a *public use* area.

217.4.3.2 Private Buildings. Where four or more public pay telephones are provided in a *private building*, at least one public *TTY* shall be provided in the *building*.

217.4.4 Exterior Site Requirement. Where four or more public pay telephones are provided on an exterior *site*, at least one public *TTY* shall be provided on the *site*.

217.4.5 Rest Stops, Emergency Roadside Stops, and Service Plazas. Where at least one public pay telephone is provided at a public rest stop, emergency roadside stop, or service plaza, at least one public *TTY* shall be provided.

217.4.6 Hospitals. Where at least one public pay telephone is provided serving a hospital emergency room, hospital recovery room, or hospital waiting room, at least one public *TTY* shall be provided at each location.

217.4.7 Transportation Facilities. In transportation *facilities*, in addition to the requirements of 217.4.1 through 217.4.4, where at least one public pay telephone serves a particular *entrance* to a bus or rail *facility*, at least one public *TTY* shall be provided to serve that *entrance*. In airports, in addition to the requirements of 217.4.1 through 217.4.4, where four or more public pay telephones are located in a terminal outside the security areas, a concourse within the security areas, or a baggage claim area in a terminal, at least one public *TTY* shall be provided in each location.

217.4.8 Detention and Correctional Facilities. In detention and correctional *facilities*, where at least one pay telephone is provided in a secured area used only by detainees or inmates and security personnel, at least one *TTY* shall be provided in at least one secured area.

217.5 Shelves for Portable TTYs. Where a bank of telephones in the interior of a *building* consists of three or more public pay telephones, at least one public pay telephone at the bank shall be provided with a shelf and an electrical outlet in accordance with 704.5.

EXCEPTIONS: 1. Secured areas of detention and correctional *facilities* where shelves and outlets are prohibited for purposes of security or safety shall not be required to comply with 217.5.

2. The shelf and electrical outlet shall not be required at a bank of telephones with a *TTY*.

218 Transportation Facilities

218.1 General. Transportation *facilities* shall comply with 218.

218.2 New and Altered Fixed Guideway Stations. New and *altered* stations in rapid rail, light rail, commuter rail, intercity rail, high speed rail, and other fixed guideway systems shall comply with 810.5 through 810.10.

218.3 Key Stations and Existing Intercity Rail Stations. *Key stations* and existing intercity rail stations shall comply with 810.5 through 810.10.

218.4 Bus Shelters. Where provided, bus shelters shall comply with 810.3.

218.5 Other Transportation Facilities. In other transportation *facilities*, public address systems shall comply with 810.7 and clocks shall comply with 810.8.

219 Assistive Listening Systems

219.1 General. *Assistive listening systems* shall be provided in accordance with 219 and shall comply with 706.

219.2 Required Systems. In each *assembly area* where audible communication is integral to the use of the *space*, an *assistive listening system* shall be provided.

EXCEPTION: Other than in courtrooms, *assistive listening systems* shall not be required where audio amplification is not provided.

219.3 Receivers. Receivers complying with 706.2 shall be provided for *assistive listening systems* in each *assembly area* in accordance with Table 219.3. Twenty-five percent minimum of receivers provided, but no fewer than two, shall be hearing-aid compatible in accordance with 706.3.

EXCEPTIONS: 1. Where a *building* contains more than one *assembly area* and the *assembly areas* required to provide *assistive listening systems* are under one management, the total number of required receivers shall be permitted to be calculated according to the total number of seats in the *assembly areas* in the *building* provided that all receivers are usable with all systems.
2. Where all seats in an *assembly area* are served by an induction loop *assistive listening system*, the minimum number of receivers required by Table 219.3 to be hearing-aid compatible shall not be required to be provided.

Table 219.3 Receivers for Assistive Listening Systems

Capacity of Seating in Assembly Area	Minimum Number of Required Receivers	Minimum Number of Required Receivers Required to be Hearing-aid Compatible
50 or less	2	2
51 to 200	2, plus 1 per 25 seats over 50 seats[1]	2
201 to 500	2, plus 1 per 25 seats over 50 seats[1]	1 per 4 receivers[1]
501 to 1000	20, plus 1 per 33 seats over 500 seats[1]	1 per 4 receivers[1]
1001 to 2000	35, plus 1 per 50 seats over 1000 seats[1]	1 per 4 receivers[1]
2001 and over	55 plus 1 per 100 seats over 2000 seats[1]	1 per 4 receivers[1]

1. Or fraction thereof.

220 Automatic Teller Machines and Fare Machines

220.1 General. Where automatic teller machines or self-service fare vending, collection, or adjustment machines are provided, at least one of each type provided at each location shall comply with 707. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type shall comply with 811.

Advisory 220.1 General. If a bank provides both interior and exterior ATMs, each such installation is considered a separate location. Accessible ATMs, including those with speech and those that are within reach of people who use wheelchairs, must provide all the functions provided to customers at that location at all times. For example, it is unacceptable for the accessible ATM only to provide cash withdrawals while inaccessible ATMs also sell theater tickets.

221 Assembly Areas

221.1 General. *Assembly areas* shall provide *wheelchair spaces*, companion seats, and designated aisle seats complying with 221 and 802. In addition, lawn seating shall comply with 221.5.

221.2 Wheelchair Spaces. *Wheelchair spaces* complying with 221.2 shall be provided in *assembly areas* with fixed seating.

221.2.1 Number and Location. *Wheelchair spaces* shall be provided complying with 221.2.1.

221.2.1.1 General Seating. *Wheelchair spaces* complying with 802.1 shall be provided in accordance with Table 221.2.1.1.

Table 221.2.1.1 Number of Wheelchair Spaces in Assembly Areas

Number of Seats	Minimum Number of Required Wheelchair Spaces
4 to 25	1
26 to 50	2
51 to 150	4
151 to 300	5
301 to 500	6
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000

221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. In each luxury box, club box, and suite within arenas, stadiums, and grandstands, *wheelchair spaces* complying with 802.1 shall be provided in accordance with Table 221.2.1.1.

Advisory 221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. The number of wheelchair spaces required in luxury boxes, club boxes, and suites within an arena, stadium, or grandstand is to be calculated box by box and suite by suite.

221.2.1.3 Other Boxes. In boxes other than those required to comply with 221.2.1.2, the total number of *wheelchair spaces* required shall be determined in accordance with Table 221.2.1.1. *Wheelchair spaces* shall be located in not less than 20 percent of all boxes provided. *Wheelchair spaces* shall comply with 802.1.

Advisory 221.2.1.3 Other Boxes. The provision for seating in "other boxes" includes box seating provided in facilities such as performing arts auditoria where tiered boxes are designed for spatial and acoustical purposes. The number of wheelchair spaces required in boxes covered by 221.2.1.3 is calculated based on the total number of seats provided in these other boxes. The resulting number of wheelchair spaces must be located in no fewer than 20% of the boxes covered by this section. For example, a concert hall has 20 boxes, each of which contains 10 seats, totaling 200 seats. In this example, 5 wheelchair spaces would be required, and they must be placed in at least 4 of the boxes. Additionally, because the wheelchair spaces must also meet the dispersion requirements of 221.2.3, the boxes containing these wheelchair spaces cannot all be located in one area unless an exception to the dispersion requirements applies.

221.2.1.4 Team or Player Seating. At least one *wheelchair space* complying with 802.1 shall be provided in team or player seating areas serving *areas of sport activity.*

EXCEPTION: *Wheelchair spaces* shall not be required in team or player seating areas serving bowling lanes not required to comply with 206.2.11.

221.2.2 Integration. *Wheelchair spaces* shall be an integral part of the seating plan.

Advisory 221.2.2 Integration. The requirement that wheelchair spaces be an "integral part of the seating plan" means that wheelchair spaces must be placed within the footprint of the seating area. Wheelchair spaces cannot be segregated from seating areas. For example, it would be unacceptable to place only the wheelchair spaces, or only the wheelchair spaces and their associated companion seats, outside the seating areas defined by risers in an assembly area.

221.2.3 Lines of Sight and Dispersion. *Wheelchair spaces* shall provide lines of sight complying with 802.2 and shall comply with 221.2.3. In providing lines of sight, *wheelchair spaces* shall be dispersed. *Wheelchair spaces* shall provide spectators with choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators. When the number of *wheelchair spaces* required by 221.2.1 has been met, further dispersion shall not be required.

EXCEPTION: *Wheelchair spaces* in team or player seating areas serving *areas of sport activity* shall not be required to comply with 221.2.3.

Advisory 221.2.3 Lines of Sight and Dispersion. Consistent with the overall intent of the ADA, individuals who use wheelchairs must be provided equal access so that their experience is substantially equivalent to that of other members of the audience. Thus, while individuals who use wheelchairs need not be provided with the best seats in the house, neither may they be relegated to the worst.

221.2.3.1 Horizontal Dispersion. *Wheelchair spaces* shall be dispersed horizontally.

EXCEPTIONS: 1. Horizontal dispersion shall not be required in *assembly areas* with 300 or fewer seats if the companion seats required by 221.3 and *wheelchair spaces* are located within the 2nd or 3rd quartile of the total row length. Intermediate aisles shall be included in

determining the total row length. If the row length in the 2nd and 3rd quartile of a row is insufficient to accommodate the required number of companion seats and *wheelchair spaces*, the additional companion seats and *wheelchair spaces* shall be permitted to be located in the 1st and 4th quartile of the row.

2. In row seating, two *wheelchair spaces* shall be permitted to be located side-by-side.

Advisory 221.2.3.1 Horizontal Dispersion. Horizontal dispersion of wheelchair spaces is the placement of spaces in an assembly facility seating area from side-to-side or, in the case of an arena or stadium, around the field of play or performance area.

221.2.3.2 Vertical Dispersion. *Wheelchair spaces* shall be dispersed vertically at varying distances from the screen, performance area, or playing field. In addition, *wheelchair spaces* shall be located in each balcony or *mezzanine* that is located on an *accessible* route.

EXCEPTIONS: 1. Vertical dispersion shall not be required in *assembly areas* with 300 or fewer seats if the *wheelchair spaces* provide viewing angles that are equivalent to, or better than, the average viewing angle provided in the *facility*.

2. In bleachers, *wheelchair spaces* shall not be required to be provided in rows other than rows at points of entry to bleacher seating.

Advisory 221.2.3.2 Vertical Dispersion. When wheelchair spaces are dispersed vertically in an assembly facility they are placed at different locations within the seating area from front-to-back so that the distance from the screen, stage, playing field, area of sports activity, or other focal point is varied among wheelchair spaces.

Advisory 221.2.3.2 Vertical Dispersion Exception 2. Points of entry to bleacher seating may include, but are not limited to, cross aisles, concourses, vomitories, and entrance ramps and stairs. Vertical, center, or side aisles adjoining bleacher seating that are stepped or tiered are not considered entry points.

221.3 Companion Seats. At least one companion seat complying with 802.3 shall be provided for each *wheelchair space* required by 221.2.1.

221.4 Designated Aisle Seats. At least 5 percent of the total number of aisle seats provided shall comply with 802.4 and shall be the aisle seats located closest to *accessible* routes.

EXCEPTION: Team or player seating areas serving *areas of sport activity* shall not be required to comply with 221.4.

Advisory 221.4 Designated Aisle Seats. When selecting which aisle seats will meet the requirements of 802.4, those aisle seats which are closest to, not necessarily on, accessible routes must be selected first. For example, an assembly area has two aisles (A and B) serving seating areas with an accessible route connecting to the top and bottom of Aisle A only. The aisle seats chosen to meet 802.4 must be those at the top and bottom of Aisle A, working toward the middle. Only when all seats on Aisle A would not meet the five percent minimum would seats on Aisle B be designated.

221.5 Lawn Seating. Lawn seating areas and exterior overflow seating areas, where fixed seats are not provided, shall connect to an *accessible* route.

222 Dressing, Fitting, and Locker Rooms

222.1 General. Where dressing rooms, fitting rooms, or locker rooms are provided, at least 5 percent, but no fewer than one, of each type of use in each cluster provided shall comply with 803.

EXCEPTION: In *alterations*, where it is *technically infeasible* to provide rooms in accordance with 222.1, one room for each sex on each level shall comply with 803. Where only unisex rooms are provided, unisex rooms shall be permitted.

Advisory 222.1 General. A "cluster" is a group of rooms proximate to one another. Generally, rooms in a cluster are within sight of, or adjacent to, one another. Different styles of design provide users varying levels of privacy and convenience. Some designs include private changing facilities that are close to core areas of the facility, while other designs use space more economically and provide only group dressing facilities. Regardless of the type of facility, dressing, fitting, and locker rooms should provide people with disabilities rooms that are equally private and convenient to those provided others. For example, in a physician's office, if people without disabilities must traverse the full length of the office suite in clothing other than their street clothes, it is acceptable for people with disabilities to be asked to do the same.

222.2 Coat Hooks and Shelves. Where coat hooks or shelves are provided in dressing, fitting or locker rooms without individual compartments, at least one of each type shall comply with 803.5. Where coat hooks or shelves are provided in individual compartments at least one of each type complying with 803.5 shall be provided in individual compartments in dressing, fitting, or locker rooms required to comply with 222.1.

223 Medical Care and Long-Term Care Facilities

223.1 General. In licensed medical care *facilities* and licensed long-term care *facilities* where the period of stay exceeds twenty-four hours, patient or resident sleeping rooms shall be provided in accordance with 223.

EXCEPTION: Toilet rooms that are part of critical or intensive care patient sleeping rooms shall not be required to comply with 603.

Advisory 223.1 General. Because medical facilities frequently reconfigure spaces to reflect changes in medical specialties, Section 223.1 does not include a provision for dispersion of accessible patient or resident sleeping rooms. The lack of a design requirement does not mean that covered entities are not required to provide services to people with disabilities where accessible rooms are not dispersed in specialty areas. Locate accessible rooms near core areas that are less likely to change over time. While dispersion is not required, the flexibility it provides can be a critical factor in ensuring cost effective compliance with applicable civil rights laws, including titles II and III of the ADA and Section 504 of the Rehabilitation Act of 1973, as amended.

Advisory 223.1 General (Continued). Additionally, all types of features and amenities should be dispersed among accessible sleeping rooms to ensure equal access to and a variety of choices for all patients and residents.

223.1.1 Alterations. Where sleeping rooms are *altered* or *added*, the requirements of 223 shall apply only to the sleeping rooms being *altered* or *added* until the number of sleeping rooms complies with the minimum number required for new construction.

Advisory 223.1.1 Alterations. In alterations and additions, the minimum required number is based on the total number of sleeping rooms altered or added instead of on the total number of sleeping rooms provided in a facility. As a facility is altered over time, every effort should be made to disperse accessible sleeping rooms among patient care areas such as pediatrics, cardiac care, maternity, and other units. In this way, people with disabilities can have access to the full-range of services provided by a medical care facility.

223.2 Hospitals, Rehabilitation Facilities, Psychiatric Facilities and Detoxification Facilities. Hospitals, rehabilitation *facilities*, psychiatric *facilities* and detoxification *facilities* shall comply with 223.2.

223.2.1 Facilities Not Specializing in Treating Conditions That Affect Mobility. In *facilities* not specializing in treating conditions that affect mobility, at least 10 percent, but no fewer than one, of the patient sleeping rooms shall provide mobility features complying with 805.

223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. In *facilities* specializing in treating conditions that affect mobility, 100 percent of the patient sleeping rooms shall provide mobility features complying with 805.

Advisory 223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations. Facilities that may provide treatment for, but that do not specialize in treatment of such conditions, such as general rehabilitation hospitals, are not subject to this requirement but are subject to Section 223.2.1.

223.3 Long-Term Care Facilities. In licensed long-term care *facilities*, at least 50 percent, but no fewer than one, of each type of resident sleeping room shall provide mobility features complying with 805.

224 Transient Lodging Guest Rooms

224.1 General. *Transient lodging facilities* shall provide guest rooms in accordance with 224.

Advisory 224.1 General. Certain facilities used for transient lodging, including time shares, dormitories, and town homes may be covered by both these requirements and the Fair Housing Amendments Act. The Fair Housing Amendments Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). This law and the appropriate regulations should be consulted before proceeding with the design and construction of residential housing.

224.1.1 Alterations. Where guest rooms are *altered* or *added*, the requirements of 224 shall apply only to the guest rooms being *altered* or *added* until the number of guest rooms complies with the minimum number required for new construction.

Advisory 224.1.1 Alterations. In alterations and additions, the minimum required number of accessible guest rooms is based on the total number of guest rooms altered or added instead of the total number of guest rooms provided in a facility. Typically, each alteration of a facility is limited to a particular portion of the facility. When accessible guest rooms are added as a result of subsequent alterations, compliance with 224.5 (Dispersion) is more likely to be achieved if all of the accessible guest rooms are not provided in the same area of the facility.

224.1.2 Guest Room Doors and Doorways. *Entrances,* doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

Advisory 224.1.2 Guest Room Doors and Doorways. Because of the social interaction that often occurs in lodging facilities, an accessible clear opening width is required for doors and doorways to and within all guest rooms, including those not required to be accessible. This applies to all doors, including bathroom doors, that allow full user passage. Other requirements for doors and doorways in Section 404 do not apply to guest rooms not required to provide mobility features.

224.2 Guest Rooms with Mobility Features. In *transient lodging facilities*, guest rooms with mobility features complying with 806.2 shall be provided in accordance with Table 224.2.

Table 224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

224.3 Beds. In guest rooms having more than 25 beds, 5 percent minimum of the beds shall have clear floor *space* complying with 806.2.3.

224.4 Guest Rooms with Communication Features. In *transient lodging facilities*, guest rooms with communication features complying with 806.3 shall be provided in accordance with Table 224.4.

Table 224.4 Guest Rooms with Communication Features

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12

Table 224.4 Guest Rooms with Communication Features

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
151 to 200	14
201 to 300	17
301 to 400	20
401 to 500	22
501 to 1000	5 percent of total
1001 and over	50, plus 3 for each 100 over 1000

224.5 Dispersion. Guest rooms required to provide mobility features complying with 806.2 and guest rooms required to provide communication features complying with 806.3 shall be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests. Where the minimum number of guest rooms required to comply with 806 is not sufficient to allow for complete dispersion, guest rooms shall be dispersed in the following priority: guest room type, number of beds, and amenities. At least one guest room required to provide mobility features complying with 806.2 shall also provide communication features complying with 806.3. Not more than 10 percent of guest rooms required to provide mobility features complying with 806.2 shall be used to satisfy the minimum number of guest rooms required to provide communication features complying with 806.3.

> **Advisory 224.5 Dispersion.** Factors to be considered in providing an equivalent range of options may include, but are not limited to, room size, bed size, cost, view, bathroom fixtures such as hot tubs and spas, smoking and nonsmoking, and the number of rooms provided.

225 Storage

225.1 General. Storage *facilities* shall comply with 225.

225.2 Storage. Where storage is provided in accessible *spaces*, at least one of each type shall comply with 811.

> **Advisory 225.2 Storage.** Types of storage include, but are not limited to, closets, cabinets, shelves, clothes rods, hooks, and drawers. Where provided, at least one of each type of storage must be within the reach ranges specified in 308; however, it is permissible to install additional storage outside the reach ranges.

225.2.1 Lockers. Where lockers are provided, at least 5 percent, but no fewer than one of each type, shall comply with 811.

Advisory 225.2.1 Lockers. Different types of lockers may include full-size and half-size lockers, as well as those specifically designed for storage of various sports equipment.

225.2.2 Self-Service Shelving. Self-service shelves shall be located on an *accessible* route complying with 402. Self-service shelving shall not be required to comply with 308.

Advisory 225.2.2 Self-Service Shelving. Self-service shelves include, but are not limited to, library, store, or post office shelves.

225.3 Self-Service Storage Facilities. *Self-service storage facilities* shall provide individual *self-service storage spaces* complying with these requirements in accordance with Table 225.3.

Table 225.3 Self-Service Storage Facilities

Total Spaces in Facility	Minimum Number of Spaces Required to be Accessible
1 to 200	5 percent, but no fewer than 1
201 and over	10, plus 2 percent of total number of units over 200

Advisory 225.3 Self-Service Storage Facilities. Although there are no technical requirements that are unique to self-service storage facilities, elements and spaces provided in facilities containing self-service storage spaces required to comply with these requirements must comply with this document where applicable. For example: the number of storage spaces required to comply with these requirements must provide Accessible Routes complying with Section 206; Accessible Means of Egress complying with Section 207; Parking Spaces complying with Section 208; and, where provided, other pubic use or common use elements and facilities such as toilet rooms, drinking fountains, and telephones must comply with the applicable requirements of this document.

225.3.1 Dispersion. Individual *self-service storage spaces* shall be dispersed throughout the various classes of *spaces* provided. Where more classes of *spaces* are provided than the number required to be *accessible*, the number of *spaces* shall not be required to exceed that required by Table 225.3. *Self-service storage spaces* complying with Table 225.3 shall not be required to be dispersed among *buildings* in a multi-*building facility.*

226 Dining Surfaces and Work Surfaces

226.1 General. Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating *spaces* and standing *spaces* at the dining surfaces shall comply with 902. In addition, where work surfaces are provided for use by other than employees, at least 5 percent shall comply with 902.

EXCEPTIONS: 1. Sales counters and service counters shall not be required to comply with 902.

2. Check writing surfaces provided at check-out aisles not required to comply with 904.3 shall not be required to comply with 902.

Advisory 226.1 General. In facilities covered by the ADA, this requirement does not apply to work surfaces used only by employees. However, the ADA and, where applicable, Section 504 of the Rehabilitation Act of 1973, as amended, provide that employees are entitled to "reasonable accommodations." With respect to work surfaces, this means that employers may need to procure or adjust work stations such as desks, laboratory and work benches, fume hoods, reception counters, teller windows, study carrels, commercial kitchen counters, and conference tables to accommodate the individual needs of employees with disabilities on an "as needed" basis. Consider work surfaces that are flexible and permit installation at variable heights and clearances.

226.2 Dispersion. Dining surfaces and work surfaces required to comply with 902 shall be dispersed throughout the *space* or *facility* containing dining surfaces and work surfaces.

227 Sales and Service

227.1 General. Where provided, check-out aisles, sales counters, service counters, food service lines, queues, and waiting lines shall comply with 227 and 904.

227.2 Check-Out Aisles. Where check-out aisles are provided, check-out aisles complying with 904.3 shall be provided in accordance with Table 227.2. Where check-out aisles serve different functions, check-out aisles complying with 904.3 shall be provided in accordance with Table 227.2 for each function. Where check-out aisles are dispersed throughout the *building* or *facility*, check-out aisles complying with 904.3 shall be dispersed.

EXCEPTION: Where the selling *space* is under 5000 square feet (465 m^2) no more than one check-out aisle complying with 904.3 shall be required.

Table 227.2 Check-Out Aisles

Number of Check-Out Aisles of Each Function	Minimum Number of Check-Out Aisles of Each Function Required to Comply with 904.3
1 to 4	1
5 to 8	2
9 to 15	3
16 and over	3, plus 20 percent of additional aisles

227.2.1 Altered Check-Out Aisles. Where check-out aisles are *altered*, at least one of each check-out aisle serving each function shall comply with 904.3 until the number of check-out aisles complies with 227.2.

227.3 Counters. Where provided, at least one of each type of sales counter and service counter shall comply with 904.4. Where counters are dispersed throughout the *building* or *facility*, counters complying with 904.4 also shall be dispersed.

> **Advisory 227.3 Counters.** Types of counters that provide different services in the same facility include, but are not limited to, order, pick-up, express, and returns. One continuous counter can be used to provide different types of service. For example, order and pick-up are different services. It would not be acceptable to provide access only to the part of the counter where orders are taken when orders are picked-up at a different location on the same counter. Both the order and pick-up section of the counter must be accessible.

227.4 Food Service Lines. Food service lines shall comply with 904.5. Where self-service shelves are provided, at least 50 percent, but no fewer than one, of each type provided shall comply with 308.

227.5 Queues and Waiting Lines. Queues and waiting lines servicing counters or check-out aisles required to comply with 904.3 or 904.4 shall comply with 403.

228 Depositories, Vending Machines, Change Machines, Mail Boxes, and Fuel Dispensers

228.1 General. Where provided, at least one of each type of depository, vending machine, change machine, and fuel dispenser shall comply with 309.

EXCEPTION: Drive-up only depositories shall not be required to comply with 309.

> **Advisory 228.1 General.** Depositories include, but are not limited to, night receptacles in banks, post offices, video stores, and libraries.

228.2 Mail Boxes. Where *mail boxes* are provided in an interior location, at least 5 percent, but no fewer than one, of each type shall comply with 309. In residential *facilities*, where *mail boxes* are provided for each *residential dwelling unit*, *mail boxes* complying with 309 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

229 Windows

229.1 General. Where glazed openings are provided in *accessible* rooms or *spaces* for operation by occupants, at least one opening shall comply with 309. Each glazed opening required by an *administrative authority* to be operable shall comply with 309.

EXCEPTION: 1. Glazed openings in *residential dwelling units* required to comply with 809 shall not be required to comply with 229.

2. Glazed openings in guest rooms required to provide communication features and in guest rooms required to comply with 206.5.3 shall not be required to comply with 229.

230 Two-Way Communication Systems

230.1 General. Where a two-way communication system is provided to gain admittance to a *building* or *facility* or to restricted areas within a *building* or *facility*, the system shall comply with 708.

Advisory 230.1 General. This requirement applies to facilities such as office buildings, courthouses, and other facilities where admittance to the building or restricted spaces is dependent on two-way communication systems.

231 Judicial Facilities

231.1 General. Judicial *facilities* shall comply with 231.

231.2 Courtrooms. Each courtroom shall comply with 808.

231.3 Holding Cells. Where provided, central holding cells and court-floor holding cells shall comply with 231.3.

231.3.1 Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, or juvenile female, one of each type shall comply with 807.2. Where central holding cells are provided and are not separated by age or sex, at least one cell complying with 807.2 shall be provided.

231.3.2 Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, or juvenile female, each courtroom shall be served by one cell of each type complying with 807.2. Where court-floor holding cells are provided and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 807.2. Cells may serve more than one courtroom.

231.4 Visiting Areas. Visiting areas shall comply with 231.4.

231.4.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee sides.

EXCEPTION: The detainee side of cubicles or counters at non-contact visiting areas not serving holding cells required to comply with 231 shall not be required to comply with 902 or 904.4.2.

231.4.2 Partitions. Where solid partitions or security glazing separate visitors from detainees at least one of each type of cubicle or counter partition shall comply with 904.6.

232 Detention Facilities and Correctional Facilities

232.1 General. *Buildings*, *facilities*, or portions thereof, in which people are detained for penal or correction purposes, or in which the liberty of the inmates is restricted for security reasons shall comply with 232.

Advisory 232.1 General. Detention facilities include, but are not limited to, jails, detention centers, and holding cells in police stations. Correctional facilities include, but are not limited to, prisons, reformatories, and correctional centers.

232.2 General Holding Cells and General Housing Cells. General holding cells and general housing cells shall be provided in accordance with 232.2.

EXCEPTION: *Alterations* to cells shall not be required to comply except to the extent determined by the Attorney General.

Advisory 232.2 General Holding Cells and General Housing Cells. Accessible cells or rooms should be dispersed among different levels of security, housing categories, and holding classifications (e.g., male/female and adult/juvenile) to facilitate access. Many detention and correctional facilities are designed so that certain areas (e.g., "shift" areas) can be adapted to serve as different types of housing according to need. For example, a shift area serving as a medium-security housing unit might be redesignated for a period of time as a high-security housing unit to meet capacity needs. Placement of accessible cells or rooms in shift areas may allow additional flexibility in meeting requirements for dispersion of accessible cells or rooms.

Advisory 232.2 General Holding Cells and General Housing Cells Exception. Although these requirements do not specify that cells be accessible as a consequence of an alteration, title II of the ADA requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. This requirement must be met unless doing so would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens.

232.2.1 Cells with Mobility Features. At least 2 percent, but no fewer than one, of the total number of cells in a *facility* shall provide mobility features complying with 807.2.

232.2.1.1 Beds. In cells having more than 25 beds, at least 5 percent of the beds shall have clear floor *space* complying with 807.2.3.

232.2.2 Cells with Communication Features. At least 2 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying with 807.3.

232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: *Alterations* to cells shall not be required to comply except to the extent determined by the Attorney General.

232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with 223 shall be provided in addition to any medical isolation cells required to comply with 232.3.

232.5 Visiting Areas. Visiting areas shall comply with 232.5.

232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with 232 shall not be required to comply with 902 or 904.4.2.

232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

233 Residential Facilities

233.1 General. *Facilities* with *residential dwelling units* shall comply with 233.

Advisory 233.1 General. Section 233 outlines the requirements for residential facilities subject to the Americans with Disabilities Act of 1990. The facilities covered by Section 233, as well as other facilities not covered by this section, may still be subject to other Federal laws such as the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. For example, the Fair Housing Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). These laws and the appropriate regulations should be consulted before proceeding with the design and construction of residential facilities.

Residential facilities containing residential dwelling units provided by entities subject to HUD's Section 504 regulations and residential dwelling units covered by Section 233.3 must comply with the technical and scoping requirements in Chapters 1 through 10 included this document. Section 233 is not a stand-alone section; this section only addresses the minimum number of residential dwelling units within a facility required to comply with Chapter 8. However, residential facilities must also comply with the requirements of this document. For example: Section 206.5.4 requires all doors and doorways providing user passage in residential dwelling units providing mobility features to comply with Section 404; Section 206.7.6 permits platform lifts to be used to connect levels within residential dwelling units providing mobility features; Section 208 provides general scoping for accessible parking and Section 208.2.3.1 specifies the required number of accessible parking spaces for each residential dwelling unit providing mobility features; Section 228.2 requires mail boxes to be within reach ranges when they serve residential dwelling units providing mobility features; play areas are addressed in Section 240; and swimming pools are addressed in Section 242. There are special provisions applicable to facilities containing residential dwelling units at: Exception 3 to 202.3; Exception to 202.4; 203.8; and Exception 4 to 206.2.3.

233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations. Where *facilities* with *residential dwelling units* are provided by entities subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act

of 1973, as amended, such entities shall provide *residential dwelling units* with mobility features complying with 809.2 through 809.4 in a number required by the applicable HUD regulations. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall be on an *accessible* route as required by 206. In addition, such entities shall provide *residential dwelling units* with communication features complying with 809.5 in a number required by the applicable HUD regulations. Entities subject to 233.2 shall not be required to comply with 233.3.

Advisory 233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations. Section 233.2 requires that entities subject to HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with these regulations in a number specified in HUD's Section 504 regulations. Further, the residential dwelling units provided must be dispersed according to HUD's Section 504 criteria. In addition, Section 233.2 defers to HUD the specification of criteria by which the technical requirements of this document will apply to alterations of existing facilities subject to HUD's Section 504 regulations.

233.3 Residential Dwelling Units Provided by Entitles Not Subject to HUD Section 504 Regulations. *Facilities* with *residential dwelling units* provided by entities not subject to regulations issued by the Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, shall comply with 233.3.

233.3.1 Minimum Number: New Construction. Newly constructed *facilities* with *residential dwelling units* shall comply with 233.3.1.

EXCEPTION: Where *facilities* contain 15 or fewer *residential dwelling units*, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of *residential dwelling units* that are constructed under a single contract, or are developed as a whole, whether or not located on a common *site*.

233.3.1.1 Residential Dwelling Units with Mobility Features. In *facilities* with *residential dwelling units*, at least 5 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide mobility features complying with 809.2 through 809.4 and shall be on an *accessible* route as required by 206.

233.3.1.2 Residential Dwelling Units with Communication Features. In *facilities* with *residential dwelling units*, at least 2 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide communication features complying with 809.5.

233.3.2 Residential Dwelling Units for Sale. *Residential dwelling units* offered for sale shall provide *accessible* features to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended.

Advisory 233.3.2 Residential Dwelling Units for Sale. A public entity that conducts a program to build housing for purchase by individual home buyers must provide access according to the requirements of the ADA regulations and a program receiving Federal financial assistance must comply with the applicable Section 504 regulation.

233.3.3 Additions. Where an *addition* to an existing *building* results in an increase in the number of *residential dwelling units,* the requirements of 233.3.1 shall apply only to the *residential dwelling units* that are *added* until the total number of *residential dwelling units* complies with the minimum number required by 233.3.1. *Residential dwelling units* required to comply with 233.3.1.1 shall be on an *accessible* route as required by 206.

233.3.4 Alterations. *Alterations* shall comply with 233.3.4.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is *technically infeasible*, or where it is *technically infeasible* to provide an *accessible* route to a *residential dwelling unit*, the entity shall be permitted to *alter* or construct a comparable *residential dwelling unit* to comply with 809.2 through 809.4 provided that the minimum number of *residential dwelling units* required by 233.3.1.1 and 233.3.1.2, as applicable, is satisfied.

Advisory 233.3.4 Alterations Exception. A substituted dwelling unit must be comparable to the dwelling unit that is not made accessible. Factors to be considered in comparing one dwelling unit to another should include the number of bedrooms; amenities provided within the dwelling unit; types of common spaces provided within the facility; and location with respect to community resources and services, such as public transportation and civic, recreational, and mercantile facilities.

233.3.4.1 Alterations to Vacated Buildings. Where a *building* is vacated for the purposes of *alteration*, and the *altered building* contains more than 15 *residential dwelling units*, at least 5 percent of the *residential dwelling units* shall comply with 809.2 through 809.4 and shall be on an *accessible* route as required by 206. In addition, at least 2 percent of the *residential dwelling units* shall comply with 809.5.

Advisory 233.3.4.1 Alterations to Vacated Buildings. This provision is intended to apply where a building is vacated with the intent to alter the building. Buildings that are vacated solely for pest control or asbestos removal are not subject to the requirements to provide residential dwelling units with mobility features or communication features.

233.3.4.2 Alterations to Individual Residential Dwelling Units. In individual *residential dwelling units*, where a bathroom or a kitchen is substantially *altered*, and at least one other room is *altered*, the requirements of 233.3.1 shall apply to the *altered residential dwelling units* until the total number of *residential dwelling units* complies with the minimum number required by 233.3.1.1 and 233.3.1.2. *Residential dwelling units* required to comply with 233.3.1.1 shall be on an *accessible* route as required by 206.

EXCEPTION: Where *facilities* contain 15 or fewer *residential dwelling units*, the requirements of 233.3.1.1 and 233.3.1.2 shall apply to the total number of *residential dwelling units* that are *altered* under a single contract, or are developed as a whole, whether or not located on a common *site*.

Advisory 233.3.4.2 Alterations to Individual Residential Dwelling Units. Section 233.3.4.2 uses the terms "substantially altered" and "altered." A substantial alteration to a kitchen or bathroom includes, but is not limited to, alterations that are changes to or rearrangements in the plan configuration, or replacement of cabinetry. Substantial alterations do not include normal maintenance or appliance and fixture replacement, unless such maintenance or replacement requires changes to or rearrangements in the plan configuration, or replacement of cabinetry. The term "alteration" is defined both in Section 106 of these requirements and in the Department of Justice ADA regulations.

233.3.5 Dispersion. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 and *residential dwelling units* required to provide communication features complying with 809.5 shall be dispersed among the various types of *residential dwelling units* in the *facility* and shall provide choices of *residential dwelling units* comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-*story residential dwelling units* are one of the types of *residential dwelling units* provided, one-*story residential dwelling units* shall be permitted as a substitute for multi-*story residential dwelling units* where equivalent *spaces* and amenities are provided in the one-*story residential dwelling unit.*

234 Amusement Rides

234.1 General. A*musement rides* shall comply with 234.

EXCEPTION: Mobile or portable *amusement rides* shall not be required to comply with 234.

Advisory 234.1 General. These requirements apply generally to newly designed and constructed amusement rides and attractions. A custom designed and constructed ride is new upon its first use, which is the first time amusement park patrons take the ride. With respect to amusement rides purchased from other entities, new refers to the first permanent installation of the ride, whether it is used off the shelf or modified before it is installed. Where amusement rides are moved after several seasons to another area of the park or to another park, the ride would not be considered newly designed or newly constructed.

Some amusement rides and attractions that have unique designs and features are not addressed by these requirements. In those situations, these requirements are to be applied to the extent possible. An example of an amusement ride not specifically addressed by these requirements includes "virtual reality" rides where the device does not move through a fixed course within a defined area. An accessible route must be provided to these rides. Where an attraction or ride has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions.

Advisory 234.1 General Exception. Mobile or temporary rides are those set up for short periods of time such as traveling carnivals, State and county fairs, and festivals. The amusement rides that are covered by 234.1 are ones that are not regularly assembled and disassembled.

234.2 Load and Unload Areas. Load and unload areas serving *amusement rides* shall comply with 1002.3.

234.3 Minimum Number. *Amusement rides* shall provide at least one *wheelchair space* complying with 1002.4, or at least one *amusement ride seat* designed for transfer complying with 1002.5, or at least one *transfer device* complying with 1002.6.

EXCEPTIONS: 1. *Amusement rides* that are controlled or operated by the rider shall not be required to comply with 234.3.

2. *Amusement rides* designed primarily for children, where children are assisted on and off the ride by an adult, shall not be required to comply with 234.3.

3. *Amusement rides* that do not provide *amusement ride seats* shall not be required to comply with 234.3.

Advisory 234.3 Minimum Number Exceptions 1 through 3. Amusement rides controlled or operated by the rider, designed for children, or rides without ride seats are not required to comply with 234.3. These rides are not exempt from the other provisions in 234 requiring an accessible route to the load and unload areas and to the ride. The exception does not apply to those rides where patrons may cause the ride to make incidental movements, but where the patron otherwise has no control over the ride.

Advisory 234.3 Minimum Number Exception 2. The exception is limited to those rides designed "primarily" for children, where children are assisted on and off the ride by an adult. This exception is limited to those rides designed for children and not for the occasional adult user. An accessible route to and turning space in the load and unload area will provide access for adults and family members assisting children on and off these rides.

234.4 Existing Amusement Rides. Where existing *amusement rides* are *altered*, the *alteration* shall comply with 234.4.

Advisory 234.4 Existing Amusement Rides. Routine maintenance, painting, and changing of theme boards are examples of activities that do not constitute an alteration subject to this section.

234.4.1 Load and Unload Areas. Where load and unload areas serving existing *amusement rides* are newly designed and constructed, the load and unload areas shall comply with 1002.3.

234.4.2 Minimum Number. Where the structural or operational characteristics of an *amusement ride* are *altered* to the extent that the *amusement ride*'s performance differs from that specified by the manufacturer or the original design, the *amusement ride* shall comply with 234.3.

235 Recreational Boating Facilities

235.1 General. Recreational boating *facilities* shall comply with 235.

235.2 Boat Slips. *Boat slips* complying with 1003.3.1 shall be provided in accordance with Table 235.2. Where the number of *boat slips* is not identified, each 40 feet (12 m) of *boat slip* edge provided along the perimeter of the pier shall be counted as one *boat slip* for the purpose of this section.

Table 235.2 Boat Slips

Total Number of Boat Slips Provided in Facility	Minimum Number of Required Accessible Boat Slips
1 to 25	1
26 to 50	2
51 to 100	3
101 to 150	4
151 to 300	5
301 to 400	6
401 to 500	7
501 to 600	8
601 to 700	9
701 to 800	10
801 to 900	11
901 to 1000	12
1001 and over	12, plus 1 for every 100, or fraction thereof, over 1000

Advisory 235.2 Boat Slips. The requirement for boat slips also applies to piers where boat slips are not demarcated. For example, a single pier 25 feet (7620 mm) long and 5 feet (1525 mm) wide (the minimum width specified by Section 1003.3) allows boats to moor on three sides. Because the number of boat slips is not demarcated, the total length of boat slip edge (55 feet, 17 m) must be used to determine the number of boat slips provided (two). This number is based on the specification in Section 235.2 that each 40 feet (12 m) of boat slip edge, or fraction thereof, counts as one boat slip. In this example, Table 235.2 would require one boat slip to be accessible.

235.2.1 Dispersion. *Boat slips* complying with 1003.3.1 shall be dispersed throughout the various types of *boat slips* provided. Where the minimum number of *boat slips* required to comply with 1003.3.1 has been met, no further dispersion shall be required.

Advisory 235.2.1 Dispersion. Types of boat slips are based on the size of the boat slips; whether single berths or double berths, shallow water or deep water, transient or longer-term lease, covered or uncovered; and whether slips are equipped with features such as telephone, water, electricity or cable connections. The term "boat slip" is intended to cover any pier area other than launch ramp boarding piers where recreational boats are moored for purposes of berthing, embarking, or disembarking. For example, a fuel pier may contain boat slips, and this type of short term slip would be included in determining compliance with 235.2.

235.3 Boarding Piers at Boat Launch Ramps. Where *boarding piers* are provided at *boat launch ramps*, at least 5 percent, but no fewer than one, of the *boarding piers* shall comply with 1003.3.2.

236 Exercise Machines and Equipment

236.1 General. At least one of each type of exercise machine and equipment shall comply with 1004.

Advisory 236.1 General. Most strength training equipment and machines are considered different types. Where operators provide a biceps curl machine and cable-cross-over machine, both machines are required to meet the provisions in this section, even though an individual may be able to work on their biceps through both types of equipment.

Similarly, there are many types of cardiovascular exercise machines, such as stationary bicycles, rowing machines, stair climbers, and treadmills. Each machine provides a cardiovascular exercise and is considered a different type for purposes of these requirements.

237 Fishing Piers and Platforms

237.1 General. Fishing piers and platforms shall comply with 1005.

238 Golf Facilities

238.1 General. Golf *facilities* shall comply with 238.

238.2 Golf Courses. Golf courses shall comply with 238.2.

238.2.1 Teeing Grounds. Where one *teeing ground* is provided for a hole, the *teeing ground* shall be designed and constructed so that a golf car can enter and exit the *teeing ground*. Where two *teeing grounds* are provided for a hole, the forward *teeing ground* shall be designed and constructed so that a golf car can enter and exit the *teeing ground*. Where three or more *teeing grounds* are provided for a hole, at least two *teeing grounds*, including the forward *teeing ground*, shall be designed and constructed so that a golf car can enter and exit each *teeing ground*.

EXCEPTION: In existing golf courses, the forward *teeing ground* shall not be required to be one of the *teeing grounds* on a hole designed and constructed so that a golf car can enter and exit the *teeing ground* where compliance is not feasible due to terrain.

238.2.2 Putting Greens. Putting greens shall be designed and constructed so that a golf car can enter and exit the putting green.

238.2.3 Weather Shelters. Where provided, weather shelters shall be designed and constructed so that a golf car can enter and exit the weather shelter and shall comply with 1006.4.

238.3 Practice Putting Greens, Practice Teeing Grounds, and Teeing Stations at Driving Ranges. At least 5 percent, but no fewer than one, of practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges shall be designed and constructed so that a golf car can enter and exit the practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges.

239 Miniature Golf Facilities

239.1 General. Miniature golf *facilities* shall comply with 239.

239.2 Minimum Number. At least 50 percent of holes on miniature golf courses shall comply with 1007.3.

> **Advisory 239.2 Minimum Number.** Where possible, providing access to all holes on a miniature golf course is recommended. If a course is designed with the minimum 50 percent accessible holes, designers or operators are encouraged to select holes which provide for an equivalent experience to the maximum extent possible.

239.3 Miniature Golf Course Configuration. Miniature golf courses shall be configured so that the holes complying with 1007.3 are consecutive. Miniature golf courses shall provide an *accessible* route from the last hole complying with 1007.3 to the course *entrance* or exit without requiring travel through any other holes on the course.

EXCEPTION: One break in the sequence of consecutive holes shall be permitted provided that the last hole on the miniature golf course is the last hole in the sequence.

> **Advisory 239.3 Miniature Golf Course Configuration.** Where only the minimum 50 percent of the holes are accessible, an accessible route from the last accessible hole to the course exit or entrance must not require travel back through other holes. In some cases, this may require an additional accessible route. Other options include increasing the number of accessible holes in a way that limits the distance needed to connect the last accessible hole with the course exit or entrance.

240 Play Areas

240.1 General. *Play areas* for children ages 2 and over shall comply with 240. Where separate *play areas* are provided within a *site* for specific age groups, each *play area* shall comply with 240.

EXCEPTIONS: 1. *Play areas* located in family child care *facilities* where the proprietor actually resides shall not be required to comply with 240.

2. In existing *play areas*, where *play components* are relocated for the purposes of creating safe *use zones* and the ground surface is not *altered* or extended for more than one *use zone*, the *play area* shall not be required to comply with 240.

3. *Amusement attractions* shall not be required to comply with 240.
4. Where *play components* are *altered* and the ground surface is not *altered*, the ground surface shall not be required to comply with 1008.2.6 unless required by 202.4.

Advisory 240.1 General. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

240.1.1 Additions. Where *play areas* are designed and constructed in phases, the requirements of 240 shall apply to each successive *addition* so that when the *addition* is completed, the entire *play area* complies with all the applicable requirements of 240.

Advisory 240.1.1 Additions. These requirements are to be applied so that when each successive addition is completed, the entire play area complies with all applicable provisions. For example, a play area is built in two phases. In the first phase, there are 10 elevated play components and 10 elevated play components are added in the second phase for a total of 20 elevated play components in the play area. When the first phase was completed, at least 5 elevated play components, including at least 3 different types, were to be provided on an accessible route. When the second phase is completed, at least 10 elevated play components must be located on an accessible route, and at least 7 ground level play components, including 4 different types, must be provided on an accessible route. At the time the second phase is complete, ramps must be used to connect at least 5 of the elevated play components and transfer systems are permitted to be used to connect the rest of the elevated play components required to be located on an accessible route.

240.2 Play Components. Where provided, *play components* shall comply with 240.2.

240.2.1 Ground Level Play Components. *Ground level play components* shall be provided in the number and types required by 240.2.1. *Ground level play components* that are provided to comply with 240.2.1.1 shall be permitted to satisfy the additional number required by 240.2.1.2 if the minimum required types of *play components* are satisfied. Where two or more required *ground level play components* are provided, they shall be dispersed throughout the *play area* and integrated with other *play components*.

Advisory 240.2.1 Ground Level Play Components. Examples of ground level play components may include spring rockers, swings, diggers, and stand-alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding.

Advisory 240.2.1 Ground Level Play Components (Continued). A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component from a straight slide.

Ground level play components accessed by children with disabilities must be integrated into the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

Where a stand-alone slide is provided, an accessible route must connect the base of the stairs at the entry point to the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 1008.4.3.

Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use, or may choose not to use, transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to 12 inches (305 mm). Where possible, designers and operators are encouraged to provide ramps with a slope less than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

240.2.1.1 Minimum Number and Types. Where *ground level play components* are provided, at least one of each type shall be on an *accessible* route and shall comply with 1008.4.

240.2.1.2 Additional Number and Types. Where *elevated play components* are provided, *ground level play components* shall be provided in accordance with Table 240.2.1.2 and shall comply with 1008.4.

EXCEPTION: If at least 50 percent of the *elevated play components* are connected by a *ramp* and at least 3 of the *elevated play components* connected by the *ramp* are different types of *play components*, the *play area* shall not be required to comply with 240.2.1.2.

Table 240.2.1.2 Number and Types of Ground Level Play Components Required to be on Accessible Routes

Number of Elevated Play Components Provided	Minimum Number of Ground Level Play Components Required to be on an Accessible Route	Minimum Number of Different Types of Ground Level Play Components Required to be on an Accessible Route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
26 and over	8, plus 1 for each additional 3, or fraction thereof, over 25	5

Advisory 240.2.1.2 Additional Number and Types. Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route.

240.2.2 Elevated Play Components. Where *elevated play components* are provided, at least 50 percent shall be on an *accessible* route and shall comply with 1008.4.

Advisory 240.2.2 Elevated Play Components. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components that are attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck. For example, a climber attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck on a composite play structure.

Advisory 240.2.2 Elevated Play Components (Continued). Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers and overhead play components) are considered elevated play components. These play components are not considered ground level play components and do not count toward the requirements in 240.2.1.2 regarding the number of ground level play components that must be located on an accessible route.

241 Saunas and Steam Rooms

241 General. Where provided, saunas and steam rooms shall comply with 612.

EXCEPTION: Where saunas or steam rooms are clustered at a single location, no more than 5 percent of the saunas and steam rooms, but no fewer than one, of each type in each cluster shall be required to comply with 612.

242 Swimming Pools, Wading Pools, and Spas

242.1 General. Swimming pools, wading pools, and spas shall comply with 242.

242.2 Swimming Pools. At least two *accessible* means of entry shall be provided for swimming pools. *Accessible* means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one *accessible* means of entry provided shall comply with 1009.2 or 1009.3.

EXCEPTIONS: 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one *accessible* means of entry shall be required provided that the *accessible* means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3.

2. Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one *accessible* means of entry provided that the *accessible* means of entry is a swimming pool lift complying with 1009.2, a sloped entry complying with 1009.3, or a transfer system complying with 1009.5.

3. *Catch pools* shall not be required to provide an *accessible* means of entry provided that the *catch pool* edge is on an *accessible* route.

Advisory 242.2 Swimming Pools. Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they not be provided in the same location in the pool. Different locations will provide increased options for entry and exit, especially in larger pools.

Advisory 242.2 Swimming Pools Exception 1. Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are to be counted when determining the number of accessible means of entry required.

242.3 Wading Pools. At least one *accessible* means of entry shall be provided for wading pools. Accessible means of entry shall comply with sloped entries complying with 1009.3.

242.4 Spas. At least one *accessible* means of entry shall be provided for spas. *Accessible* means of entry shall comply with swimming pool lifts complying with1009.2; transfer walls complying with 1009.4; or transfer systems complying with 1009.5.

EXCEPTION: Where spas are provided in a cluster, no more than 5 percent, but no fewer than one, spa in each cluster shall be required to comply with 242.4.

243 Shooting Facilities with Firing Positions

243.1 General. Where shooting *facilities* with firing positions are designed and constructed at a *site*, at least 5 percent, but no fewer than one, of each type of firing position shall comply with 1010.

Appendix C to Part 1191—
Architectural Barriers Act: Scoping

ABA CHAPTER 1: APPLICATION AND ADMINISTRATION

F101 Purpose

This document contains scoping and technical requirements for *accessibility* to *sites*, *facilities*, *buildings*, and *elements* by individuals with disabilities. The requirements are to be applied during the design, construction, *addition* to, *alteration*, and *lease* of *sites*, *facilities*, *buildings*, and *elements* to the extent required by regulations issued by Federal agencies under the Architectural Barriers Act of 1968 (ABA).

F102 Dimensions for Adults and Children

The technical requirements are based on adult dimensions and anthropometrics. In addition, this document includes technical requirements based on children's dimensions and anthropometrics for drinking fountains, water closets, toilet compartments, lavatories and sinks, dining surfaces, and work surfaces.

F103 Modifications and Waivers

The Architectural Barriers Act authorizes the Administrator of the General Services Administration, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of Defense, and the United States Postal Service to modify or waive the *accessibility* standards for *buildings* and *facilities* covered by the Architectural Barriers Act on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned. The General Services Administration, the Department of Housing and Urban Development, the Department of Defense, and the United States Postal Service may grant a modification or waiver only upon a determination that it is clearly necessary. Section 502(b)(1) of the Rehabilitation Act of 1973 authorizes the Access Board to ensure that modifications and waivers are based on findings of fact and are not inconsistent with the Architectural Barriers Act.

> **Advisory F103 Modifications and Waivers.** The provisions for modifications and waivers differ from the requirement issued under the Americans with Disabilities Act in that "equivalent facilitation" does not apply. There is a formal procedure for Federal agencies to request a waiver or modification of applicable standards under the Architectural Barriers Act.

F104 Conventions

F104.1 Dimensions. Dimensions that are not stated as "maximum" or "minimum" are absolute.

F104.1.1 Construction and Manufacturing Tolerances. All dimensions are subject to conventional industry tolerances except where the requirement is stated as a range with specific minimum and maximum end points.

Advisory F104.1.1 Construction and Manufacturing Tolerances. Conventional industry tolerances recognized by this provision include those for field conditions and those that may be a necessary consequence of a particular manufacturing process. Recognized tolerances are not intended to apply to design work.

It is good practice when specifying dimensions to avoid specifying a tolerance where dimensions are absolute. For example, if this document requires "1½ inches," avoid specifying "1½ inches plus or minus X inches."

Where the requirement states a specified range, such as in Section 609.4 where grab bars must be installed between 33 inches and 36 inches above the floor, the range provides an adequate tolerance and therefore no tolerance outside of the range at either end point is permitted.

Where a requirement is a minimum or a maximum dimension that does not have two specific minimum and maximum end points, tolerances may apply. Where an element is to be installed at the minimum or maximum permitted dimension, such as "15 inches minimum" or "5 pounds maximum", it would not be good practice to specify "5 pounds (plus X pounds) or 15 inches (minus X inches)." Rather, it would be good practice to specify a dimension less than the required maximum (or more than the required minimum) by the amount of the expected field or manufacturing tolerance and not to state any tolerance in conjunction with the specified dimension.

Specifying dimensions in design in the manner described above will better ensure that facilities and elements accomplish the level of accessibility intended by these requirements. It will also more often produce an end result of strict and literal compliance with the stated requirements and eliminate enforcement difficulties and issues that might otherwise arise. Information on specific tolerances may be available from industry or trade organizations, code groups and building officials, and published references.

F104.2 Calculation of Percentages. Where the required number of *elements* or *facilities* to be provided is determined by calculations of ratios or percentages and remainders or fractions result, the next greater whole number of such *elements* or *facilities* shall be provided. Where the determination of the required size or dimension of an *element* or *facility* involves ratios or percentages, rounding down for values less than one half shall be permitted.

F104.3 Figures. Unless specifically stated otherwise, figures are provided for informational purposes only.

Convention	Description
36 / 915	dimension showing English units (in inches unless otherwise specified) above the line and SI units (in millimeters unless otherwise specified) below the line
6 / 150	dimension for small measurements
33-36 / 840-915	dimension showing a range with minimum - maximum
min	minimum
max	maximum
>	greater than
≥	greater than or equal to
<	less than
≤	less than or equal to
	boundary of clear floor space or maneuvering clearance
℄	centerline
	a permitted element or its extension
	direction of travel or approach
	a wall, floor, ceiling or other element cut in section or plan
	a highlighted element in elevation or plan
	location zone of element, control or feature

Figure F104
Graphic Convention for Figures

F105 Referenced Standards

F105.1 General. The standards listed in F105.2 are incorporated by reference in this document and are part of the requirements to the prescribed extent of each such reference. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, NW, Washington, DC; at the Department of Transportation, 400 Seventh Street, SW, Room 10424, Washington DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

F105.2 Referenced Standards. The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

F105.2.1 ANSI/BHMA. Copies of the referenced standards may be obtained from the Builders Hardware Manufacturers Association, 355 Lexington Avenue, 17th floor, New York, NY 10017 (http://www.buildershardware.com).

ANSI/BHMA A156.10-1999 American National Standard for Power Operated Pedestrian Doors (see 404.3).

ANSI/BHMA A156.19-1997 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

ANSI/BHMA A156.19-2002 American National Standard for Power Assist and Low Energy Power Operated Doors (see 404.3, 408.3.2.1, and 409.3.1).

Advisory F105.2.1 ANSI/BHMA. ANSI/BHMA A156.10-1999 applies to power operated doors for pedestrian use which open automatically when approached by pedestrians. Included are provisions intended to reduce the chance of user injury or entrapment.

ANSI/BHMA A156.19-1997 and A156.19-2002 applies to power assist doors, low energy power operated doors or low energy power open doors for pedestrian use not provided for in ANSI/BHMA A156.10 for Power Operated Pedestrian Doors. Included are provisions intended to reduce the chance of user injury or entrapment.

F105.2.2 ASME. Copies of the referenced standards may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016 (http://www.asme.org).

ASME A17.1- 2000 Safety Code for Elevators and Escalators, including ASME A17.1a-2002 Addenda and ASME A17.1b-2003 Addenda (see 407.1, 408.1, 409.1, and 810.9).

ASME A18.1-1999 Safety Standard for Platform Lifts and Stairway Chairlifts, including ASME A18.1a-2001 Addenda and ASME A18.1b-2001 Addenda (see 410.1).

ASME A18.1-2003 Safety Standard for Platform Lifts and Stairway Chairlifts, (see 410.1).

Advisory F105.2.2 ASME. ASME A17.1-2000 is used by local jurisdictions throughout the United States for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators and escalators. The majority of the requirements apply to the operational machinery not seen or used by elevator passengers. ASME A17.1 requires a two-way means of emergency communications in passenger elevators. This means of communication must connect with emergency or authorized personnel and not an automated answering system. The communication system must be push button activated. The activation button must be permanently identified with the word "HELP." A visual indication acknowledging the establishment of a communications link to authorized personnel must be provided. The visual indication must remain on until the call is terminated by authorized personnel. The building location, the elevator car number, and the need for assistance must be provided to authorized personnel answering the emergency call. The use of a handset by the communications system is prohibited. Only the authorized personnel answering the call can terminate the call. Operating instructions for the communications system must be provided in the elevator car.

The provisions for escalators require that at least two flat steps be provided at the entrance and exit of every escalator and that steps on escalators be demarcated by yellow lines 2 inches wide maximum along the back and sides of steps.

ASME A18.1-1999 and ASME A18.1-2003 address the design, construction, installation, operation, inspection, testing, maintenance and repair of lifts that are intended for transportation of persons with disabilities. Lifts are classified as: vertical platform lifts, inclined platform lifts, inclined stairway chairlifts, private residence vertical platform lifts, private residence inclined platform lifts, and private residence inclined stairway chairlifts.

This document does not permit the use of inclined stairway chairlifts which do not provide platforms because such lifts require the user to transfer to a seat.

ASME A18.1 contains requirements for runways, which are the spaces in which platforms or seats move. The standard includes additional provisions for runway enclosures, electrical equipment and wiring, structural support, headroom clearance (which is 80 inches minimum), lower level access ramps and pits. The enclosure walls not used for entry or exit are required to have a grab bar the full length of the wall on platform lifts. Access ramps are required to meet requirements similar to those for ramps in Chapter 4 of this document.

Each of the lift types addressed in ASME A18.1 must meet requirements for capacity, load, speed, travel, operating devices, and control equipment. The maximum permitted height for operable parts is consistent with Section 308 of this document. The standard also addresses attendant operation. However, Section 410.1 of this document does not permit attendant operation.

F105.2.3 ASTM. Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (http://www.astm.org).

ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 1008.2.6.2).

ASTM F 1292-04 Standard Specification for Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment (see 1008.2.6.2).

ASTM F 1487-01 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see F106.5).

ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 1008.2.6.1).

Advisory F105.2.3 ASTM. ASTM F 1292-99 and ASTM F 1292-04 establish a uniform means to measure and compare characteristics of surfacing materials to determine whether materials provide a safe surface under and around playground equipment. These standards are referenced in the play areas requirements of this document when an accessible surface is required inside a play area use zone where a fall attenuating surface is also required. The standards cover the minimum impact attenuation requirements, when tested in accordance with Test Method F 355, for surface systems to be used under and around any piece of playground equipment from which a person may fall.

ASTM F 1487-01 establishes a nationally recognized safety standard for public playground equipment to address injuries identified by the U.S. Consumer Product Safety Commission. It defines the use zone, which is the ground area beneath and immediately adjacent to a play structure or play equipment designed for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting a play structure or equipment. The play areas requirements in this document reference the ASTM F 1487 standard when defining accessible routes that overlap use zones requiring fall attenuating surfaces. If the use zone of a playground is not entirely surfaced with an accessible material, at least one accessible route within the use zone must be provided from the perimeter to all accessible play structures or components within the playground.

ASTM F 1951-99 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. Surface materials that comply with this standard and are located in the use zone must also comply with ASTM F 1292. The test methods in this standard address access for children and adults who may traverse the surfacing to aid children who are playing. When a surface is tested it must have an average work per foot value for straight propulsion and for turning less than the average work per foot values for straight propulsion and for turning, respectively, on a hard, smooth surface with a grade of 7% (1:14).

F105.2.4 ICC/IBC. Copies of the referenced standard may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041 (www.iccsafe.org).

International Building Code, 2000 Edition (see F207.1, F207.2, F216.4.2, F216.4.3, and 1005.2.1).

International Building Code, 2001 Supplement (see F207.1 and F207.2).

International Building Code, 2003 Edition (see F207.1, F207.2, F216.4.2, F216.4.3, and 1005.2.1).

Advisory F105.2.4 ICC/IBC. International Building Code (IBC)-2000 (including 2001 Supplement to the International Codes) and IBC-2003 are referenced for means of egress, areas of refuge, and railings provided on fishing piers and platforms. At least one accessible means of egress is required for every accessible space and at least two accessible means of egress are required where more than one means of egress is required. The technical criteria for accessible means of egress allow the use of exit stairways and evacuation elevators when provided in conjunction with horizontal exits or areas of refuge. While typical elevators are not designed to be used during an emergency evacuation, evacuation elevators are designed with standby power and other features according to the elevator safety standard and can be used for the evacuation of individuals with disabilities. The IBC also provides requirements for areas of refuge, which are fire-rated spaces on levels above or below the exit discharge levels where people unable to use stairs can go to register a call for assistance and wait for evacuation.

The recreation facilities requirements of this document references two sections in the IBC for fishing piers and platforms. An exception addresses the height of the railings, guards, or handrails where a fishing pier or platform is required to include a guard, railing, or handrail higher than 34 inches (865 mm) above the ground or deck surface.

F105.2.5 NFPA. Copies of the referenced standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, (http://www.nfpa.org).

NFPA 72 National Fire Alarm Code, 1999 Edition (see 702.1 and 809.5.2).

NFPA 72 National Fire Alarm Code, 2002 Edition (see 702.1 and 809.5.2).

Advisory F105.2.5 NFPA. NFPA 72-1999 and NFPA 72-2002 address the application, installation, performance, and maintenance of protective signaling systems and their components. The NFPA 72 incorporates Underwriters Laboratory (UL) 1971 by reference. The standard specifies the characteristics of audible alarms, such as placement and sound levels. However, Section 702 of these requirements limits the volume of an audible alarm to 110 dBA, rather than the maximum 120 dBA permitted by NFPA 72-1999.

NFPA 72 specifies characteristics for visible alarms, such as flash frequency, color, intensity, placement, and synchronization. However, Section 702 of this document requires that visual alarm appliances be permanently installed. UL 1971 specifies intensity dispersion requirements for visible alarms. In particular, NFPA 72 requires visible alarms to have a light source that is clear or white and has polar dispersion complying with UL 1971.

F106 Definitions

F106.1 General. For the purpose of this document, the terms defined in F106.5 have the indicated meaning.

> **Advisory F106.1 General.** Terms defined in Section 106.5 are italicized in the text of this document.

F106.2 Terms Defined in Referenced Standard. Terms not defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service to implement the Architectural Barriers Act but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated

F106.3 Undefined Terms. The meaning of terms not specifically defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service

to implement the Architectural Barriers Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

F106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

F106.5 Defined Terms.

Accessible. A *site*, *building*, *facility*, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a *building* or *facility* that provides an *accessible* route to an area of refuge, a horizontal exit, or a *public way*.

Addition. An expansion, extension, or increase in the gross floor area or height of a *building* or *facility*.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or *alteration* of *buildings* and *facilities*.

Alteration. A change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*.

Amusement Attraction. Any *facility*, or portion of a *facility*, located within an amusement park or theme park which provides amusement without the use of an amusement device. Amusement attractions include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. A system that moves persons through a fixed course within a defined area for the purpose of amusement.

Amusement Ride Seat. A seat that is built-in or mechanically fastened to an *amusement ride* intended to be occupied by one or more passengers.

Area of Sport Activity. That portion of a room or *space* where the play or practice of a sport occurs.

Assembly Area. A *building* or *facility*, or portion thereof, used for the purpose of entertainment, worship, educational or civic gatherings, or similar purposes. For the purposes of these requirements, *assembly areas* include, but are not limited to, classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Assistive Listening System (ALS). An amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical *space* between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.

Boarding Pier. A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.

Boat Launch Ramp. A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

Boat Slip. That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Catch Pool. A pool or designated section of a pool used as a terminus for water slide flumes.

Characters. Letters, numbers, punctuation marks and typographic symbols.

Children's Use. Describes *spaces* and *elements* specifically designed for use primarily by people 12 years old and younger.

Circulation Path. An exterior or interior way of passage provided for pedestrian travel, including but not limited to, *walks*, hallways, courtyards, elevators, platform lifts, *ramps*, stairways, and landings.

Closed-Circuit Telephone. A telephone with a dedicated line such as a house phone, courtesy phone or phone that must be used to gain entry to a *facility*.

Common Use. Interior or exterior *circulation paths*, rooms, *spaces*, or *elements* that are not for *public use* and are made available for the shared use of two or more people.

Cross Slope. The slope that is perpendicular to the direction of travel (see *running slope*).

Curb Ramp. A short *ramp* cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other *elements* to warn of hazards on a *circulation path*.

Element. An architectural or mechanical component of a *building*, *facility*, *space*, or *site*.

Elevated Play Component. A *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

Employee Work Area. All or any portion of a *space* used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not *employee work areas*.

Entrance. Any access point to a *building* or portion of a *building* or *facility* used for the purpose of entering. An *entrance* includes the approach *walk*, the vertical access leading to the *entrance* platform, the *entrance* platform itself, vestibule if provided, the entry door or gate, and the hardware of the entry door or gate.

Facility. All or any portion of *buildings*, structures, *site* improvements, *elements*, and pedestrian routes or *vehicular ways* located on a *site*.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. *Gangways* that connect to vessels are not addressed by this document.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Level Play Component. A *play component* that is approached and exited at the ground level.

Joint Use. Interior or exterior rooms, *spaces*, or *elements* that are common *space* available for use by all occupants of the *building*. *Joint use* does not include mechanical or custodial rooms, or areas occupied by other tenants.

Lease. Any agreement which establishes the relationship of landlord and tenant.

Mail Boxes. Receptacles for the receipt of documents, packages, or other deliverable matter. *Mail boxes* include, but are not limited to, post office boxes and receptacles provided by commercial mail-receiving agencies, apartment *facilities*, or schools.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a *vehicular way*.

Mezzanine. An intermediate level or levels between the floor and ceiling of any *story* with an aggregate floor area of not more than one-third of the area of the room or *space* in which the level or levels are located. *Mezzanines* have sufficient elevation that *space* for human occupancy can be provided on the floor below.

Military Installation. A base, camp, post, station, yard, center, homeport *facility* for any ship, or other activity or operation under the jurisdiction of the Department of Defense, including any *leased facility. Military installation* does not include any *facility* used primarily for civil works, rivers and harbors projects, or flood control projects. Multiple, contiguous, or collocated bases, camps, posts, stations, yards, centers, or home ports shall not be considered as constituting a single *military installation.*

Occupant Load. The number of persons for which the means of egress of a *building* or portion of a *building* is designed.

Operable Part. A component of an *element* used to insert or withdraw objects, or to activate, deactivate, or adjust the *element.*

Pictogram. A pictorial symbol that represents activities, *facilities*, or concepts.

Play Area. A portion of a *site* containing *play components* designed and constructed for children.

Play Component. An *element* intended to generate specific opportunities for play, socialization, or learning. *Play components* are manufactured or natural; and are stand-alone or part of a composite play structure.

Public Entrance. An *entrance* that is not a *service entrance* or a *restricted entrance.*

Public Use. Interior or exterior rooms, *spaces*, or *elements* that are made available to the public. *Public use* may be provided at a *building* or *facility* that is privately or publicly owned.

Public Way. Any street, alley or other parcel of land open to the outside air leading to a public street, which has been deeded, dedicated or otherwise permanently appropriated to the public for *public use,* and which has a clear width and height of not less than 10 feet (3050 mm).

Qualified Historic Building or Facility. A *building* or *facility* that is listed in or eligible for listing in the National Register of Historic Places, or designated as historic under an appropriate State or local law.

Ramp. A walking surface that has a *running slope* steeper than 1:20.

Residential Dwelling Unit. A unit intended to be used as a residence, that is primarily long-term in nature. *Residential dwelling units* do not include *transient lodging*, inpatient medical care, licensed long-term care, and detention or correctional *facilities.*

Restricted Entrance. An *entrance* that is made available for *common use* on a controlled basis but not *public use* and that is not a *service entrance.*

Running Slope. The slope that is parallel to the direction of travel (see *cross slope*).

Self-Service Storage. *Building* or *facility* designed and used for the purpose of renting or *leasing* individual storage *spaces* to customers for the purpose of storing and removing personal property on a self-service basis.

Service Entrance. An *entrance* intended primarily for delivery of goods or services.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Soft Contained Play Structure. A play structure made up of one or more *play components* where the user enters a fully enclosed play environment that utilizes pliable materials, such as plastic, netting, or fabric.

Space. A definable area, such as a room, toilet room, hall, *assembly area*, *entrance*, storage room, alcove, courtyard, or lobby.

Story. That portion of a *building* or *facility* designed for human occupancy included between the upper surface of a floor and upper surface of the floor or roof next above. A *story* containing one or more *mezzanines* has more than one floor level.

Structural Frame. The columns and the girders, beams, and trusses having direct connections to the columns and all other members that are essential to the stability of the *building* or *facility* as a whole.

Tactile. An object that can be perceived using the sense of touch.

Technically Infeasible. With respect to an *alteration* of a *building* or a *facility*, something that has little likelihood of being accomplished because existing structural conditions would require removing or *altering* a load-bearing member that is an essential part of the *structural frame*; or because other existing physical or *site* constraints prohibit modification or *addition* of *elements*, *spaces*, or features that are in full and strict compliance with the minimum requirements.

Teeing Ground. In golf, the starting place for the hole to be played.

Transfer Device. Equipment designed to facilitate the transfer of a person from a wheelchair or other mobility aid to and from an *amusement ride seat*.

Transient Lodging. A *building* or *facility* containing one or more guest room(s) for sleeping that provides accommodations that are primarily short-term in nature. *Transient lodging* does not include *residential dwelling units* intended to be used as a residence, inpatient medical care *facilities*, licensed long-term care *facilities*, detention or correctional *facilities*, or *private buildings or facilities* that contain not more than five rooms for rent or hire and that are actually occupied by the proprietor as the residence of such proprietor.

Transition Plate. A sloping pedestrian walking surface located at the end(s) of a *gangway*.

TTY. An abbreviation for teletypewriter. Machinery that employs interactive text-based communication through the transmission of coded signals across the telephone network. *TTYs* may include, for example, devices known as TDDs (telecommunication display devices or

telecommunication devices for deaf persons) or computers with special modems. *TTYs* are also called text telephones.

Use Zone. The ground level area beneath and immediately adjacent to a play structure or play equipment that is designated by ASTM F 1487 (incorporated by reference, see "Referenced Standards" in Chapter 1) for unrestricted circulation around the play equipment and where it is predicted that a user would land when falling from or exiting the play equipment.

Vehicular Way. A route provided for vehicular traffic, such as in a street, driveway, or parking *facility.*

Walk. An exterior prepared surface for pedestrian use, including pedestrian areas such as plazas and courts.

Wheelchair Space. *Space* for a single wheelchair and its occupant.

Work Area Equipment. Any machine, instrument, engine, motor, pump, conveyor, or other apparatus used to perform work. As used in this document, this term shall apply only to equipment that is permanently installed or built-in in *employee work areas* subject to the Americans with Disabilities Act of 1990 (ADA). *Work area equipment* does not include passenger elevators and other accessible means of vertical transportation.

ABA CHAPTER 2: SCOPING REQUIREMENTS

F201 Application

F201.1 Scope. All areas of newly designed and newly constructed *buildings* and *facilities* and *altered* or *leased* portions of existing *buildings* and *facilities* shall comply with these requirements.

> **Advisory F201.1 Scope.** The requirements are to be applied to all areas of a facility unless exempted, or where scoping limits the number of multiple elements required to be accessible. For example, not all medical care patient rooms are required to be accessible; those that are not required to be accessible are not required to comply with these requirements. However, common use and public use spaces such as recovery rooms, examination rooms, and cafeterias are not exempt from these requirements and must be accessible.

F201.2 Application Based on Building or Facility Use. Where a *site*, *building*, *facility*, room, or *space* contains more than one use, each portion shall comply with the applicable requirements for that use.

F201.3 Temporary and Permanent Structures. These requirements shall apply to temporary and permanent *buildings* and *facilities*.

> **Advisory F201.3 Temporary and Permanent Structures.** Temporary buildings or facilities covered by these requirements include, but are not limited to, reviewing stands, temporary classrooms, bleacher areas, stages, platforms and daises, fixed furniture systems, wall systems, and exhibit areas, temporary banking facilities, and temporary health screening facilities. Structures and equipment directly associated with the actual processes of construction are not required to be accessible as permitted in F203.3.

F202 Existing Buildings and Facilities

F202.1 General. *Additions* and *alterations* to existing *buildings* or *facilities*, including *leased buildings* or *facilities*, shall comply with F202.

F202.2 Additions. Each *addition* to an existing *building* or *facility* shall comply with the requirements for new construction.

F202.2.1 Accessible Route. At least one *accessible* route shall be provided within the *site* from *accessible* parking *spaces* and *accessible* passenger loading zones; public streets and sidewalks; and public transportation stops to an *accessible entrance* serving the *addition*. If the only *accessible entrances* serving the *addition* are provided in the existing *building* or *facility*, the *accessible* route shall connect at least one existing *entrance* to all *accessible spaces* and *elements* within the *addition*. In addition, *elements* and *spaces* specified in F202.2.2 through F202.2.5 shall be on an *accessible* route.

F202.2.2 Entrance. Where an *entrance* is not provided in an *addition*, at least one *entrance* in the existing *building* or *facility* shall comply with F206.4 and shall serve the *addition*.

F202.2.3 Toilet and Bathing Facilities. Where toilet *facilities* and bathing *facilities* are not provided in an *addition* but are provided in the existing *building* or *facility* to serve the *addition*, the toilet *facilities* and bathing *facilities* shall comply with F202.2.3.

EXCEPTION: In *alterations* to areas serving *additions* where it is *technically infeasible* to comply with 603, *altering* existing toilet or bathing rooms is not required where a single unisex toilet room or bathing room complying with F213.2.1 is provided to serve the *addition*.

F202.2.3.1 Existing Toilet Facility. Where existing toilet *facilities* are provided in the existing *building* or *facility*, at least one toilet *facility* for men and at least one toilet *facility* for women shall comply with F213.2 and F213.3 and shall serve the *addition*.

EXCEPTION: Where only one toilet *facility* is provided in the existing *building* or *facility*, one toilet *facility* shall comply with F213.2 and F213.3 and shall serve the *addition*.

F202.2.3.2 Existing Bathing Facility. Where existing bathing *facilities* are provided in the existing *building* or *facility*, at least one bathing *facility* for men and at least one bathing *facility* for women shall comply with F213.2 and F213.3 and shall serve the *addition*.

EXCEPTION: Where only one bathing *facility* is provided in the existing *building* or *facility*, one bathing *facility* shall comply with F213.2 and F213.3 and shall serve the *addition*.

F202.2.4 Public Telephone. Where a public telephone is not provided in an *addition* but is provided in the existing *building* or *facility* to serve the *addition*, at least one public telephone in the existing *building* or *facility* shall comply with F217.

F202.2.5 Drinking Fountain. Where a drinking fountain is not provided in an *addition* but is provided in the existing *building* or *facility* to serve the *addition*, at least one drinking fountain in the existing *building* or *facility* shall comply with 602.1 through 602.6.

F202.3 Alterations. Where existing *elements* or *spaces* are *altered*, each *altered element* or *space* shall comply with the applicable requirements of Chapter 2.

EXCEPTIONS: 1. Unless required by F202.4, where *elements* or *spaces* are *altered* and the *circulation path* to the *altered element* or *space* is not *altered*, an *accessible* route shall not be required.

2. In *alterations*, where compliance with applicable requirements is *technically infeasible*, the *alteration* shall comply with the requirements to the maximum extent feasible.

3. *Residential dwelling units* not required to be *accessible* in compliance with a standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with F202.3.

Advisory F202.3 Alterations. Although covered entities are permitted to limit the scope of an alteration to individual elements, the alteration of multiple elements within a room or space may provide a cost-effective opportunity to make the entire room or space accessible. Any elements or spaces of the building or facility that are required to comply with these requirements must be made accessible within the scope of the alteration, to the maximum extent feasible. If providing accessibility in compliance with these requirements for people with one type of disability (e.g., people who use wheelchairs) is not feasible, accessibility must still be provided in compliance with the requirements for people with other types of disabilities (e.g., people who have hearing impairments or who have vision impairments) to the extent that such accessibility is feasible.

F202.3.1 Prohibited Reduction in Access. An *alteration* that decreases or has the effect of decreasing the *accessibility* of a *building* or *facility* below the requirements for new construction at the time of the *alteration* is prohibited.

F202.3.2 Extent of Application. An *alteration* of an existing *element*, *space*, or area of a *building* or *facility* shall not impose a requirement for *accessibility* greater than required for new construction.

F202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of F202.3, an *alteration* that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the *altered* area, including the rest rooms, telephones, and drinking fountains serving the *altered* area, are readily *accessible* to and usable by individuals with disabilities, unless such *alterations* are disproportionate to the overall *alterations* in terms of cost and scope as determined under criteria established by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service.

EXCEPTION: *Residential dwelling units* shall not be required to comply with F202.4.

Advisory F202.4 Alterations Affecting Primary Function Areas. An area of a building or facility containing a major activity for which the building or facility is intended is a primary function area. There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk-in safe are primary function areas. Also, mixed use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.

F202.5 Alterations to Qualified Historic Buildings and Facilities. *Alterations* to a *qualified historic building* or *facility* shall comply with F202.3 and F202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for *accessible* routes, *entrances*, or toilet *facilities* would threaten or destroy the historic significance of the *building* or *facility*, the exceptions for *alterations* to *qualified historic buildings or facilities* for that *element* shall be permitted to apply.

Advisory F202.5 Alterations to Qualified Historic Buildings and Facilities Exception. Section 106 of the National Historic Preservation Act requires that a Federal agency with jurisdiction over a proposed Federal or federally assisted undertaking consider the effect of the action on buildings and facilities listed in or eligible for listing in the National Register of Historic Places prior to approving the expenditure of any Federal funds. The Advisory Council on Historic Preservation has established procedures for Federal agencies to meet this statutory responsibility. See 36 CFR Part 800. The procedures require Federal agencies to consult with the State Historic Preservation Officer, and provide for involvement by the Advisory Council on Historic Preservation in certain cases. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (F206.2.1 Exception 1 and F206.2.3 Exception 6); entrances (F206.4 Exception 2); and toilet facilities (F213.2 Exception 2). These exceptions apply only when the State Historic Preservation Officer or the Advisory Council on Historic Preservation agrees that compliance with requirements for the specific element would threaten or destroy the historic significance of the building or facility.

The AccessAbility Office at the National Endowment for the Arts (NEA) provides a variety of resources for museum operators and historic properties including: the Design for Accessibility Guide and the Disability Symbols. Contact NEA about these and other resources at (202) 682-5532 or www.arts.gov.

F202.6 Leases. *Buildings* or *facilities* for which new *leases* are negotiated by the Federal government after the effective date of the revised standards issued pursuant to the Architectural Barriers Act, including new *leases* for *buildings* or *facilities* previously occupied by the Federal government, shall comply with F202.6.

EXCEPTIONS: 1. *Buildings* or *facilities leased* for use by officials servicing disasters on a temporary, emergency basis shall not be required to comply with F202.6.

2. *Buildings* or *facilities leased* for 12 months or less shall not be required to comply with F202.6 provided that the *lease* may not be extended or renewed.

F202.6.1 Joint Use Areas. *Joint use* areas serving the *leased space* shall comply with F202.6.

EXCEPTION: *Alterations* and *additions* to *joint use* areas serving the *leased space* shall not be required to comply with F202.2, F202.3, and F202.5 provided that the *alterations* are not undertaken by or on behalf of the Federal government.

Advisory F202.6.1 Joint Use Areas Exception. When negotiating a lease, ensure that joint use areas are accessible. Inaccessible joint use areas may prevent access to and from leased space.

F202.6.2 Accessible Route. Primary function areas, as defined by Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, and the United States Postal Service, shall be served by at least one *accessible* route complying with F206. *Elements* and *spaces* required to be *accessible* by F202.6 shall be on an *accessible* route complying with F206.

EXCEPTION: Fire alarms required by F202.6.5.2 and *assistive listening systems* required by F202.6.5.5 shall not be required to be on an *accessible* route.

F202.6.3 Toilet and Bathing Facilities. Where provided, toilet *facilities* and bathing *facilities* shall comply with F202.6.3.

F202.6.3.1 Multiple Facilities. At least one toilet *facility* or bathing *facility* for each sex on each floor that has toilet *facilities* or bathing *facilities* shall comply with F213.2 and F213.3.

F202.6.3.2 Single Facilities. Where only one toilet or bathing *facility* is provided in a *building* or *facility* for each sex, either one unisex toilet or bathing *facility*, or one toilet or bathing *facility* for each sex, shall comply with F213.2 and F213.3.

F202.6.4 Parking. Parking shall comply with F208.

F202.6.5 Other Elements and Spaces. Where provided, the following *elements* and *spaces* shall comply with F202.6.5.

F202.6.5.1 Drinking Fountains. Drinking fountains shall comply with F211.

F202.6.5.2 Fire Alarms. Fire alarms shall comply with F215.
EXCEPTION: Fire alarms shall not be required to comply with 702 where existing power sources must be upgraded to meet the requirement.

F202.6.5.3 Public Telephones. Public telephones shall comply with F217.

F202.6.5.4 Dining Surfaces and Work Surfaces. Dining surfaces and work surfaces shall comply with F226.

F202.6.5.5 Assembly Areas. *Assistive listening systems* shall comply with F219 and assembly seating shall comply with F221.

F202.6.5.6 Sales and Service Counters. Sales and service counters shall comply with F227.

F202.6.5.7 Depositories, Vending Machines, Change Machines, and Mail Boxes. Depositories, vending machines, change machines, and *mail boxes* shall comply with F228.

F202.6.5.8 Residential Facilities. *Residential dwelling units* shall comply with F233.

F203 General Exceptions

F203.1 General. *Sites, buildings, facilities,* and *elements* are exempt from these requirements to the extent specified by F203.

F203.2 Existing Elements. *Elements* in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended shall not be required to comply with these requirements unless *altered.*

Advisory F203.2 Existing Elements. The exception at F203.2 does not obviate or limit in any way a federal agency's obligation to provide reasonable accommodations pursuant to the Rehabilitation Act of 1973. Federal employees with disabilities are entitled to reasonable accommodations in the workplace. Such accommodations may include modifications to workstations or to other areas of the workplace, including the common areas such as toilet rooms, meeting rooms, or break rooms. Reasonable accommodations are always provided on a case-by-case basis and are specific to the unique needs of a person. As such, an accommodation may be consistent with, or depart from, the specific technical requirements of this, or any other, document.

In addition, the exception at F203.2 provides that compliance with an earlier standard issued under Section 504 of the Rehabilitation Act satisfies the requirements of the Architectural Barriers Act; the exception does not obviate or limit a Federal agency's authority to enforce requirements issued pursuant to Section 504 of the Rehabilitation Act, including requirements for making reasonable modifications to policies, practices, and procedures, or making structural changes to facilities in order to make a program or activity accessible to and usable by persons with disabilities.

F203.3 Construction Sites. Structures and *sites* directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage, and construction trailers shall not be required to comply with these requirements or to be on an *accessible* route. Portable toilet units provided for use exclusively by construction personnel on a construction *site* shall not be required to comply with F213 or to be on an *accessible* route.

F203.4 Raised Areas. Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers, or life guard stands shall not be required to comply with these requirements or to be on an *accessible* route.

F203.5 Limited Access Spaces. *Spaces* accessed only by ladders, catwalks, crawl *spaces*, or very narrow passageways shall not be required to comply with these requirements or to be on an *accessible* route.

F203.6 Machinery Spaces. *Spaces* frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an *accessible* route. Machinery *spaces* include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility *facilities*.

F203.7 Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an *accessible* route.

F203.8 Detention and Correctional Facilities. In detention and correctional *facilities*, *common use* areas that are used only by inmates or detainees and security personnel and that do not serve holding

cells or housing cells required to comply with F232, shall not be required to comply with these requirements or to be on an *accessible* route.

F203.9 Residential Facilities. In residential *facilities*, *common use* areas that do not serve *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall not be required to comply with these requirements or to be on an *accessible* route.

F203.10 Raised Refereeing, Judging, and Scoring Areas. Raised structures used solely for refereeing, judging, or scoring a sport shall not be required to comply with these requirements or to be on an *accessible* route.

F203.11 Water Slides. Water slides shall not be required to comply with these requirements or to be on an *accessible* route.

F203.12 Animal Containment Areas. Animal containment areas that are not for *public use* shall not be required to comply with these requirements or to be on an *accessible* route.

> **Advisory F203.12 Animal Containment Areas.** Public circulation routes where animals may travel, such as in petting zoos and passageways alongside animal pens in State fairs, are not eligible for the exception.

F203.13 Raised Boxing or Wrestling Rings. Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an *accessible* route.

F203.14 Raised Diving Boards and Diving Platforms. Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an *accessible* route.

F204 Protruding Objects

F204.1 General. Protruding objects on *circulation paths* shall comply with 307.

EXCEPTIONS: 1. Within *areas of sport activity*, protruding objects on *circulation paths* shall not be required to comply with 307.

2. Within *play areas*, protruding objects on *circulation paths* shall not be required to comply with 307 provided that ground level *accessible* routes provide vertical clearance in compliance with 1008.2.

F205 Operable Parts

F205.1 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 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.
7. Cleats and other boat securement devices shall not be required to comply with 309.3.
8. Exercise machines and exercise equipment shall not be required to comply with 309.

Advisory F205.1 General. Controls covered by F205.1 include, but are not limited to, light switches, circuit breakers, duplexes and other convenience receptacles, environmental and appliance controls, plumbing fixture controls, and security and intercom systems.

F206 Accessible Routes

F206.1 General. *Accessible* routes shall be provided in accordance with F206 and shall comply with Chapter 4 except that the exemptions at 403.5, 405.5, and 405.8 shall not apply.

F206.2 Where Required. *Accessible* routes shall be provided where required by F206.2.

F206.2.1 Site Arrival Points. At least one *accessible* route shall be provided within the *site* from *accessible* parking *spaces* and *accessible* passenger loading zones; public streets and sidewalks; and public transportation stops to the *accessible building* or *facility entrance* they serve.

EXCEPTIONS: 1. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by F202.5, no more than one *accessible* route from a *site* arrival point to an *accessible entrance* shall be required.

2. An *accessible* route shall not be required between *site* arrival points and the *building* or *facility entrance* if the only means of access between them is a *vehicular way* not providing pedestrian access.

Advisory F206.2.1 Site Arrival Points. Each site arrival point must be connected by an accessible route to the accessible building entrance or entrances served. Where two or more similar site arrival points, such as bus stops, serve the same accessible entrance or entrances, both bus stops must be on accessible routes. In addition, the accessible routes must serve all of the accessible entrances on the site.

Advisory F206.2.1 Site Arrival Points Exception 2. Access from site arrival points may include vehicular ways. Where a vehicular way, or a portion of a vehicular way, is provided for pedestrian travel, such as within a shopping center or shopping mall parking lot, this exception does not apply.

F206.2.2 Within a Site. At least one *accessible* route shall connect *accessible buildings*, *accessible facilities*, *accessible elements*, and *accessible spaces* that are on the same *site*.

EXCEPTION: An *accessible* route shall not be required between *accessible buildings*, *accessible facilities*, *accessible elements* and *accessible spaces* if the only means of access between them is a *vehicular way* not providing pedestrian access.

Advisory F206.2.2 Within a Site. An accessible route is required to connect to the boundary of each area of sport activity. Examples of areas of sport activity include: soccer fields, basketball courts, baseball fields, running tracks, skating rinks, and the area surrounding a piece of gymnastic equipment. While the size of an area of sport activity may vary from sport to sport, each includes only the space needed to play. Where multiple sports fields or courts are provided, an accessible route is required to each field or area of sport activity.

F206.2.3 Multi-Story Buildings and Facilities. At least one *accessible* route shall connect each *story* and *mezzanine* in multi-*story buildings* and *facilities*.

EXCEPTIONS: 1. Where a two *story building or facility* has one *story* with an *occupant load* of five or fewer persons that does not contain *public use space*, that *story* shall not be required to be connected to the *story* above or below.

2. In detention and correctional *facilities*, an *accessible* route shall not be required to connect *stories* where cells with mobility features required to comply with 807.2, all *common use* areas serving cells with mobility features required to comply with 807.2, and all *public use* areas are on an *accessible* route.

3. In residential *facilities,* an *accessible* route shall not be required to connect *stories* where *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, all *common use* areas serving *residential dwelling units* with mobility features required to comply with 809.2 through 809.4, and *public use* areas serving *residential dwelling units* are on an *accessible* route.

4. Within multi-*story transient lodging* guest rooms with mobility features required to comply with 806.2, an *accessible* route shall not be required to connect *stories* provided that *spaces* complying with 806.2 are on an *accessible* route and sleeping accommodations for two persons minimum are provided on a *story* served by an accessible route.

5. In air traffic control towers, an *accessible* route shall not be required to serve the cab and the floor immediately below the cab.

6. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by F202.5, an *accessible* route shall not be required to *stories* located above or below the *accessible story*.

Advisory F206.2.3 Multi-Story Buildings and Facilities. Spaces and elements located on a level not required to be served by an accessible route must fully comply with this document. While a mezzanine may be a change in level, it is not a story. If an accessible route is required to connect stories within a building or facility, the accessible route must serve all mezzanines.

Advisory F206.2.3 Multi-Story Buildings and Facilities Exception 3. Where common use areas are provided for the use of residents, it is presumed that all such common use areas "serve" accessible dwelling units unless use is restricted to residents occupying certain dwelling units. For example, if all residents are permitted to use all laundry rooms, then all laundry rooms "serve" accessible dwelling units.

Advisory F206.2.3 Multi-Story Buildings and Facilities Exception 3 (Continued). However, if the laundry room on the first floor is restricted to use by residents on the first floor, and the second floor laundry room is for use by occupants of the second floor, then first floor accessible units are "served" only by laundry rooms on the first floor. In this example, an accessible route is not required to the second floor provided that all accessible units and all common use areas serving them are on the first floor.

F206.2.3.1 Stairs and Escalators in Existing Buildings. In *alterations* and *additions*, where an escalator or stair is provided where none existed previously and major structural modifications are necessary for the installation, an *accessible* route shall be provided between the levels served by the escalator or stair unless exempted by F206.2.3 Exceptions 1 through 6.

F206.2.4 Spaces and Elements. At least one *accessible* route shall connect *accessible building* or *facility entrances* with all *accessible spaces* and *elements* within the *building* or *facility* which are otherwise connected by a *circulation path* unless exempted by F206.2.3 Exceptions 1 through 6.

EXCEPTIONS: 1. Raised courtroom stations, including judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations shall not be required to provide vertical access provided that the required clear floor *space*, maneuvering *space*, and, if appropriate, electrical service are installed at the time of initial construction to allow future installation of a means of vertical access complying with 405, 407, 408, or 410 without requiring substantial reconstruction of the *space*.

2. In *assembly areas* with fixed seating required to comply with F221, an *accessible* route shall not be required to serve fixed seating where *wheelchair spaces* required to be on an *accessible* route are not provided.

3. *Accessible* routes shall not be required to connect *mezzanines* where *buildings* or *facilities* have no more than one story. In addition, *accessible* routes shall not be required to connect stories or *mezzanines* where multi-story *buildings* or *facilities* are exempted by F206.2.3 Exceptions 1 through 6.

Advisory F206.2.4 Spaces and Elements. Accessible routes must connect all spaces and elements required to be accessible including, but not limited to, raised areas and speaker platforms.

Advisory F206.2.4 Spaces and Elements Exception 1. The exception does not apply to areas that are likely to be used by members of the public who are not employees of the court such as jury areas, attorney areas, or witness stands.

F206.2.5 Restaurants and Cafeterias. In restaurants and cafeterias, an *accessible* route shall be provided to all dining areas, including raised or sunken dining areas, and outdoor dining areas.

EXCEPTIONS: 1. In *alterations*, an *accessible* route shall not be required to existing raised or sunken dining areas, or to all parts of existing outdoor dining areas where the same services and decor are provided in an *accessible space* usable by the public and not restricted to use by people with disabilities.

2. In sports *facilities*, tiered dining areas providing seating required to comply with F221 shall be required to have *accessible* routes serving at least 25 percent of the dining area provided that

accessible routes serve seating complying with F221 and each tier is provided with the same services.

Advisory F206.2.5 Restaurants and Cafeterias Exception 1. Examples of "same services" include, but are not limited to, bar service, rooms having smoking and non-smoking sections, lotto and other table games, carry-out, and buffet service. Examples of "same decor" include, but are not limited to, seating at or near windows and railings with views, areas designed with a certain theme, party and banquet rooms, and rooms where entertainment is provided.

F206.2.6 Performance Areas. Where a *circulation path* directly connects a performance area to an assembly seating area, an *accessible* route shall directly connect the assembly seating area with the performance area. An *accessible* route shall be provided from performance areas to ancillary areas or *facilities* used by performers unless exempted by F206.2.3 Exceptions 1 through 6.

F206.2.7 Press Boxes. Press boxes in *assembly areas* shall be on an *accessible* route.

EXCEPTIONS: 1. An *accessible* route shall not be required to press boxes in bleachers that have points of entry at only one level provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

2. An *accessible* route shall not be required to free-standing press boxes that are elevated above grade 12 feet (3660 mm) minimum provided that the aggregate area of all press boxes is 500 square feet (46 m^2) maximum.

Advisory F206.2.7 Press Boxes Exception 2. Where a facility contains multiple assembly areas, the aggregate area of the press boxes in each assembly area is to be calculated separately. For example, if a university has a soccer stadium with three press boxes elevated 12 feet (3660 mm) or more above grade and each press box is 150 square feet (14 m^2), then the aggregate area of the soccer stadium press boxes is less than 500 square feet (465 m^2) and Exception 2 applies to the soccer stadium. If that same university also has a football stadium with two press boxes elevated 12 feet (3660 mm) or more above grade and one press box is 250 square feet (23 m^2), and the second is 275 square feet (26 m^2), then the aggregate area of the football stadium press boxes is more than 500 square feet (465 m^2) and Exception 2 does not apply to the football stadium.

F206.2.8 Amusement Rides. *Amusement rides* required to comply with F234 shall provide *accessible* routes in accordance with F206.2.8. *Accessible* routes serving *amusement rides* shall comply with Chapter 4 except as modified by 1002.2.

F206.2.8.1 Load and Unload Areas. Load and unload areas shall be on an *accessible* route. Where load and unload areas have more than one loading or unloading position, at least one loading and unloading position shall be on an *accessible* route.

F206.2.8.2 Wheelchair Spaces, Ride Seats Designed for Transfer, and Transfer Devices. When *amusement rides* are in the load and unload position, *wheelchair spaces* complying with

1002.4, *amusement ride seats* designed for transfer complying with 1002.5, and *transfer devices* complying with 1002.6 shall be on an *accessible* route.

F206.2.9 Recreational Boating Facilities. *Boat slips* required to comply with F235.2 and *boarding piers* at *boat launch ramps* required to comply with F235.3 shall be on an *accessible* route. *Accessible* routes serving recreational boating *facilities* shall comply with Chapter 4 except as modified by 1003.2.

F206.2.10 Bowling Lanes. Where bowling lanes are provided, at least 5 percent, but no fewer than one of each type of bowling lane, shall be on an *accessible* route.

F206.2.11 Court Sports. In court sports, at least one *accessible* route shall directly connect both sides of the court.

F206.2.12 Exercise Machines and Equipment. Exercise machines and equipment required to comply with F236 shall be on an *accessible* route.

F206.2.13 Fishing Piers and Platforms. Fishing piers and platforms shall be on an *accessible* route. *Accessible* routes serving fishing piers and platforms shall comply with Chapter 4 except as modified by 1005.1.

F206.2.14 Golf Facilities. At least one *accessible* route shall connect *accessible elements* and *spaces* within the boundary of the golf course. In addition, *accessible* routes serving golf car rental areas; bag drop areas; course weather shelters complying with F238.2.3; course toilet rooms; and practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges complying with F238.3 shall comply with Chapter 4 except as modified by 1006.2.

EXCEPTION: *Golf car passages* complying with 1006.3 shall be permitted to be used for all or part of *accessible* routes required by F206.2.14.

F206.2.15 Miniature Golf Facilities. Holes required to comply with F239.2, including the start of play, shall be on an *accessible* route. *Accessible* routes serving miniature golf *facilities* shall comply with Chapter 4 except as modified by 1007.2.

F206.2.16 Play Areas. *Play areas* shall provide *accessible* routes in accordance with F206.2.16. *Accessible* routes serving *play areas* shall comply with Chapter 4 except as modified by 1008.2.

F206.2.16.1 Ground Level and Elevated Play Components. At least one *accessible* route shall be provided within the *play area*. The *accessible* route shall connect *ground level play components* required to comply with F240.2.1 and *elevated play components* required to comply with F240.2.2, including entry and exit points of the *play components*.

F206.2.16.2 Soft Contained Play Structures. Where three or fewer entry points are provided for *soft contained play structures*, at least one entry point shall be on an *accessible* route. Where four or more entry points are provided for *soft contained play structures*, at least two entry points shall be on an *accessible* route.

F206.3 Location. *Accessible* routes shall coincide with or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior.

> **Advisory F206.3 Location.** The accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby. Additionally, accessible vertical interior circulation must be in the same area as stairs and escalators, not isolated in the back of the facility.

F206.4 Entrances. *Entrances* shall be provided in accordance with F206.4. *Entrance* doors, doorways, and gates shall comply with 404 and shall be on an *accessible* route complying with 402.

EXCEPTIONS: 1. Where an *alteration* includes *alterations* to an *entrance*, and the *building* or *facility* has another *entrance* complying with 404 that is on an *accessible* route, the *altered entrance* shall not be required to comply with F206.4 unless required by F202.4.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by F202.5, no more than one *public entrance* shall be required to comply with F206.4. Where no *public entrance* can comply with F206.4 under criteria established in F202.5 Exception, then either an unlocked *entrance* not used by the public shall comply with F206.4; or a locked *entrance* complying with F206.4 with a notification system or remote monitoring shall be provided.

F206.4.1 Public Entrances. In addition to *entrances* required by F206.4.2 through F206.4.9, at least 60 percent of all *public entrances* shall comply with 404.

F206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a *building* or *facility entrance*, each direct access to the *building* or *facility entrance* shall comply with 404.

F206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a *building* or *facility*, at least one direct *entrance* to the *building* or *facility* from each tunnel or walkway shall comply with 404.

F206.4.4 Transportation Facilities. In addition to the requirements of F206.4.2, F206.4.3, and F206.4.5 through F206.4.9, transportation *facilities* shall provide *entrances* in accordance with F206.4.4.

F206.4.4.1 Location. In transportation *facilities*, where different *entrances* serve different transportation fixed routes or groups of fixed routes, at least one *public entrance* shall comply with 404.

F206.4.4.2 Direct Connections. Direct connections to other *facilities* shall provide an *accessible* route complying with 404 from the point of connection to boarding platforms and all transportation system *elements* required to be *accessible*. Any *elements* provided to facilitate future direct connections shall be on an *accessible* route connecting boarding platforms and all transportation system *elements* required to be *accessible*.

F206.4.5 Tenant Spaces. At least one *accessible entrance* to each tenancy in a *facility* shall comply with 404.

EXCEPTION: *Self-service storage* facilities not required to comply with F225.3 shall not be required to be on an *accessible* route.

F206.4.6 Residential Dwelling Unit Primary Entrance. In *residential dwelling units*, at least one primary *entrance* shall comply with 404. The primary *entrance* to a *residential dwelling unit* shall not be to a bedroom.

F206.4.7 Restricted Entrances. Where *restricted entrances* are provided to a *building* or *facility*, at least one *restricted entrance* to the *building* or *facility* shall comply with 404.

F206.4.8 Service Entrances. If a *service entrance* is the only *entrance* to a *building* or to a tenancy in a *facility*, that *entrance* shall comply with 404.

F206.4.9 Entrances for Inmates or Detainees. Where *entrances* used only by inmates or detainees and security personnel are provided at judicial *facilities*, detention *facilities*, or correctional *facilities*, at least one such *entrance* shall comply with 404.

F206.5 Doors, Doorways, and Gates. Doors, doorways, and gates providing user passage shall be provided in accordance with F206.5.

F206.5.1 Entrances. Each *entrance* to a *building* or *facility* required to comply with F206.4 shall have at least one door, doorway, or gate complying with 404.

F206.5.2 Rooms and Spaces. Within a *building* or *facility*, at least one door, doorway, or gate serving each room or *space* complying with these requirements shall comply with 404.

F206.5.3 Transient Lodging Facilities. In *transient lodging facilities*, *entrances*, doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

F206.5.4 Residential Dwelling Units. In *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4, all doors and doorways providing user passage shall comply with 404.

F206.6 Elevators. Elevators provided for passengers shall comply with 407. Where multiple elevators are provided, each elevator shall comply with 407.

EXCEPTIONS: 1. In a *building* or *facility* permitted to use the exceptions to F206.2.3 or permitted by F206.7 to use a platform lift, elevators complying with 408 shall be permitted.

2. Elevators complying with 408 or 409 shall be permitted in multi-*story residential dwelling units*.

F206.6.1 Existing Elevators. Where *elements* of existing elevators are *altered*, the same *element* shall also be *altered* in all elevators that are programmed to respond to the same hall call control as the *altered* elevator and shall comply with the requirements of 407 for the *altered element*.

F206.7 Platform Lifts. Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an *accessible* route in new construction in accordance with F206.7. Platform lifts shall be permitted as a component of an *accessible* route in an existing *building* or *facility*.

F206.7.1 Performance Areas and Speakers' Platforms. Platform lifts shall be permitted to provide *accessible* routes to performance areas and speakers' platforms.

F206.7.2 Wheelchair Spaces. Platform lifts shall be permitted to provide an *accessible* route to comply with the *wheelchair space* dispersion and line-of-sight requirements of F221 and 802.

F206.7.3 Incidental Spaces. Platform lifts shall be permitted to provide an *accessible* route to incidental *spaces* which are not *public use spaces* and which are occupied by five persons maximum.

F206.7.4 Judicial Spaces. Platform lifts shall be permitted to provide an *accessible* route to: jury boxes and witness stands; raised courtroom stations including, judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, and court reporters' stations; and to depressed areas such as the well of a court.

F206.7.5 Existing Site Constraints. Platform lifts shall be permitted where existing exterior *site* constraints make use of a *ramp* or elevator infeasible.

> **Advisory F206.7.5 Existing Site Constraints.** This exception applies where topography or other similar existing site constraints necessitate the use of a platform lift as the only feasible alternative. While the site constraint must reflect exterior conditions, the lift can be installed in the interior of a building. For example, a new building constructed between and connected to two existing buildings may have insufficient space to coordinate floor levels and also to provide ramped entry from the public way. In this example, an exterior or interior platform lift could be used to provide an accessible entrance or to coordinate one or more interior floor levels.

F206.7.6 Guest Rooms and Residential Dwelling Units. Platform lifts shall be permitted to connect levels within *transient lodging* guest rooms required to provide mobility features complying with 806.2 or *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4.

F206.7.7 Amusement Rides. Platform lifts shall be permitted to provide *accessible* routes to load and unload areas serving *amusement rides*.

F206.7.8 Play Areas. Platform lifts shall be permitted to provide *accessible* routes to *play components* or *soft contained play structures*.

F206.7.9 Team or Player Seating. Platform lifts shall be permitted to provide *accessible* routes to team or player seating areas serving *areas of sport activity*.

Advisory F206.7.9 Team or Player Seating. While the use of platform lifts is allowed, ramps are recommended to provide access to player seating areas serving an area of sport activity.

F206.7.10 Recreational Boating Facilities and Fishing Piers and Platforms. Platform lifts shall be permitted to be used instead of *gangways* that are part of *accessible* routes serving recreational boating *facilities* and fishing piers and platforms.

F206.8 Security Barriers. Security barriers, including but not limited to, security bollards and security check points, shall not obstruct a required *accessible* route or *accessible means of egress*.

EXCEPTION: Where security barriers incorporate *elements* that cannot comply with these requirements such as certain metal detectors, fluoroscopes, or other similar devices, the *accessible* route shall be permitted to be located adjacent to security screening devices. The *accessible* route shall permit persons with disabilities passing around security barriers to maintain visual contact with their personal items to the same extent provided others passing through the security barrier.

F207 Accessible Means of Egress

F207.1 General. Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

EXCEPTIONS: 1. Where means of egress are permitted by local *building* or life safety codes to share a common path of egress travel, *accessible means of egress* shall be permitted to share a common path of egress travel.

2. Areas of refuge shall not be required in detention and correctional *facilities*.

F207.2 Platform Lifts. Standby power shall be provided for platform lifts permitted by section 1003.2.13.4 of the International Building Code (2000 edition and 2001 Supplement) or section 1007.5 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to serve as a part of an *accessible means of egress*.

F208 Parking Spaces

F208.1 General. Where parking *spaces* are provided, parking *spaces* shall be provided in accordance with F208.

EXCEPTION: Parking *spaces* used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or vehicular impound shall not be required to comply with F208 provided that lots accessed by the public are provided with a passenger loading zone complying with 503.

F208.2 Minimum Number. Parking *spaces* complying with 502 shall be provided in accordance with Table F208.2 except as required by F208.2.1, F208.2.2, and F208.2.3. Where more than one parking *facility* is provided on a *site*, the number of *accessible spaces* provided on the *site* shall be calculated according to the number of *spaces* required for each parking *facility*.

Table F208.2 Parking Spaces

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Advisory F208.2 Minimum Number. The term "parking facility" is used Section F208.2 instead of the term "parking lot" so that it is clear that both parking lots and parking structures are required to comply with this section. The number of parking spaces required to be accessible is to be calculated separately for each parking facility; the required number is not to be based on the total number of parking spaces provided in all of the parking facilities provided on the site.

F208.2.1 Hospital Outpatient Facilities. Ten percent of patient and visitor parking *spaces* provided to serve hospital outpatient *facilities* shall comply with 502.

Advisory F208.2.1 Hospital Outpatient Facilities. The term "outpatient facility" is not defined in this document but is intended to cover facilities or units that are located in hospitals and that provide regular and continuing medical treatment without an overnight stay. Doctors' offices, independent clinics, or other facilities not located in hospitals are not considered hospital outpatient facilities for purposes of this document.

F208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Twenty percent of patient and visitor parking *spaces* provided to serve rehabilitation *facilities* specializing in treating conditions that affect mobility and outpatient physical therapy *facilities* shall comply with 502.

Advisory F208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations.

F208.2.3 Residential Facilities. Parking *spaces* provided to serve residential facilities shall comply with F208.2.3.

F208.2.3.1 Parking for Residents. Where at least one parking *space* is provided for each *residential dwelling unit*, at least one parking *space* complying with 502 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

F208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking *spaces* provided for each *residential dwelling unit* exceeds one parking *space* per *residential dwelling unit*, 2 percent, but no fewer than one *space*, of all the parking *spaces* not covered by F208.2.3.1 shall comply with 502.

F208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table F208.2.

F208.2.4 Van Parking Spaces. For every six or fraction of six parking *spaces* required by F208.2 to comply with 502, at least one shall be a van parking *space* complying with 502.

F208.3 Location. Parking *facilities* shall comply with F208.3

F208.3.1 General. Parking *spaces* complying with 502 that serve a particular *building* or *facility* shall be located on the shortest *accessible* route from parking to an *entrance* complying with F206.4. Where parking serves more than one *accessible entrance*, parking *spaces* complying with 502 shall be dispersed and located on the shortest *accessible* route to the *accessible entrances*. In parking *facilities* that do not serve a particular *building* or *facility*, parking *spaces* complying with 502 shall be located on the shortest *accessible* route to an *accessible* pedestrian *entrance* of the parking *facility*.

EXCEPTIONS: 1. All van parking *spaces* shall be permitted to be grouped on one level within a multi-*story* parking *facility*.

2. Parking *spaces* shall be permitted to be located in different parking *facilities* if substantially equivalent or greater *accessibility* is provided in terms of distance from an *accessible entrance* or *entrances*, parking fee, and user convenience.

Advisory F208.3.1 General Exception 2. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

F208.3.2 Residential Facilities. In residential *facilities* containing *residential dwelling units* required to provide mobility features complying with 809.2 through 809.4, parking *spaces* provided in accordance with F208.2.3.1 shall be located on the shortest *accessible* route to the *residential dwelling unit entrance* they serve. *Spaces* provided in accordance with F208.2.3.2 shall be dispersed throughout all types of parking provided for the *residential dwelling units*.

EXCEPTION: Parking *spaces* provided in accordance with F208.2.3.2 shall not be required to be dispersed throughout all types of parking if substantially equivalent or greater *accessibility* is provided in terms of distance from an *accessible entrance*, parking fee, and user convenience.

Advisory F208.3.2 Residential Facilities Exception. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

F209 Passenger Loading Zones and Bus Stops

F209.1 General. Passenger loading zones shall be provided in accordance with F209.

F209.2 Type. Where provided, passenger loading zones shall comply with F209.2.

F209.2.1 Passenger Loading Zones. Passenger loading zones, except those required to comply with F209.2.2 and F209.2.3, shall provide at least one passenger loading zone complying with 503 in every continuous 100 linear feet (30 m) of loading zone *space*, or fraction thereof.

F209.2.2 Bus Loading Zones. In bus loading zones restricted to use by designated or specified public transportation vehicles, each bus bay, bus stop, or other area designated for lift or *ramp* deployment shall comply with 810.2.

Advisory F209.2.2 Bus Loading Zones. The terms "designated public transportation" and "specified public transportation" are defined by the Department of Transportation at 49 CFR 37.3 in regulations implementing the Americans with Disabilities Act. These terms refer to public transportation services provided by public or private entities, respectively. For example, designated public transportation vehicles include buses and vans operated by public transit agencies, while specified public transportation vehicles include tour and charter buses, taxis and limousines, and hotel shuttles operated by private entities.

F209.2.3 On-Street Bus Stops. On-street bus stops shall comply with 810.2 to the maximum extent practicable.

F209.3 Medical Care and Long-Term Care Facilities. At least one passenger loading zone complying with 503 shall be provided at an *accessible entrance* to licensed medical care and licensed long-term care *facilities* where the period of stay exceeds twenty-four hours.

F209.4 Valet Parking. Parking *facilities* that provide valet parking services shall provide at least one passenger loading zone complying with 503.

F209.5 Mechanical Access Parking Garages. Mechanical access parking garages shall provide at least one passenger loading zone complying with 503 at vehicle drop-off and vehicle pick-up areas.

F210 Stairways

F210.1 General. Interior and exterior stairs that are part of a means of egress shall comply with 504.

EXCEPTIONS: 1. In detention and correctional *facilities*, stairs that are not located in *public use* areas shall not be required to comply with 504.

2. In *alterations*, stairs between levels that are connected by an *accessible* route shall not be required to comply with 504, except that handrails complying with 505 shall be provided when the stairs are *altered*.

3. In *assembly areas*, aisle stairs shall not be required to comply with 504.

4. Stairs that connect *play components* shall not be required to comply with 504.

Advisory F210.1 General. Although these requirements do not mandate handrails on stairs that are not part of a means of egress, State or local building codes may require handrails or guards.

F211 Drinking Fountains

F211.1 General. Where drinking fountains are provided on an exterior *site*, on a floor, and within a secured area they shall be provided in accordance with F211.

EXCEPTION: In detention or correctional *facilities*, drinking fountains only serving holding or housing cells not required to comply with F232 shall not be required to comply with F211.

F211.2 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.

F211.3 More Than Minimum Number. Where more than the minimum number of drinking fountains specified in F211.2 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 F211 equals 100 percent of drinking fountains.

F212 Kitchens, Kitchenettes, and Sinks

F212.1 General. Where provided, kitchens, kitchenettes, and sinks shall comply with F212.

F212.2 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

F212.3 Sinks. Where sinks are provided, at least 5 percent, but no fewer than one, of each type provided in each *accessible* room or *space* shall comply with 606.

EXCEPTION: Mop or service sinks shall not be required to comply with F212.3.

F213 Toilet Facilities and Bathing Facilities

F213.1 General. Where toilet *facilities* and bathing *facilities* are provided, they shall comply with F213. Where toilet *facilities* and bathing *facilities* are provided in *facilities* permitted by F206.2.3 Exceptions 1 and 2 not to connect *stories* by an *accessible* route, toilet *facilities* and bathing *facilities* shall be provided on a *story* connected by an *accessible* route to an *accessible entrance*.

F213.2 Toilet Rooms and Bathing Rooms. Where toilet rooms are provided, each toilet room shall comply with 603. Where bathing rooms are provided, each bathing room shall comply with 603.

EXCEPTIONS: 1. In *alterations* where it is *technically infeasible* to comply with 603, *altering* existing toilet or bathing rooms shall not be required where a single unisex toilet room or bathing room complying with F213.2.1 is provided and located in the same area and on the same floor as existing inaccessible toilet or bathing rooms.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by F202.5 and toilet rooms are provided, no fewer than one toilet room for each sex complying with 603 or one unisex toilet room complying with F213.2.1 shall be provided.

3. Where multiple single user portable toilet or bathing units are clustered at a single location, no more than 5 percent of the toilet units and bathing units at each cluster shall be required to comply with 603. Portable toilet units and bathing units complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1.

4. Where multiple single user toilet rooms are clustered at a single location, no more than 50 percent of the single user toilet rooms for each use at each cluster shall be required to comply with 603.

Advisory F213.2 Toilet Rooms and Bathing Rooms. These requirements allow the use of unisex (or single-user) toilet rooms in alterations when technical infeasibility can be demonstrated. Unisex toilet rooms benefit people who use opposite sex personal care assistants. For this reason, it is advantageous to install unisex toilet rooms in addition to accessible single-sex toilet rooms in new facilities.

Advisory F213.2 Toilet Rooms and Bathing Rooms Exceptions 3 and 4. A "cluster" is a group of toilet rooms proximate to one another. Generally, toilet rooms in a cluster are within sight of, or adjacent to, one another.

F213.2.1 Unisex (Single-Use or Family) Toilet and Bathing Rooms. Unisex toilet rooms shall contain not more than one lavatory, and two water closets without urinals or one water closet and one urinal. Unisex bathing rooms shall contain one shower or one shower and one bathtub, one lavatory, and one water closet. Doors to unisex toilet rooms and unisex bathing rooms shall have privacy latches.

F213.3 Plumbing Fixtures and Accessories. Plumbing fixtures and accessories provided in a toilet room or bathing room required to comply with F213.2 shall comply with F213.3.

F213.3.1 Toilet Compartments. Where toilet compartments are provided, at least one toilet compartment shall comply with 604.8.1. In addition to the compartment required to comply with

604.8.1, at least one compartment shall comply with 604.8.2 where six or more toilet compartments are provided, or where the combination of urinals and water closets totals six or more fixtures.

Advisory F213.3.1 Toilet Compartments. A toilet compartment is a partitioned space that is located within a toilet room, and that normally contains no more than one water closet. A toilet compartment may also contain a lavatory. A lavatory is a sink provided for hand washing. Full-height partitions and door assemblies can comprise toilet compartments where the minimum required spaces are provided within the compartment.

F213.3.2 Water Closets. Where water closets are provided at least one shall comply with 604.

F213.3.3 Urinals. Where more than one urinal is provided, at least one shall comply with 605.

F213.3.4 Lavatories. Where lavatories are provided, at least one shall comply with 606 and shall not be located in a toilet compartment.

F213.3.5 Mirrors. Where mirrors are provided, at least one shall comply with 603.3.

F213.3.6 Bathing Facilities. Where bathtubs or showers are provided, at least one bathtub complying with 607 or at least one shower complying with 608 shall be provided.

F213.3.7 Coat Hooks and Shelves. Where coat hooks or shelves are provided in toilet rooms without toilet compartments, at least one of each type shall comply with 603.4. Where coat hooks or shelves are provided in toilet compartments, at least one of each type complying with 604.8.3 shall be provided in toilet compartments required to comply with F213.3.1. Where coat hooks or shelves are provided in bathing *facilities*, at least one of each type complying with 603.4 shall serve fixtures required to comply with F213.3.6.

F214 Washing Machines and Clothes Dryers

F214.1 General. Where provided, washing machines and clothes dryers shall comply with F214.
EXCEPTION: Washing machines and clothes dryers provided in *employee work areas* shall not be required to comply with F214.

Advisory F214.1 General Exception. Washers and dryers provided for use by employees during non-work hours are not considered to be provided in employee work areas. For example, if trainees are housed in a dormitory and provided access to washers and dryers, those facilities are not considered part of the employee work area. Examples of washing machines and clothes dryers provided in employee work areas include, but are not limited to, employee only laundries in hospitals, hotels, and prisons.

F214.2 Washing Machines. Where three or fewer washing machines are provided, at least one shall comply with 611. Where more than three washing machines are provided, at least two shall comply with 611.

F214.3 Clothes Dryers. Where three or fewer clothes dryers are provided, at least one shall comply with 611. Where more than three clothes dryers are provided, at least two shall comply with 611.

F215 Fire Alarm Systems

F215.1 General. Where fire alarm systems provide audible alarm coverage, alarms shall comply with F215.

EXCEPTION: In existing *facilities*, visible alarms shall not be required except where an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed.

> **Advisory F215.1 General.** Unlike audible alarms, visible alarms must be located within the space they serve so that the signal is visible. Facility alarm systems (other than fire alarm systems) such as those used for tornado warnings and other emergencies are not required to comply with the technical criteria for alarms in Section 702. Every effort should be made to ensure that such alarms can be differentiated in their signal from fire alarms systems and that people who need to be notified of emergencies are adequately safeguarded. Consult local fire departments and prepare evacuation plans taking into consideration the needs of every building occupant, including people with disabilities.

F215.2 Public and Common Use Areas. Alarms in *public use* areas and *common use* areas shall comply with 702.

F215.3 Employee Work Areas. Where *employee work areas* have audible alarm coverage, the wiring system shall be designed so that visible alarms complying with 702 can be integrated into the alarm system.

F215.4 Transient Lodging. Guest rooms required to comply with F224.4 shall provide alarms complying with 702.

F215.5 Residential Facilities. Where provided in *residential dwelling units* required to comply with 809.5, alarms shall comply with 702.

F216 Signs

F216.1 General. Signs shall be provided in accordance with F216 and shall comply with 703.

EXCEPTIONS: 1. *Building* directories, menus, seat and row designations in *assembly areas*, occupant names, *building* addresses, and company names and logos shall not be required to comply with F216.

2. In parking *facilities*, signs shall not be required to comply with F216.2, F216.3, and F216.6 through F216.12.

3. Temporary, 7 days or less, signs shall not be required to comply with F216.

4. In detention and correctional *facilities*, signs not located in *public use* areas shall not be required to comply with F216.

F216.2 Designations. Interior and exterior signs identifying permanent rooms and *spaces* shall comply with 703.1, 703.2, and 703.5. Where *pictograms* are provided as designations of permanent interior

rooms and *spaces*, the *pictograms* shall comply with 703.6 and shall have text descriptors complying with 703.2 and 703.5.

EXCEPTION: Exterior signs that are not located at the door to the *space* they serve shall not be required to comply with 703.2.

Advisory F216.2 Designations. Section F216.2 applies to signs that provide designations, labels, or names for interior rooms or spaces where the sign is not likely to change over time. Examples include interior signs labeling restrooms, room and floor numbers or letters, and room names. Tactile text descriptors are required for pictograms that are provided to label or identify a permanent room or space. Pictograms that provide information about a room or space, such as "no smoking," occupant logos, and the International Symbol of Accessibility, are not required to have text descriptors.

F216.3 Directional and Informational Signs. Signs that provide direction to or information about interior *spaces* and *facilities* of the *site* shall comply with 703.5.

Advisory F216.3 Directional and Informational Signs. Information about interior spaces and facilities includes rules of conduct, occupant load, and similar signs. Signs providing direction to rooms or spaces include those that identify egress routes.

F216.4 Means of Egress. Signs for means of egress shall comply with F216.4.

F216.4.1 Exit Doors. Doors at exit passageways, exit discharge, and exit stairways shall be identified by *tactile* signs complying with 703.1, 703.2, and 703.5.

Advisory F216.4.1 Exit Doors. An exit passageway is a horizontal exit component that is separated from the interior spaces of the building by fire-resistance-rated construction and that leads to the exit discharge or public way. The exit discharge is that portion of an egress system between the termination of an exit and a public way.

F216.4.2 Areas of Refuge. Signs required by section 1003.2.13.5.4 of the International Building Code (2000 edition) or section 1007.6.4 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to provide instructions in areas of refuge shall comply with 703.5.

F216.4.3 Directional Signs. Signs required by section 1003.2.13.6 of the International Building Code (2000 edition) or section 1007.7 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) to provide directions to *accessible means of egress* shall comply with 703.5.

F216.5 Parking. Parking *spaces* complying with 502 shall be identified by signs complying with 502.6.

EXCEPTIONS: 1. Where a total of four or fewer parking *spaces*, including *accessible* parking *spaces*, are provided on a *site*, identification of *accessible* parking *spaces* shall not be required.

2. In residential *facilities*, where parking *spaces* are assigned to specific *residential dwelling units*, identification of *accessible* parking *spaces* shall not be required.

F216.6 Entrances. Where not all *entrances* comply with 404, *entrances* complying with 404 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Directional signs complying with 703.5 that indicate the location of the nearest *entrance* complying with 404 shall be provided at *entrances* that do not comply with 404.

> **Advisory F216.6 Entrances.** Where a directional sign is required, it should be located to minimize backtracking. In some cases, this could mean locating a sign at the beginning of a route, not just at the inaccessible entrances to a building.

F216.7 Elevators. Where existing elevators do not comply with 407, elevators complying with 407 shall be clearly identified with the International Symbol of *Accessibility* complying with 703.7.2.1.

F216.8 Toilet Rooms and Bathing Rooms. Where existing toilet rooms or bathing rooms do not comply with 603, directional signs indicating the location of the nearest toilet room or bathing room complying with 603 within the *facility* shall be provided. Signs shall comply with 703.5 and shall include the International Symbol of *Accessibility* complying with 703.7.2.1. Where existing toilet rooms or bathing rooms do not comply with 603, the toilet rooms or bathing rooms complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Where clustered single user toilet rooms or bathing *facilities* are permitted to use exception to F213.2, toilet rooms or bathing *facilities* complying with 603 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1 unless all toilet rooms and bathing *facilities* comply with 603.

F216.9 TTYs. Identification and directional signs for public *TTYs* shall be provided in accordance with F216.9.

F216.9.1 Identification Signs. Public *TTYs* shall be identified by the International Symbol of *TTY* complying with 703.7.2.2.

F216.9.2 Directional Signs. Directional signs indicating the location of the nearest public *TTY* shall be provided at all banks of public pay telephones not containing a public *TTY*. In addition, where signs provide direction to public pay telephones, they shall also provide direction to public *TTYs*. Directional signs shall comply with 703.5 and shall include the International Symbol of *TTY* complying with 703.7.2.2.

F216.10 Assistive Listening Systems. Each *assembly area* required by F219 to provide *assistive listening systems* shall provide signs informing patrons of the availability of the *assistive listening system*. Assistive listening signs shall comply with 703.5 and shall include the International Symbol of Access for Hearing Loss complying with 703.7.2.4.

EXCEPTION: Where ticket offices or windows are provided, signs shall not be required at each *assembly area* provided that signs are displayed at each ticket office or window informing patrons of the availability of *assistive listening systems*.

F216.11 Check-Out Aisles. Where more than one check-out aisle is provided, check-out aisles complying with 904.3 shall be identified by the International Symbol of *Accessibility* complying with 703.7.2.1. Where check-out aisles are identified by numbers, letters, or functions, signs identifying

check-out aisles complying with 904.3 shall be located in the same location as the check-out aisle identification.

EXCEPTION: Where all check-out aisles serving a single function comply with 904.3, signs complying with 703.7.2.1 shall not be required.

F216.12 Amusement Rides. Signs identifying the type of access provided on *amusement rides* shall be provided at entries to queues and waiting lines. In addition, where *accessible* unload areas also serve as *accessible* load areas, signs indicating the location of the *accessible* load and unload areas shall be provided at entries to queues and waiting lines.

Advisory F216.12 Amusement Rides. Amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider, and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats, or transfer systems, and need not meet the sign requirements in 216.12. The load and unload areas of these rides must, however, be on an accessible route and must provide turning space.

F217 Telephones

F217.1 General. Where coin-operated public pay telephones, coinless public pay telephones, public *closed-circuit telephones*, public courtesy phones, or other types of public telephones are provided, public telephones shall be provided in accordance with F217 for each type of public telephone provided. For purposes of this section, a bank of telephones shall be considered to be two or more adjacent telephones.

Advisory F217.1 General. These requirements apply to all types of public telephones including courtesy phones at airports and rail stations that provide a free direct connection to hotels, transportation services, and tourist attractions.

F217.2 Wheelchair Accessible Telephones. Where public telephones are provided, wheelchair *accessible* telephones complying with 704.2 shall be provided in accordance with Table F217.2.

EXCEPTION: Drive-up only public telephones shall not be required to comply with F217.2.

Table F217.2 Wheelchair Accessible Telephones

Number of Telephones Provided on a Floor, Level, or Exterior Site	Minimum Number of Required Wheelchair Accessible Telephones
1 or more single units	1 per floor, level, and exterior *site*
1 bank	1 per floor, level, and exterior *site*
2 or more banks	1 per bank

F217.3 Volume Controls. All public telephones shall have volume controls complying with 704.3.

F217.4 TTYs. *TTYs* complying with 704.4 shall be provided in accordance with F217.4.

Advisory F217.4 TTYs. Separate requirements are provided based on the number of public pay telephones provided at a bank of telephones, within a floor, a building, or on a site. In some instances one TTY can be used to satisfy more than one of these requirements. For example, a TTY required for a bank can satisfy the requirements for a building. However, the requirement for at least one TTY on an exterior site cannot be met by installing a TTY in a bank inside a building. Consideration should be given to phone systems that can accommodate both digital and analog transmissions for compatibility with digital and analog TTYs.

F217.4.1 Bank Requirement. Where four or more public pay telephones are provided at a bank of telephones, at least one public *TTY* complying with 704.4 shall be provided at that bank.

EXCEPTION: *TTYs* shall not be required at banks of telephones located within 200 feet (61 m) of, and on the same floor as, a bank containing a public *TTY*.

F217.4.2 Floor Requirement. Where at least one public pay telephone is provided on a floor of a *building*, at least one public *TTY* shall be provided on that floor.

F217.4.3 Building Requirement. Where at least one public pay telephone is provided in a *public use* area of a *building*, at least one public *TTY* shall be provided in the *building* in a *public use* area.

F217.4.4 Exterior Site Requirement. Where four or more public pay telephones are provided on an exterior *site*, at least one public *TTY* shall be provided on the *site*.

F217.4.5 Rest Stops, Emergency Roadside Stops, and Service Plazas. Where at least one public pay telephone is provided at a public rest stop, emergency roadside stop, or service plaza, at least one public *TTY* shall be provided.

F217.4.6 Hospitals. Where at least one public pay telephone is provided serving a hospital emergency room, hospital recovery room, or hospital waiting room, at least one public *TTY* shall be provided at each location.

F217.4.7 Transportation Facilities. In transportation *facilities*, in addition to the requirements of F217.4.1 through F217.4.4, where at least one public pay telephone serves a particular *entrance* to a bus or rail *facility*, at least one public *TTY* shall be provided to serve that *entrance*. In airports, in addition to the requirements of F217.4.1 through F217.4.4, where four or more public pay telephones are located in a terminal outside the security areas, a concourse within the security areas, or a baggage claim area in a terminal, at least one public *TTY* shall be provided in each location.

F217.4.8 Detention and Correctional Facilities. In detention and correctional *facilities*, where at least one pay telephone is provided in a secured area used only by detainees or inmates and security personnel, at least one *TTY* shall be provided in at least one secured area.

F217.5 Shelves for Portable TTYs. Where a bank of telephones in the interior of a *building* consists of three or more public pay telephones, at least one public pay telephone at the bank shall be provided with a shelf and an electrical outlet in accordance with 704.5.

EXCEPTIONS: 1. Secured areas of detention and correctional *facilities* where shelves and outlets are prohibited for purposes of security or safety shall not be required to comply with F217.5.
2. The shelf and electrical outlet shall not be required at a bank of telephones with a *TTY*.

F218 Transportation Facilities

F218.1 General. Transportation *facilities* shall comply with F218.

F218.2 New and Altered Fixed Guideway Stations. New and altered stations in rapid rail, light rail, commuter rail, intercity rail, high speed rail, and other fixed guideway systems shall comply with 810.5 through 810.10.

F218.3 Bus Shelters. Where provided, bus shelters shall comply with 810.3 and 810.4.

F218.4 Other Transportation Facilities. In other transportation *facilities*, public address systems shall comply with 810.7 and clocks shall comply with 810.8.

F219 Assistive Listening Systems

F219.1 General. *Assistive listening systems* shall be provided in accordance with F219 and shall comply with 706.

F219.2 Required Systems. In each *assembly area* where audible communication is integral to the use of the *space*, an *assistive listening system* shall be provided.
EXCEPTION: Other than in courtrooms, *assistive listening systems* shall not be required where audio amplification is not provided.

F219.3 Receivers. Receivers complying with 706.2 shall be provided for *assistive listening systems* in each *assembly area* in accordance with Table F219.3. Twenty-five percent minimum of receivers provided, but no fewer than two, shall be hearing-aid compatible in accordance with 706.3.
EXCEPTIONS: 1. Where a *building* contains more than one *assembly area* and the *assembly areas* required to provide *assistive listening systems* are under one management, the total number of required receivers shall be permitted to be calculated according to the total number of seats in the *assembly areas* in the *building* provided that all receivers are usable with all systems.
2. Where all seats in an *assembly area* are served by an induction loop *assistive listening system*, the minimum number of receivers required by Table F219.3 to be hearing-aid compatible shall not be required to be provided.

Table F219.3 Receivers for Assistive Listening Systems

Capacity of Seating in Assembly Area	Minimum Number of Required Receivers	Minimum Number of Required Receivers Required to be Hearing-aid Compatible
50 or less	2	2
51 to 200	2, plus 1 per 25 seats over 50 seats[1]	2
201 to 500	2, plus 1 per 25 seats over 50 seats[1]	1 per 4 receivers[1]
501 to 1000	20, plus 1 per 33 seats over 500 seats[1]	1 per 4 receivers[1]
1001 to 2000	35, plus 1 per 50 seats over 1000 seats[1]	1 per 4 receivers[1]
2001 and over	55, plus 1 per 100 seats over 2000 seats[1]	1 per 4 receivers[1]

1. Or fraction thereof.

F220 Automatic Teller Machines and Fare Machines

F220.1 General. Where automatic teller machines or self-service fare vending, collection, or adjustment machines are provided, at least one of each type provided at each location shall comply with 707. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type shall comply with 811.

> **Advisory F220.1 General.** If a bank provides both interior and exterior ATMs, each such installation is considered a separate location. Accessible ATMs, including those with speech and those that are within reach of people who use wheelchairs, must provide all the functions provided to customers at that location at all times. For example, it is unacceptable for the accessible ATM only to provide cash withdrawals while inaccessible ATMs also sell theater tickets.

F221 Assembly Areas

F221.1 General. *Assembly areas* shall provide *wheelchair spaces*, companion seats, and designated aisle seats complying with F221 and 802. In addition, lawn seating shall comply with F221.5.

F221.2 Wheelchair Spaces. *Wheelchair spaces* complying with F221.2 shall be provided in *assembly areas* with fixed seating.

F221.2.1 Number and Location. *Wheelchair spaces* shall be provided complying with F221.2.1.

F221.2.1.1 General Seating. *Wheelchair spaces* complying with 802.1 shall be provided in accordance with Table F221.2.1.1.

Table F221.2.1.1 Number of Wheelchair Spaces in Assembly Areas

Number of Seats	Minimum Number of Required Wheelchair Spaces
4 to 25	1
26 to 50	2
51 to 150	4
151 to 300	5
301 to 500	6
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000

F221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. In each luxury box, club box, and suite within arenas, stadiums, and grandstands, *wheelchair spaces* complying with 802.1 shall be provided in accordance with Table F221.2.1.1.

Advisory F221.2.1.2 Luxury Boxes, Club Boxes, and Suites in Arenas, Stadiums, and Grandstands. The number of wheelchair spaces required in luxury boxes, club boxes, and suites within an arena, stadium, or grandstand is to be calculated box by box and suite by suite.

F221.2.1.3 Other Boxes. In boxes other than those required to comply with F221.2.1.2, the total number of *wheelchair spaces* required shall be determined in accordance with Table F221.2.1.1. *Wheelchair spaces* shall be located in not less than 20 percent of all boxes provided. *Wheelchair spaces* shall comply with 802.1.

Advisory F221.2.1.3 Other Boxes. The provision for seating in "other boxes" includes box seating provided in facilities such as performing arts auditoria where tiered boxes are designed for spatial and acoustical purposes. The number of wheelchair spaces required in boxes covered by 221.2.1.3 is calculated based on the total number of seats provided in these other boxes. The resulting number of wheelchair spaces must be located in no fewer than 20% of the boxes covered by this section. For example, a concert hall has 20 boxes, each of which contains 10 seats, totaling 200 seats. In this example, 5 wheelchair spaces would be required, and they must be placed in at least 4 of the boxes. Additionally, because the wheelchair spaces must also meet the dispersion requirements of 221.2.3, the boxes containing these wheelchair spaces cannot all be located in one area unless an exception to the dispersion requirements applies.

F221.2.1.4 Team or Player Seating. At least one *wheelchair space* complying with 802.1 shall be provided in team or player seating areas serving *areas of sport activity.*

EXCEPTION: *Wheelchair spaces* shall not be required in team or player seating areas serving bowling lanes not required to comply with F206.2.10.

F221.2.2 Integration. *Wheelchair spaces* shall be an integral part of the seating plan.

Advisory F221.2.2 Integration. The requirement that wheelchair spaces be an "integral part of the seating plan" means that wheelchair spaces must be placed within the footprint of the seating area. Wheelchair spaces cannot be segregated from seating areas. For example, it would be unacceptable to place only the wheelchair spaces, or only the wheelchair spaces and their associated companion seats, outside the seating areas defined by risers in an assembly area.

F221.2.3 Lines of Sight and Dispersion. *Wheelchair spaces* shall provide lines of sight complying with 802.2 and shall comply with F221.2.3. In providing lines of sight, *wheelchair spaces* shall be dispersed. *Wheelchair spaces* shall provide spectators with choices of seating locations and viewing angles that are substantially equivalent to, or better than, the choices of seating locations and viewing angles available to all other spectators. When the number of *wheelchair spaces* required by F221.2.1 has been met, further dispersion shall not be required.

EXCEPTION: *Wheelchair spaces* in team or player seating areas serving *areas of sport activity* shall not be required to comply with F221.2.3.

Advisory F221.2.3 Lines of Sight and Dispersion. Consistent with the overall intent of the ADA, individuals who use wheelchairs must be provided equal access so that their experience is substantially equivalent to that of other members of the audience. Thus, while individuals who use wheelchairs need not be provided with the best seats in the house, neither may they be relegated to the worst.

F221.2.3.1 Horizontal Dispersion. *Wheelchair spaces* shall be dispersed horizontally.

EXCEPTIONS: 1. Horizontal dispersion shall not be required in *assembly areas* with 300 or fewer seats if the companion seats required by F221.3 and *wheelchair spaces* are located within the 2nd or 3rd quartile of the total row length. Intermediate aisles shall be included in

determining the total row length. If the row length in the 2nd and 3rd quartile of a row is insufficient to accommodate the required number of companion seats and *wheelchair spaces*, the additional companion seats and *wheelchair spaces* shall be permitted to be located in the 1st and 4th quartile of the row.

2. In row seating, two *wheelchair spaces* shall be permitted to be located side-by-side.

Advisory F221.2.3.1 Horizontal Dispersion. Horizontal dispersion of wheelchair spaces is the placement of spaces in an assembly facility seating area from side-to-side or, in the case of an arena or stadium, around the field of play or performance area.

F221.2.3.2 Vertical Dispersion. *Wheelchair spaces* shall be dispersed vertically at varying distances from the screen, performance area, or playing field. In addition, *wheelchair spaces* shall be located in each balcony or *mezzanine* that is located on an *accessible* route.

EXCEPTIONS: 1. Vertical dispersion shall not be required in *assembly areas* with 300 or fewer seats if the *wheelchair spaces* provide viewing angles that are equivalent to, or better than, the average viewing angle provided in the *facility*.

2. In bleachers, *wheelchair spaces* shall not be required to be provided in rows other than rows at points of entry to bleacher seating.

Advisory F221.2.3.2 Vertical Dispersion. When wheelchair spaces are dispersed vertically in an assembly facility they are placed at different locations within the seating area from front-to-back so that the distance from the screen, stage, playing field, area of sports activity, or other focal point is varied among wheelchair spaces.

Advisory F221.2.3.2 Vertical Dispersion Exception 2. Points of entry to bleacher seating may include, but are not limited to, cross aisles, concourses, vomitories, and entrance ramps and stairs. Vertical, center, or side aisles adjoining bleacher seating that are stepped or tiered are not considered entry points.

F221.3 Companion Seats. At least one companion seat complying with 802.3 shall be provided for each *wheelchair space* required by F221.2.1.

F221.4 Designated Aisle Seats. At least 5 percent of the total number of aisle seats provided shall comply with 802.4 and shall be the aisle seats located closest to *accessible* routes.

EXCEPTION: Team or player seating areas serving *areas of sport activity* shall not be required to comply with F221.4.

Advisory F221.4 Designated Aisle Seats. When selecting which aisle seats will meet the requirements of 802.4, those aisle seats which are closest to, not necessarily on, accessible routes must be selected first. For example, an assembly area has two aisles (A and B) serving seating areas with an accessible route connecting to the top and bottom of Aisle A only. The aisle seats chosen to meet 802.4 must be those at the top and bottom of Aisle A, working toward the middle. Only when all seats on Aisle A would not meet the five percent minimum would seats on Aisle B be designated.

F221.5 Lawn Seating. Lawn seating areas and exterior overflow seating areas, where fixed seats are not provided, shall connect to an *accessible* route.

F222 Dressing, Fitting, and Locker Rooms

F222.1 General. Where dressing rooms, fitting rooms, or locker rooms are provided, at least 5 percent, but no fewer than one, of each type of use in each cluster provided shall comply with 803.

EXCEPTION: In *alterations*, where it is *technically infeasible* to provide rooms in accordance with F222.1, one room for each sex on each level shall comply with 803. Where only unisex rooms are provided, unisex rooms shall be permitted.

Advisory F222.1 General. A "cluster" is a group of rooms proximate to one another. Generally, rooms in a cluster are within sight of, or adjacent to, one another. Different styles of design provide users varying levels of privacy and convenience. Some designs include private changing facilities that are close to core areas of the facility, while other designs use space more economically and provide only group dressing facilities. Regardless of the type of facility, dressing, fitting, and locker rooms should provide people with disabilities rooms that are equally private and convenient to those provided others. For example, in a physician's office, if people without disabilities must traverse the full length of the office suite in clothing other than their street clothes, it is acceptable for people with disabilities to be asked to do the same.

F222.2 Coat Hooks and Shelves. Where coat hooks or shelves are provided in dressing, fitting or locker rooms without individual compartments, at least one of each type shall comply with 803.5. Where coat hooks or shelves are provided in individual compartments at least one of each type complying with 803.5 shall be provided in individual compartments in dressing, fitting, or locker rooms required to comply with F222.1.

F223 Medical Care and Long-Term Care Facilities

F223.1 General. In licensed medical care *facilities* and licensed long-term care *facilities* where the period of stay exceeds twenty-four hours, patient or resident sleeping rooms shall be provided in accordance with F223.

EXCEPTION: Toilet rooms that are part of critical or intensive care patient sleeping rooms shall not be required to comply with 603.

Advisory F223.1 General. Because medical facilities frequently reconfigure spaces to reflect changes in medical specialties, Section F223.1 does not include a provision for dispersion of accessible patient or resident sleeping rooms. The lack of a design requirement does not mean that covered entities are not required to provide services to people with disabilities where accessible rooms are not dispersed in specialty areas. Locate accessible rooms near core areas that are less likely to change over time. While dispersion is not required, the flexibility it provides can be a critical factor in ensuring cost effective compliance with applicable civil rights laws, including Sections 501 and 504 of the Rehabilitation Act of 1973, as amended.

Advisory F223.1 General (Continued). Additionally, all types of features and amenities should be dispersed among accessible sleeping rooms to ensure equal access to and a variety of choices for all patients and residents.

F223.1.1 Alterations. Where sleeping rooms are *altered* or *added*, the requirements of F223 shall apply only to the sleeping rooms being *altered* or *added* until the number of sleeping rooms complies with the minimum number required for new construction.

Advisory F223.1.1 Alterations. In alterations and additions, the minimum required number is based on the total number of sleeping rooms altered or added instead of on the total number of sleeping rooms provided in a facility. As a facility is altered over time, every effort should be made to disperse accessible sleeping rooms among patient care areas such as pediatrics, cardiac care, maternity, and other units. In this way, people with disabilities can have access to the full-range of services provided by a medical care facility.

F223.2 Hospitals, Rehabilitation Facilities, Psychiatric Facilities and Detoxification Facilities. Hospitals, rehabilitation *facilities*, psychiatric *facilities* and detoxification *facilities* shall comply with F223.2.

F223.2.1 Facilities Not Specializing in Treating Conditions That Affect Mobility. In *facilities* not specializing in treating conditions that affect mobility, at least 10 percent, but no fewer than one, of the patient sleeping rooms shall provide mobility features complying with 805.

F223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. In *facilities* specializing in treating conditions that affect mobility, 100 percent of the patient sleeping rooms shall provide mobility features complying with 805.

Advisory F223.2.2 Facilities Specializing in Treating Conditions That Affect Mobility. Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations. Facilities that may provide treatment for, but that do not specialize in treatment of such conditions, such as general rehabilitation hospitals, are not subject to this requirement but are subject to Section F223.2.1.

F223.3 Long-Term Care Facilities. In licensed long-term care *facilities*, at least 50 percent, but no fewer than one, of each type of resident sleeping room shall provide mobility features complying with 805.

F224 Transient Lodging Guest Rooms

F224.1 General. *Transient lodging facilities* shall provide guest rooms in accordance with F224.

Advisory F224.1 General. Certain facilities used for transient lodging including time shares, dormitories, and town homes may be covered by both these requirements and the Fair Housing Amendments Act. The Fair Housing Amendments Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). This law and the appropriate regulations should be consulted before proceeding with the design and construction of residential housing.

F224.1.1 Alterations. Where guest rooms are *altered* or *added*, the requirements of F224 shall apply only to the guest rooms being *altered* or *added* until the number of guest rooms complies with the minimum number required for new construction.

Advisory F224.1.1 Alterations. In alterations and additions, the minimum required number of accessible guest rooms is based on the total number of guest rooms altered or added instead of the total number of guest rooms provided in a facility. Typically, each alteration of a facility is limited to a particular portion of the facility. When accessible guest rooms are added as a result of subsequent alterations, compliance with 224.5 (Dispersion) is more likely to be achieved if all of the accessible guest rooms are not provided in the same area of the facility.

F224.1.2 Guest Room Doors and Doorways. *Entrances,* doors, and doorways providing user passage into and within guest rooms that are not required to provide mobility features complying with 806.2 shall comply with 404.2.3.

EXCEPTION: Shower and sauna doors in guest rooms that are not required to provide mobility features complying with 806.2 shall not be required to comply with 404.2.3.

Advisory F224.1.2 Guest Room Doors and Doorways. Because of the social interaction that often occurs in lodging facilities, an accessible clear opening width is required for doors and doorways to and within all guest rooms, including those not required to be accessible. This applies to all doors, including bathroom doors, that allow full user passage. Other requirements for doors and doorways in Section 404 do not apply to guest rooms not required to provide mobility features.

F224.2 Guest Rooms with Mobility Features. In *transient lodging facilities*, guest rooms with mobility features complying with 806.2 shall be provided in accordance with Table F224.2.

Table F224.2 Guest Rooms with Mobility Features

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

F224.3 Beds. In guest rooms having more than 25 beds, 5 percent minimum of the beds shall have clear floor *space* complying with 806.2.3.

F224.4 Guest Rooms with Communication Features. In *transient lodging facilities*, guest rooms with communication features complying with 806.3 shall be provided in accordance with Table F224.4.

Table F224.4 Guest Rooms with Communication Features

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12

Table F224.4 Guest Rooms with Communication Features

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
151 to 200	14
201 to 300	17
301 to 400	20
401 to 500	22
501 to 1000	5 percent of total
1001 and over	50, plus 3 for each 100 over 1000

F224.5 Dispersion. Guest rooms required to provide mobility features complying with 806.2 and guest rooms required to provide communication features complying with 806.3 shall be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests. Where the minimum number of guest rooms required to comply with 806 is not sufficient to allow for complete dispersion, guest rooms shall be dispersed in the following priority: guest room type, number of beds, and amenities. At least one guest room required to provide mobility features complying with 806.2 shall also provide communication features complying with 806.3. Not more than 10 percent of guest rooms required to provide mobility features complying with 806.2 shall be used to satisfy the minimum number of guest rooms required to provide communication features complying with 806.3.

> **Advisory F224.5 Dispersion.** Factors to be considered in providing an equivalent range of options may include, but are not limited to, room size, bed size, cost, view, bathroom fixtures such as hot tubs and spas, smoking and nonsmoking, and the number of rooms provided.

F225 Storage

F225.1 General. Storage *facilities* shall comply with F225.

F225.2 Storage. Where storage is provided in *accessible spaces*, at least one of each type shall comply with 811.

> **Advisory F225.2 Storage.** Types of storage include, but are not limited to, closets, cabinets, shelves, clothes rods, hooks, and drawers. Where provided, at least one of each type of storage must be within the reach ranges specified in 308; however, it is permissible to install additional storage outside the reach ranges.

F225.2.1 Lockers. Where lockers are provided, at least 5 percent, but no fewer than one of each type, shall comply with 811.

Advisory F225.2.1 Lockers. Different types of lockers may include full-size and half-size lockers, as well as those specifically designed for storage of various sports equipment.

F225.2.2 Self-Service Shelving. Self-service shelves shall be located on an *accessible* route complying with 402. Self-service shelving shall not be required to comply with 308.

Advisory F225.2.2 Self-Service Shelving. Self-service shelves include, but are not limited to, library, store, or post office shelves.

F225.3 Self-Service Storage Facilities. *Self-service storage facilities* shall provide individual *self-service storage spaces* complying with these requirements in accordance with Table F225.3.

Table F225.3 Self-Service Storage Facilities

Total Spaces in Facility	Minimum Number of Spaces Required to be Accessible
1 to 200	5 percent, but no fewer than 1
201 and over	10, plus 2 percent of total number of units over 200

Advisory F225.3 Self-Service Storage Facilities. Although there are no technical requirements that are unique to self-service storage facilities, elements and spaces provided in facilities containing self-service storage spaces required to comply with these requirements must comply with this document where applicable. For example: the number of storage spaces required to comply with these requirements must provide Accessible Routes complying with Section F206; Accessible Means of Egress complying with Section F207; Parking Spaces complying with Section F208; and, where provided, other pubic use or common use elements and facilities such as toilet rooms, drinking fountains, and telephones must comply with the applicable requirements of this document.

F225.3.1 Dispersion. Individual *self-service storage spaces* shall be dispersed throughout the various classes of *spaces* provided. Where more classes of *spaces* are provided than the number required to be *accessible*, the number of *spaces* shall not be required to exceed that required by Table F225.3. *Self-service storage spaces* complying with Table F225.3 shall not be required to be dispersed among *buildings* in a multi-*building facility.*

F226 Dining Surfaces and Work Surfaces

F226.1 General. Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating *spaces* and standing *spaces* at the dining surfaces shall comply with 902. In addition, where work surfaces are provided, at least 5 percent shall comply with 902.

EXCEPTIONS: 1. Sales counters and service counters shall not be required to comply with 902.

2. Check writing surfaces provided at check-out aisles not required to comply with 904.3 shall not be required to comply with 902.

Advisory F226.1 General. In facilities covered by the ABA, this requirement applies to work surfaces used by employees. Five percent, but not less than one, of permanently installed work surfaces in each work area must be accessible. Permanently installed work surfaces include, but are not limited to, laboratory and work benches, fume hoods, reception counters, teller windows, study carrels, commercial kitchen counters, writing surfaces, and fixed conference tables. Where furnishings are not fixed, Sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended provides that Federal employees, employees of Federal contractors, and certain other employees, are entitled to "reasonable accommodations." This means that employers may need to procure or adjust furnishings to accommodate the individual needs of employees with disabilities on an "as needed" basis. Consider work surfaces that are flexible and permit installation at variable heights and clearances.

F226.2 Dispersion. Dining surfaces and work surfaces required to comply with 902 shall be dispersed throughout the *space* or *facility* containing dining surfaces and work surfaces.

F227 Sales and Service

F227.1 General. Where provided, check-out aisles, sales counters, service counters, food service lines, queues, and waiting lines shall comply with F227 and 904.

F227.2 Check-Out Aisles. Where check-out aisles are provided, check-out aisles complying with 904.3 shall be provided in accordance with Table F227.2. Where check-out aisles serve different functions, check-out aisles complying with 904.3 shall be provided in accordance with Table F227.2 for each function. Where check-out aisles are dispersed throughout the *building* or *facility*, check-out aisles complying with 904.3 shall be dispersed.

EXCEPTION: Where the selling *space* is under 5000 square feet (465 m^2) no more than one check-out aisle complying with 904.3 shall be required.

Table F227.2 Check-Out Aisles

Number of Check-Out Aisles of Each Function	Minimum Number of Check-Out Aisles of Each Function Required to Comply with 904.3
1 to 4	1
5 to 8	2
9 to 15	3
16 and over	3, plus 20 percent of additional aisles

F227.2.1 Altered Check-Out Aisles. Where check-out aisles are *altered*, at least one of each check-out aisle serving each function shall comply with 904.3 until the number of check-out aisles complies with F227.2.

F227.3 Counters. Where provided, at least one of each type of sales counter and service counter shall comply with 904.4. Where counters are dispersed throughout the *building* or *facility*, counters complying with 904.4 also shall be dispersed.

> **Advisory F227.3 Counters.** Types of counters that provide different services in the same facility include, but are not limited to, order, pick-up, express, and returns. One continuous counter can be used to provide different types of service. For example, order and pick-up are different services. It would not be acceptable to provide access only to the part of the counter where orders are taken when orders are picked-up at a different location on the same counter. Both the order and pick-up section of the counter must be accessible.

F227.4 Food Service Lines. Food service lines shall comply with 904.5. Where self-service shelves are provided, at least 50 percent, but no fewer than one, of each type provided shall comply with 308.

F227.5 Queues and Waiting Lines. Queues and waiting lines servicing counters or check-out aisles required to comply with 904.3 or 904.4 shall comply with 403.

F228 Depositories, Vending Machines, Change Machines, Mail Boxes, and Fuel Dispensers

F228.1 General. Where provided, at least one of each type of depository, vending machine, change machine, and fuel dispenser shall comply with 309.

EXCEPTIONS: 1. Drive-up only depositories shall not be required to comply with 309.

2. Fuel dispensers provided for fueling official government vehicles shall not be required to comply with 309.

> **Advisory F228.1 General.** Depositories include, but are not limited to, night receptacles in banks, post offices, video stores, and libraries.

F228.2 Mail Boxes. Where *mail boxes* are provided in an interior location, at least 5 percent, but no fewer than one, of each type shall comply with 309. In residential *facilities*, where *mail boxes* are provided for each *residential dwelling unit*, *mail boxes* complying with 309 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

F229 Windows

F229.1 General. Where glazed openings are provided in *accessible* rooms or *spaces* for operation by occupants, excluding employees, at least one opening shall comply with 309. In *accessible* rooms or *spaces*, each glazed opening required by an *administrative authority* to be operable shall comply with 309.

EXCEPTION: 1. Glazed openings in *residential dwelling units* required to comply with 809 shall not be required to comply with F229.

2. Glazed openings in guest rooms required to provide communication features and in guest rooms required to comply with F206.5.3 shall not be required to comply with F229.

F230 Two-Way Communication Systems

F230.1 General. Where a two-way communication system is provided to gain admittance to a *building* or *facility* or to restricted areas within a *building* or *facility*, the system shall comply with 708.

> **Advisory F230.1 General.** This requirement applies to facilities such as office buildings, courthouses, and other facilities where admittance to the building or restricted spaces is dependent on two-way communication systems.

F231 Judicial Facilities

F231.1 General. Judicial *facilities* shall comply with F231.

F231.2 Courtrooms. Each courtroom shall comply with 808.

F231.3 Holding Cells. Where provided, central holding cells and court-floor holding cells shall comply with F231.3.

F231.3.1 Central Holding Cells. Where separate central holding cells are provided for adult male, juvenile male, adult female, or juvenile female, one of each type shall comply with 807.2. Where central holding cells are provided and are not separated by age or sex, at least one cell complying with 807.2 shall be provided.

F231.3.2 Court-Floor Holding Cells. Where separate court-floor holding cells are provided for adult male, juvenile male, adult female, or juvenile female, each courtroom shall be served by one cell of each type complying with 807.2. Where court-floor holding cells are provided and are not separated by age or sex, courtrooms shall be served by at least one cell complying with 807.2. Cells may serve more than one courtroom.

F231.4 Visiting Areas. Visiting areas shall comply with F231.4.

F231.4.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee sides.

EXCEPTION: The detainee side of cubicles or counters at non-contact visiting areas not serving holding cells required to comply with F231 shall not be required to comply with 902 or 904.4.2.

F231.4.2 Partitions. Where solid partitions or security glazing separate visitors from detainees at least one of each type of cubicle or counter partition shall comply with 904.6.

F232 Detention Facilities and Correctional Facilities

F232.1 General. *Buildings*, *facilities*, or portions thereof, in which people are detained for penal or correction purposes, or in which the liberty of the inmates is restricted for security reasons shall comply with F232.

> **Advisory F232.1 General.** Detention facilities include, but are not limited to, jails, detention centers, and holding cells in police stations. Correctional facilities include, but are not limited to, prisons, reformatories, and correctional centers.

F232.2 General Holding Cells and General Housing Cells. General holding cells and general housing cells shall be provided in accordance with F232.2.

EXCEPTION: *Alterations* to cells shall not be required to comply except to the extent determined by regulations issued by the appropriate Federal agency having authority under section 504 of the Rehabilitation Act of 1973.

> **Advisory F232.2 General Holding Cells and General Housing Cells.** Accessible cells or rooms should be dispersed among different levels of security, housing categories, and holding classifications (e.g., male/female and adult/juvenile) to facilitate access. Many detention and correctional facilities are designed so that certain areas (e.g., "shift" areas) can be adapted to serve as different types of housing according to need. For example, a shift area serving as a medium-security housing unit might be redesignated for a period of time as a high-security housing unit to meet capacity needs. Placement of accessible cells or rooms in shift areas may allow additional flexibility in meeting requirements for dispersion of accessible cells or rooms.
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> **Advisory F232.2 General Holding Cells and General Housing Cells Exception.** Although these requirements do not specify that cells be accessible as a consequence of an alteration, Section 504 of the Rehabilitation Act of 1973, as amended requires that each service, program, or activity conducted by a Federal agency, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. This requirement must be met unless doing so would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens.

F232.2.1 Cells with Mobility Features. At least 2 percent, but no fewer than one, of the total number of cells in a *facility* shall provide mobility features complying with 807.2.

F232.2.1.1 Beds. In cells having more than 25 beds, at least 5 percent of the beds shall have clear floor *space* complying with 807.2.3.

F232.2.2 Cells with Communication Features. At least 2 percent, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features complying with 807.3.

F232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: *Alterations* to cells shall not be required to comply except to the extent determined by regulations issued by the appropriate Federal agency having authority under section 504 of the Rehabilitation Act of 1973.

F232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with F223 shall be provided in addition to any medical isolation cells required to comply with F232.3.

F232.5 Visiting Areas. Visiting areas shall comply with F232.5.

F232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with F232 shall not be required to comply with 902 or 904.4.2.

F232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

F233 Residential Facilities

F233.1 General. *Facilities* with *residential dwelling units* shall comply with F233.

Advisory F233.1 General. Section F233 outlines the requirements for residential facilities subject to the Architectural Barriers Act. The facilities covered by Section F233, as well as other facilities not covered by this section, may still be subject to other Federal laws such as the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. For example, the Fair Housing Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). These laws and the appropriate regulations should be consulted before proceeding with the design and construction of residential facilities.

Residential facilities containing residential dwelling units provided by entities subject to HUD's Section 504 regulations and residential dwelling units covered by Section F233.3 must comply with the technical and scoping requirements in Chapters 1 through 10 included this document. Section F233 is not a stand-alone section; this section only addresses the minimum number of residential dwelling units within a facility required to comply with Chapter 8. However, residential facilities must also comply with the requirements of this document. For example: Section F206.5.4 requires all doors and doorways providing user

Advisory F233.1 General (Continued). passage in residential dwelling units providing mobility features to comply with Section 404; Section F206.7.6 permits platform lifts to be used to connect levels within residential dwelling units providing mobility features; Section F208 provides general scoping for accessible parking and Section F208.2.3.1 specifies the required number of accessible parking spaces for each residential dwelling unit providing mobility features; Section F228.2 requires mail boxes to be within reach ranges when they serve residential dwelling units providing mobility features; play areas are addressed in Section F240; and swimming pools are addressed in Section F242. There are special provisions applicable to facilities containing residential dwelling units at: Exception 3 to F202.3; Exception to F202.4; F203.9; and Exception 3 to F206.2.3.

F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD. Where *facilities* with *residential dwelling units* are provided by the Department of Housing and Urban Development (HUD), or through a grant or loan program administered by HUD, *residential dwelling units* with mobility features complying with 809.2 through 809.4 shall be provided in a number required by the regulations issued by HUD under Section 504 of the Rehabilitation Act of 1973, as amended. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall be on an *accessible* route as required by F206. In addition, *residential dwelling units* with communication features complying with 809.5 shall be provided in a number required by the applicable HUD regulations. *Residential dwelling units* subject to F233.2 shall not be required to comply with F233.3 or F233.4.

Advisory F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD. Section F233.2 requires that entities subject to HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with these regulations in a number specified in HUD's Section 504 regulations. Further, the residential dwelling units provided must be dispersed according to HUD's Section 504 criteria. In addition, Section F233.2 defers to HUD the specification of criteria by which the technical requirements of this document will apply to alterations of existing facilities subject to HUD's Section 504 regulations.

F233.3 Residential Dwelling Units Provided on Military Installations. *Military installations* with *residential dwelling units* shall comply with F233.3. *Residential dwelling units* on *military installations* subject to F233.3 shall not be required to comply with F233.2 or F233.4.

F233.3.1 Minimum Number: New Construction. Newly constructed *facilities* with *residential dwelling units* shall comply with F233.3.1.

F233.3.1.1 Residential Dwelling Units with Mobility Features. On *military installations* with *residential dwelling units*, at least 5 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide mobility features complying with 809.2 through 809.4 and shall be on an *accessible* route as required by F206.

F233.3.1.2 Residential Dwelling Units with Communication Features. On *military installations* with *residential dwelling units*, at least 2 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide communication features complying with 809.5.

F233.3.2 Additions. Where an *addition* to an existing *building* results in an increase in the number of *residential dwelling units*, the requirements of F233.3.1 shall apply only to the *residential dwelling units* that are *added* until the total number of *residential dwelling units* complies with the minimum number required by F233.3.1. *Residential dwelling units* required to comply with F233.3.1.1 shall be on an *accessible* route as required by F206.

F233.3.3 Alterations. *Alterations* shall comply with F233.3.3.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is *technically infeasible*, or where it is *technically infeasible* to provide an *accessible* route to a *residential dwelling unit*, the Department of Defense shall be permitted to *alter* or construct a comparable *residential dwelling unit* to comply with 809.2 through 809.4 provided that the minimum number of *residential dwelling units* required by F233.3.1.1 and F233.3.1.2, as applicable, is satisfied.

F233.3.3.1 Alterations to Vacated Buildings. Where a *building* is vacated for the purposes of *alteration*, at least 5 percent of the *residential dwelling units* shall comply with 809.2 through 809.4 and shall be on an *accessible* route as required by F206. In addition, at least 2 percent of the *residential dwelling units* shall comply with 809.5.

F233.3.3.2 Alterations to Individual Residential Dwelling Units. In individual *residential dwelling units*, where a bathroom or a kitchen is substantially *altered*, and at least one other room is *altered*, the requirements of F233.3.1 shall apply to the *altered residential dwelling units* until the total number of *residential dwelling units* complies with the minimum number required by F233.3.1.1 and F233.3.1.2. *Residential dwelling units* required to comply with F233.3.1.1 shall be on an *accessible* route as required by F206.

F233.3.4 Dispersion. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 and *residential dwelling units* required provide communication features complying with 809.5 shall be dispersed among the various types of *residential dwelling units* on the *military installation*, and shall provide choices of *residential dwelling units* comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-*story residential dwelling units* are one of the types of *residential dwelling units* provided, one-*story residential dwelling units* shall be permitted as a substitute for multi-*story residential dwelling units* where equivalent *spaces* and amenities are provided in the one-*story residential dwelling unit*.

F233.4 Residential Dwelling Units Provided by Other Federal Agencies or Through Grant or Loan Programs Administered by Other Federal Agencies. *Facilities* with *residential dwelling units* provided by other federal agencies or through grant or loan programs administered by other federal agencies shall comply with F233.4. *Residential dwelling units* subject to F233.4 shall not be required to comply with F233.2 or F233.3.

F233.4.1 Minimum Number: New Construction. Newly constructed *facilities* with *residential dwelling units* shall comply with F233.4.1.

EXCEPTION: Where *facilities* contain 15 or fewer r*esidential dwelling units*, the requirements of F233.4.1.1 and F233.4.1.2 shall apply to the total number of *residential dwelling units* that are constructed under a single contract, or are developed as a whole, whether or not located on a common *site*.

F233.4.1.1 Residential Dwelling Units with Mobility Features. In *facilities* with *residential dwelling units*, at least 5 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide mobility features complying with 809.2 through 809.4 and shall be on an *accessible* route as required by F206.

F233.4.1.2 Residential Dwelling Units with Communication Features. In *facilities* with *residential dwelling units*, at least 2 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide communication features complying with 809.5.

F233.4.2 Residential Dwelling Units for Sale. *Residential dwelling units* offered for sale shall provide *accessible* features to the extent required by regulations issued by Federal agencies under Section 504 of the Rehabilitation Act of 1973, as amended.

Advisory F233.4.2 Residential Dwelling Units for Sale. An agency that uses federal funds or an entity that receives federal financial assistance to build housing for purchase by individual home buyers must provide access according to the requirements of the applicable Section 504 regulations.

F233.4.3 Additions. Where an *addition* to an existing *building* results in an increase in the number of *residential dwelling units,* the requirements of F233.4.1 shall apply only to the *residential dwelling units* that are *added* until the total number of *residential dwelling units* complies with the minimum number required by F233.4.1. *Residential dwelling units* required to comply with F233.4.1.1 shall be on an *accessible* route as required by F206.

F233.4.4 Alterations. *Alterations* shall comply with F233.4.4.

EXCEPTION: Where compliance with 809.2, 809.3, or 809.4 is *technically infeasible*, or where it is *technically infeasible* to provide an *accessible* route to a *residential dwelling unit*, the entity shall be permitted to *alter* or construct a comparable *residential dwelling unit* to comply with 809.2 through 809.4 provided that the minimum number of *residential dwelling units* required by F233.4.1.1 and F233.4.1.2, as applicable, is satisfied.

Advisory F233.4.4 Alterations Exception. A substituted dwelling unit must be comparable to the dwelling unit that is not made accessible. Factors to be considered in comparing one dwelling unit to another should include the number of bedrooms; amenities provided within the dwelling unit; types of common spaces provided within the facility; and location with respect to community resources and services, such as public transportation and civic, recreational, and mercantile facilities.

F233.4.4.1 Alterations to Vacated Buildings. Where a *building* is vacated for the purposes of *alteration* and the *altered building* contains more than 15 *residential dwelling units*, at least 5 percent of the *residential dwelling units* shall comply with 809.2 through 809.4 and shall be on an *accessible* route as required by F206. In addition, at least 2 percent of the *residential dwelling units* shall comply with 809.5.

Advisory F233.4.4.1 Alterations to Vacated Buildings. This provision is intended to apply where a building is vacated with the intent to alter the building. Buildings that are vacated solely for pest control or asbestos removal are not subject to the requirements to provide residential dwelling units with mobility features or communication features.

F233.4.4.2 Alterations to Individual Residential Dwelling Units. In individual *residential dwelling units*, where a bathroom or a kitchen is substantially *altered*, and at least one other room is *altered* the requirements of F233.4.1 shall apply to the *altered residential dwelling units* until the total number of *residential dwelling units* complies with the minimum number required by F233.4.1.1 and F233.4.1.2. *Residential dwelling units* required to comply with F233.4.1.1 shall be on an *accessible* route as required by F206.

EXCEPTION: Where *facilities* contain 15 or fewer *residential dwelling units*, the requirements of F233.4.1.1 and F233.4.1.2 shall apply to the total number of *residential dwelling units* that are *altered* under a single contract, or are developed as a whole, whether or not located on a common *site*.

Advisory F233.4.4.2 Alterations to Individual Residential Dwelling Units. Section F233.4.4.2 uses the terms "substantially altered" and "altered." A substantial alteration to a kitchen or bathroom includes, but is not limited to, alterations that are changes to or rearrangements in the plan configuration, or replacement of cabinetry. Substantial alterations do not include normal maintenance or appliance and fixture replacement, unless such maintenance or replacement requires changes to or rearrangements in the plan configuration, or replacement of cabinetry. The term "alteration" is defined in Section F106 of these requirements.

F233.4.5 Dispersion. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 and *residential dwelling units* required to provide communication features complying with 809.5 shall be dispersed among the various types of *residential dwelling units* in the *facility* and shall provide choices of *residential dwelling units* comparable to, and integrated with, those available to other residents.

EXCEPTION: Where multi-*story residential dwelling units* are one of the types of *residential dwelling units* provided, one-*story residential dwelling units* shall be permitted as a substitute for multi-*story residential dwelling units* where equivalent *spaces* and amenities are provided in the one-*story residential dwelling unit*.

F234 Amusement Rides

F234.1 General. *Amusement rides* shall comply with F234.

EXCEPTION: Mobile or portable *amusement rides* shall not be required to comply with F234.

Advisory F234.1 General. These requirements apply generally to newly designed and constructed amusement rides and attractions. A custom designed and constructed ride is new upon its first use, which is the first time amusement park patrons take the ride. With respect to amusement rides purchased from other entities, new refers to the first permanent installation of the ride, whether it is used off the shelf or modified before it is installed. Where amusement rides are moved after several seasons to another area of the park or to another park, the ride would not be considered newly designed or newly constructed.

Some amusement rides and attractions that have unique designs and features are not addressed by these requirements. In those situations, these requirements are to be applied to the extent possible. An example of an amusement ride not specifically addressed by these requirements includes "virtual reality" rides where the device does not move through a fixed course within a defined area. An accessible route must be provided to these rides. Where an attraction or ride has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions.

Advisory F234.1 General Exception. Mobile or temporary rides are those set up for short periods of time such as traveling carnivals, State and county fairs, and festivals. The amusement rides that are covered by F234.1 are ones that are not regularly assembled and disassembled.

F234.2 Load and Unload Areas. Load and unload areas serving *amusement rides* shall comply with 1002.3.

F234.3 Minimum Number. *Amusement rides* shall provide at least one *wheelchair space* complying with 1002.4, or at least one *amusement ride seat* designed for transfer complying with 1002.5, or at least one *transfer device* complying with 1002.6.

EXCEPTIONS: 1. *Amusement rides* that are controlled or operated by the rider shall not be required to comply with F234.3.

2. *Amusement rides* designed primarily for children, where children are assisted on and off the ride by an adult, shall not be required to comply with F234.3.

3. *Amusement rides* that do not provide *amusement ride seats* shall not be required to comply with F234.3.

Advisory F234.3 Minimum Number Exceptions 1 through 3. Amusement rides controlled or operated by the rider, designed for children, or rides without ride seats are not required to comply with F234.3. These rides are not exempt from the other provisions in F234 requiring an accessible route to the load and unload areas and to the ride. The exception does not apply to those rides where patrons may cause the ride to make incidental movements, but where the patron otherwise has no control over the ride.

Advisory F234.3 Minimum Number Exception 2. The exception is limited to those rides designed "primarily" for children, where children are assisted on and off the ride by an adult. This exception is limited to those rides designed for children and not for the occasional adult user. An accessible route to and turning space in the load and unload area will provide access for adults and family members assisting children on and off these rides.

F234.4 Existing Amusement Rides. Where existing *amusement rides* are *altered*, the *alteration* shall comply with F234.4.

Advisory F234.4 Existing Amusement Rides. Routine maintenance, painting, and changing of theme boards are examples of activities that do not constitute an alteration subject to this section.

F234.4.1 Load and Unload Areas. Where load and unload areas serving existing *amusement rides* are newly designed and constructed, the load and unload areas shall comply with 1002.3.

F234.4.2 Minimum Number. Where the structural or operational characteristics of an *amusement ride* are *altered* to the extent that the *amusement ride*'s performance differs from that specified by the manufacturer or the original design, the *amusement ride* shall comply with F234.3.

F235 Recreational Boating Facilities

F235.1 General. Recreational boating *facilities* shall comply with F235.

F235.2 Boat Slips. *Boat slips* complying with 1003.3.1 shall be provided in accordance with Table F235.2. Where the number of *boat slips* is not identified, each 40 feet (12 m) of *boat slip* edge provided along the perimeter of the pier shall be counted as one *boat slip* for the purpose of this section.

Table F235.2 Boat Slips

Total Number of Boat Slips Provided in Facility	Minimum Number of Required Accessible Boat Slips
1 to 25	1
26 to 50	2
51 to 100	3
101 to 150	4
151 to 300	5
301 to 400	6
401 to 500	7
501 to 600	8

Table F235.2 Boat Slips

Total Number of Boat Slips Provided in Facility	Minimum Number of Required Accessible Boat Slips
601 to 700	9
701 to 800	10
801 to 900	11
901 to 1000	12
1001 and over	12, plus 1 for every 100, or fraction thereof, over 1000

Advisory F235.2 Boat Slips. The requirement for boat slips also applies to piers where boat slips are not demarcated. For example, a single pier 25 feet (7620 mm) long and 5 feet (1525 mm) wide (the minimum width specified by Section 1003.3) allows boats to moor on three sides. Because the number of boat slips is not demarcated, the total length of boat slip edge (55 feet, 17 m) must be used to determine the number of boat slips provided (two). This number is based on the specification in Section F235.2 that each 40 feet (12 m) of boat slip edge, or fraction thereof, counts as one boat slip. In this example, Table F235.2 would require one boat slip to be accessible.

F235.2.1 Dispersion. *Boat slips* complying with 1003.3.1 shall be dispersed throughout the various types of *boat slips* provided. Where the minimum number of *boat slips* required to comply with 1003.3.1 has been met, no further dispersion shall be required.

Advisory F235.2.1 Dispersion. Types of boat slips are based on the size of the boat slips; whether single berths or double berths, shallow water or deep water, transient or longer-term lease, covered or uncovered; and whether slips are equipped with features such as telephone, water, electricity or cable connections. The term "boat slip" is intended to cover any pier area other than launch ramp boarding piers where recreational boats are moored for purposes of berthing, embarking, or disembarking. For example, a fuel pier may contain boat slips, and this type of short term slip would be included in determining compliance with F235.2.

F235.3 Boarding Piers at Boat Launch Ramps. Where *boarding piers* are provided at *boat launch ramps*, at least 5 percent, but no fewer than one, of the *boarding piers* shall comply with 1003.3.2.

F236 Exercise Machines and Equipment

F236.1 General. At least one of each type of exercise machine and equipment shall comply with 1004.

Advisory F236.1 General. Most strength training equipment and machines are considered different types. Where operators provide a biceps curl machine and cable cross-over machine, both machines are required to meet the provisions in this section, even though an individual may be able to work on their biceps through both types of equipment.

Similarly, there are many types of cardiovascular exercise machines, such as stationary bicycles, rowing machines, stair climbers, and treadmills. Each machine provides a cardiovascular exercise and is considered a different type for purposes of these requirements.

F237 Fishing Piers and Platforms

F237.1 General. Fishing piers and platforms shall comply with 1005.

F238 Golf Facilities

F238.1 General. Golf *facilities* shall comply with F238.

F238.2 Golf Courses. Golf courses shall comply with F238.2.

F238.2.1 Teeing Grounds. Where one *teeing ground* is provided for a hole, the *teeing ground* shall be designed and constructed so that a golf car can enter and exit the *teeing ground*. Where two *teeing grounds* are provided for a hole, the forward *teeing ground* shall be designed and constructed so that a golf car can enter and exit the *teeing ground*. Where three or more *teeing grounds* are provided for a hole, at least two *teeing grounds*, including the forward *teeing ground*, shall be designed and constructed so that a golf car can enter and exit each *teeing ground*.

EXCEPTION: In existing golf courses, the forward *teeing ground* shall not be required to be one of the *teeing grounds* on a hole designed and constructed so that a golf car can enter and exit the *teeing ground* where compliance is not feasible due to terrain.

F238.2.2 Putting Greens. Putting greens shall be designed and constructed so that a golf car can enter and exit the putting green.

F238.2.3 Weather Shelters. Where provided, weather shelters shall be designed and constructed so that a golf car can enter and exit the weather shelter and shall comply with 1006.4.

F238.3 Practice Putting Greens, Practice Teeing Grounds, and Teeing Stations at Driving Ranges. At least 5 percent, but no fewer than one, of practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges shall be designed and constructed so that a golf car can enter and exit the practice putting greens, practice *teeing grounds*, and teeing stations at driving ranges.

F239 Miniature Golf Facilities

F239.1 General. Miniature golf *facilities* shall comply with F239.

F239.2 Minimum Number. At least 50 percent of holes on miniature golf courses shall comply with 1007.3.

Advisory F239.2 Minimum Number. Where possible, providing access to all holes on a miniature golf course is recommended. If a course is designed with the minimum 50 percent accessible holes, designers or operators are encouraged to select holes which provide for an equivalent experience to the maximum extent possible.

F239.3 Miniature Golf Course Configuration. Miniature golf courses shall be configured so that the holes complying with 1007.3 are consecutive. Miniature golf courses shall provide an *accessible* route from the last hole complying with 1007.3 to the course *entrance* or exit without requiring travel through any other holes on the course.

EXCEPTION: One break in the sequence of consecutive holes shall be permitted provided that the last hole on the miniature golf course is the last hole in the sequence.

Advisory F239.3 Miniature Golf Course Configuration. Where only the minimum 50 percent of the holes are accessible, an accessible route from the last accessible hole to the course exit or entrance must not require travel back through other holes. In some cases, this may require an additional accessible route. Other options include increasing the number of accessible holes in a way that limits the distance needed to connect the last accessible hole with the course exit or entrance.

F240 Play Areas

F240.1 General. *Play areas* for children ages 2 and over shall comply with F240. Where separate *play areas* are provided within a *site* for specific age groups, each *play area* shall comply with F240.

EXCEPTIONS: 1. *Play areas* located in family child care *facilities* where the proprietor actually resides shall not be required to comply with F240.

2. In existing *play areas*, where *play components* are relocated for the purposes of creating safe *use zones* and the ground surface is not *altered* or extended for more than one *use zone*, the *play area* shall not be required to comply with F240.

3. *Amusement attractions* shall not be required to comply with F240.

4. Where *play components* are *altered* and the ground surface is not *altered*, the ground surface shall not be required to comply with 1008.2.6 unless required by F202.4.

Advisory F240.1 General. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

F240.1.1 Additions. Where *play areas* are designed and constructed in phases, the requirements of F240 shall apply to each successive *addition* so that when the *addition* is completed, the entire *play area* complies with all the applicable requirements of F240.

Advisory F240.1.1 Additions. These requirements are to be applied so that when each successive addition is completed, the entire play area complies with all applicable provisions. For example, a play area is built in two phases. In the first phase, there are 10 elevated play components and 10 elevated play components are added in the second phase for a total of 20 elevated play components in the play area. When the first phase was completed, at least 5 elevated play components, including at least 3 different types, were to be provided on an accessible route. When the second phase is completed, at least 10 elevated play components must be located on an accessible route, and at least 7 ground level play components, including 4 different types, must be provided on an accessible route. At the time the second phase is complete, ramps must be used to connect at least 5 of the elevated play components and transfer systems are permitted to be used to connect the rest of the elevated play components required to be located on an accessible route.

F240.2 Play Components. Where provided, *play components* shall comply with F240.2.

F240.2.1 Ground Level Play Components. *Ground level play components* shall be provided in the number and types required by F240.2.1. *Ground level play components* that are provided to comply with F240.2.1.1 shall be permitted to satisfy the additional number required by F240.2.1.2 if the minimum required types of *play components* are satisfied. Where two or more required *ground level play components* are provided, they shall be dispersed throughout the *play area* and integrated with other *play components*.

Advisory F240.2.1 Ground Level Play Components. Examples of ground level play components may include spring rockers, swings, diggers, and stand-alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component from a straight slide.

Ground level play components accessed by children with disabilities must be integrated into the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

Where a stand-alone slide is provided, an accessible route must connect the base of the stairs at the entry point to the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 1008.4.3.

Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use, or may choose not to use, transfer systems.

Advisory F240.2.1 Ground Level Play Components (Continued). Where ramps connect elevated play components, the maximum rise of any ramp run is limited to 12 inches (305 mm). Where possible, designers and operators are encouraged to provide ramps with a slope less than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

F240.2.1.1 Minimum Number and Types. Where *ground level play components* are provided, at least one of each type shall be on an *accessible* route and shall comply with 1008.4.

F240.2.1.2 Additional Number and Types. Where *elevated play components* are provided, *ground level play components* shall be provided in accordance with Table F240.2.1.2 and shall comply with 1008.4.

EXCEPTION: If at least 50 percent of the *elevated play components* are connected by a *ramp* and at least 3 of the *elevated play components* connected by the *ramp* are different types of *play components*, the *play area* shall not be required to comply with F240.2.1.2.

Table F240.2.1.2 Number and Types of Ground Level Play Components Required to be on Accessible Routes

Number of Elevated Play Components Provided	Minimum Number of Ground Level Play Components Required to be on an Accessible Route	Minimum Number of Different Types of Ground Level Play Components Required to be on an Accessible Route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4
26 and over	8, plus 1 for each additional 3, or fraction thereof, over 25	5

Advisory F240.2.1.2 Additional Number and Types. Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route.

F240.2.2 Elevated Play Components. Where *elevated play components* are provided, at least 50 percent shall be on an *accessible* route and shall comply with 1008.4.

Advisory F240.2.2 Elevated Play Components. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components that are attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck. For example, a climber attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck on a composite play structure. Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers and overhead play components) are considered elevated play components. These play components are not considered ground level play components and do not count toward the requirements in F240.2.1.2 regarding the number of ground level play components that must be located on an accessible route.

F241 Saunas and Steam Rooms

F241.1 General. Where provided, saunas and steam rooms shall comply with 612.

EXCEPTION: Where saunas or steam rooms are clustered at a single location, no more than 5 percent of the saunas and steam rooms, but no fewer than one, of each type in each cluster shall be required to comply with 612.

F242 Swimming Pools, Wading Pools, and Spas

F242.1 General. Swimming pools, wading pools, and spas shall comply with F242.

F242.2 Swimming Pools. At least two *accessible* means of entry shall be provided for swimming pools. *Accessible* means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one *accessible* means of entry provided shall comply with 1009.2 or 1009.3.

EXCEPTIONS: 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one *accessible* means of entry shall be required provided that the *accessible* means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3. **2.** Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one *accessible* means of entry provided that

the *accessible* means of entry is a swimming pool lift complying with 1009.2, a sloped entry complying with 1009.3, or a transfer system complying with 1009.5.

3. *Catch pools* shall not be required to provide an *accessible* means of entry provided that the *catch pool* edge is on an *accessible* route.

> **Advisory F242.2 Swimming Pools.** Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they not be provided in the same location in the pool. Different locations will provide increased options for entry and exit, especially in larger pools.
>
> **Advisory F242.2 Swimming Pools Exception 1.** Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are to be counted when determining the number of accessible means of entry required.

F242.3 Wading Pools. At least one *accessible* means of entry shall be provided for wading pools. *Accessible* means of entry shall comply with sloped entries complying with 1009.3.

F242.4 Spas. At least one *accessible* means of entry shall be provided for spas. *Accessible* means of entry shall comply with swimming pool lifts complying with1009.2; transfer walls complying with 1009.4; or transfer systems complying with 1009.5.

EXCEPTION: Where spas are provided in a cluster, no more than 5 percent, but no fewer than one, spa in each cluster shall be required to comply with F242.4.

F243 Shooting Facilities with Firing Positions

F243.1 General. Where shooting *facilities* with firing positions are designed and constructed at a *site*, at least 5 percent, but no fewer than one, of each type of firing position shall comply with 1010.

CHAPTER 3: BUILDING BLOCKS

301 General

301.1 Scope. The provisions of Chapter 3 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

302 Floor or Ground Surfaces

302.1 General. Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.

EXCEPTIONS: 1. Within animal containment areas, floor and ground surfaces shall not be required to be stable, firm, and slip resistant.

2. *Areas of sport activity* shall not be required to comply with 302.

> **Advisory 302.1 General.** A stable surface is one that remains unchanged by contaminants or applied force, so that when the contaminant or force is removed, the surface returns to its original condition. A firm surface resists deformation by either indentations or particles moving on its surface. A slip-resistant surface provides sufficient frictional counterforce to the forces exerted in walking to permit safe ambulation.

302.2 Carpet. Carpet or carpet tile shall be securely attached and shall have a firm cushion, pad, or backing or no cushion or pad. Carpet or carpet tile shall have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. Pile height shall be ½ inch (13 mm) maximum. Exposed edges of carpet shall be fastened to floor surfaces and shall have trim on the entire length of the exposed edge. Carpet edge trim shall comply with 303.

> **Advisory 302.2 Carpet.** Carpets and permanently affixed mats can significantly increase the amount of force (roll resistance) needed to propel a wheelchair over a surface. The firmer the carpeting and backing, the lower the roll resistance. A pile thickness up to ½ inch (13 mm) (measured to the backing, cushion, or pad) is allowed, although a lower pile provides easier wheelchair maneuvering. If a backing, cushion or pad is used, it must be firm. Preferably, carpet pad should not be used because the soft padding increases roll resistance.

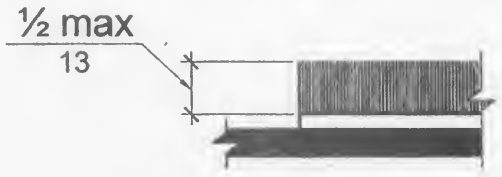


Figure 302.2
Carpet Pile Height

302.3 Openings. Openings in floor or ground surfaces shall not allow passage of a sphere more than ½ inch (13 mm) diameter except as allowed in 407.4.3, 409.4.3, 410.4, 810.5.3 and 810.10. Elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

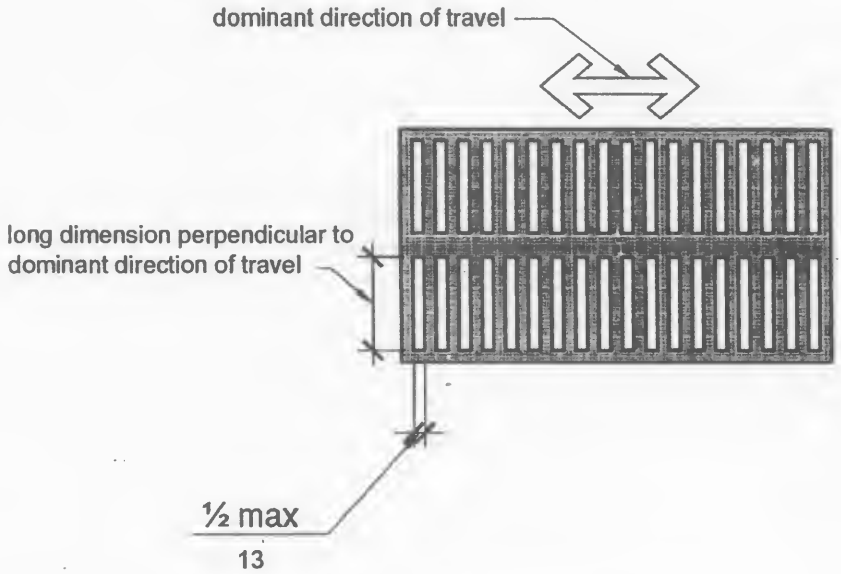


Figure 302.3
Elongated Openings in Floor or Ground Surfaces

303 Changes in Level

303.1 General. Where changes in level are permitted in floor or ground surfaces, they shall comply with 303.

EXCEPTIONS: 1. Animal containment areas shall not be required to comply with 303.

2. *Areas of sport activity* shall not be required to comply with 303.

303.2 Vertical. Changes in level of ¼ inch (6.4 mm) high maximum shall be permitted to be vertical.

Figure 303.2
Vertical Change in Level

303.3 Beveled. Changes in level between ¼ inch (6.4 mm) high minimum and ½ inch (13 mm) high maximum shall be beveled with a slope not steeper than 1:2.

> **Advisory 303.3 Beveled.** A change in level of ½ inch (13 mm) is permitted to be ¼ inch (6.4 mm) vertical plus ¼ inch (6.4 mm) beveled. However, in no case may the combined change in level exceed ½ inch (13 mm). Changes in level exceeding ½ inch (13 mm) must comply with 405 (Ramps) or 406 (Curb Ramps).

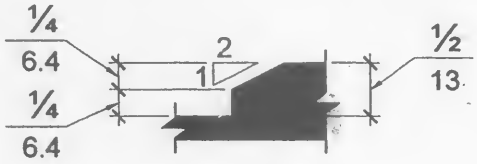


Figure 303.3
Beveled Change in Level

303.4 Ramps. Changes in level greater than ½ inch (13 mm) high shall be *ramped*, and shall comply with 405 or 406.

304 Turning Space

304.1 General. Turning *space* shall comply with 304.

304.2 Floor or Ground Surfaces. Floor or ground surfaces of a turning *space* shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

> **Advisory 304.2 Floor or Ground Surface Exception.** As used in this section, the phrase "changes in level" refers to surfaces with slopes and to surfaces with abrupt rise exceeding that permitted in Section 303.3. Such changes in level are prohibited in required clear floor and ground spaces, turning spaces, and in similar spaces where people using wheelchairs and other mobility devices must park their mobility aids such as in wheelchair spaces, or maneuver to use elements such as at doors, fixtures, and telephones. The exception permits slopes not steeper than 1:48.

304.3 Size. Turning *space* shall comply with 304.3.1 or 304.3.2.

304.3.1 Circular Space. The turning *space* shall be a *space* of 60 inches (1525 mm) diameter minimum. The *space* shall be permitted to include knee and toe clearance complying with 306.

304.3.2 T-Shaped Space. The turning *space* shall be a T-shaped *space* within a 60 inch (1525 mm) square minimum with arms and base 36 inches (915 mm) wide minimum. Each arm of the T shall be clear of obstructions 12 inches (305 mm) minimum in each direction and the base shall be clear of

obstructions 24 inches (610 mm) minimum. The *space* shall be permitted to include knee and toe clearance complying with 306 only at the end of either the base or one arm.

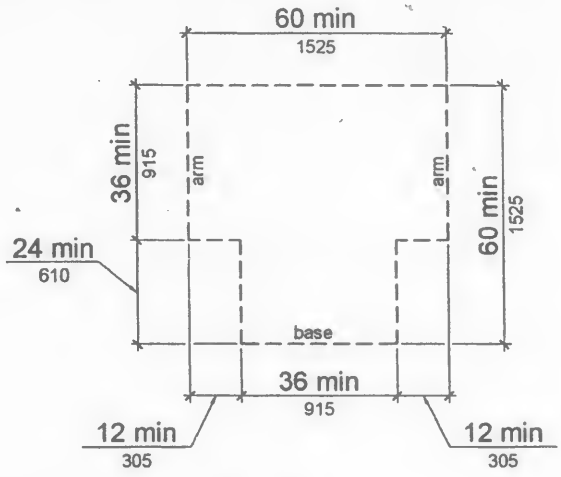


Figure 304.3.2
T-Shaped Turning Space

304.4 Door Swing. Doors shall be permitted to swing into turning *spaces*.

305 Clear Floor or Ground Space

305.1 General. Clear floor or ground *space* shall comply with 305.

305.2 Floor or Ground Surfaces. Floor or ground surfaces of a clear floor or ground *space* shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

305.3 Size. The clear floor or ground *space* shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

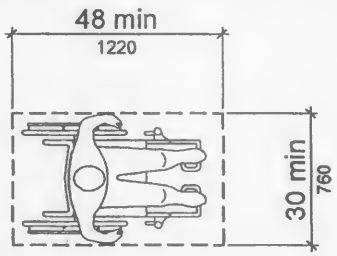


Figure 305.3
Clear Floor or Ground Space

305.4 Knee and Toe Clearance. Unless otherwise specified, clear floor or ground *space* shall be permitted to include knee and toe clearance complying with 306.

305.5 Position. Unless otherwise specified, clear floor or ground *space* shall be positioned for either forward or parallel approach to an *element*.

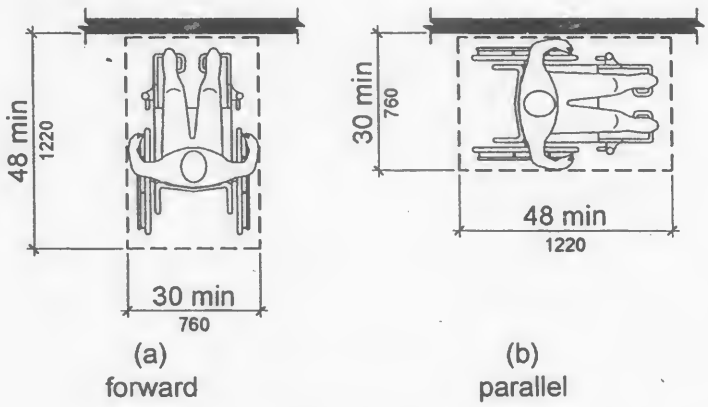


Figure 305.5
Position of Clear Floor or Ground Space

305.6 Approach. One full unobstructed side of the clear floor or ground *space* shall adjoin an *accessible* route or adjoin another clear floor or ground *space*.

305.7 Maneuvering Clearance. Where a clear floor or ground *space* is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearance shall be provided in accordance with 305.7.1 and 305.7.2.

305.7.1 Forward Approach. Alcoves shall be 36 inches (915 mm)wide minimum where the depth exceeds 24 inches (610 mm).

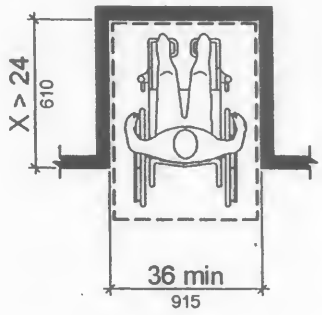


Figure 305.7.1
Maneuvering Clearance in an Alcove, Forward Approach

305.7.2 Parallel Approach. Alcoves shall be 60 inches (1525 mm) wide minimum where the depth exceeds 15 inches (380 mm).

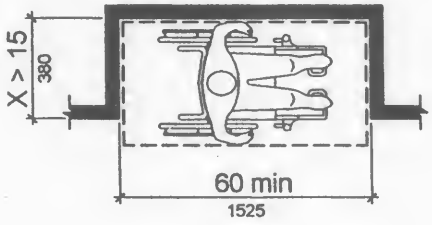


Figure 305.7.2
Maneuvering Clearance in an Alcove, Parallel Approach

306 Knee and Toe Clearance

306.1 General. Where *space* beneath an *element* is included as part of clear floor or ground *space* or turning *space*, the *space* shall comply with 306. Additional *space* shall not be prohibited beneath an *element* but shall not be considered as part of the clear floor or ground *space* or turning *space*.

Advisory 306.1 General. Clearances are measured in relation to the usable clear floor space, not necessarily to the vertical support for an element. When determining clearance under an object for required turning or maneuvering space, care should be taken to ensure the space is clear of any obstructions.

306.2 Toe Clearance.

306.2.1 General. *Space* under an *element* between the finish floor or ground and 9 inches (230 mm) above the finish floor or ground shall be considered toe clearance and shall comply with 306.2.

306.2.2 Maximum Depth. Toe clearance shall extend 25 inches (635 mm) maximum under an *element*.

306.2.3 Minimum Required Depth. Where toe clearance is required at an *element* as part of a clear floor *space*, the toe clearance shall extend 17 inches (430 mm) minimum under the *element*.

306.2.4 Additional Clearance. *Space* extending greater than 6 inches (150 mm) beyond the available knee clearance at 9 inches (230 mm) above the finish floor or ground shall not be considered toe clearance.

306.2.5 Width. Toe clearance shall be 30 inches (760 mm) wide minimum.

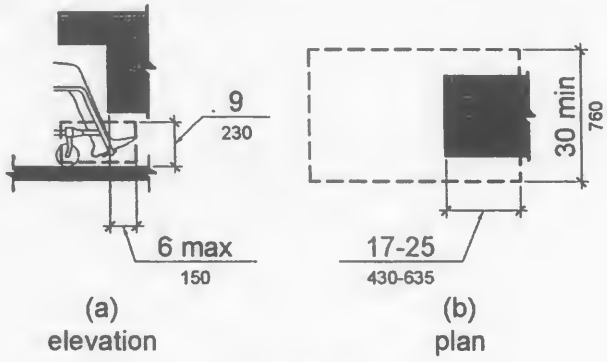


Figure 306.2
Toe Clearance

306.3 Knee Clearance.

306.3.1 General. *Space* under an *element* between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground shall be considered knee clearance and shall comply with 306.3.

306.3.2 Maximum Depth. Knee clearance shall extend 25 inches (635 mm) maximum under an *element* at 9 inches (230 mm) above the finish floor or ground.

306.3.3 Minimum Required Depth. Where knee clearance is required under an *element* as part of a clear floor *space*, the knee clearance shall be 11 inches (280 mm) deep minimum at 9 inches (230 mm) above the finish floor or ground, and 8 inches (205 mm) deep minimum at 27 inches (685 mm) above the finish floor or ground.

306.3.4 Clearance Reduction. Between 9 inches (230 mm) and 27 inches (685 mm) above the finish floor or ground, the knee clearance shall be permitted to reduce at a rate of 1 inch (25 mm) in depth for each 6 inches (150 mm) in height.

306.3.5 Width. Knee clearance shall be 30 inches (760 mm) wide minimum.

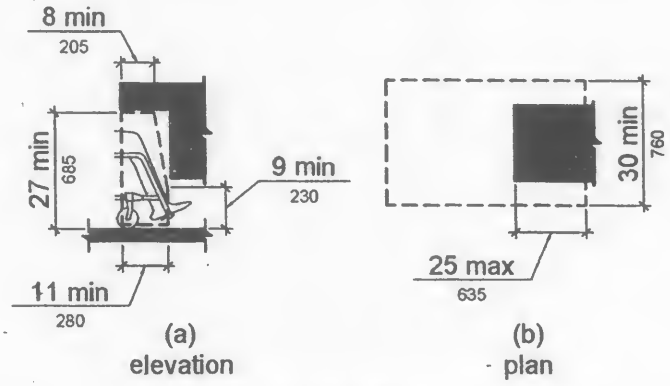


Figure 306.3
Knee Clearance

307 Protruding Objects

307.1 General. Protruding objects shall comply with 307.

307.2 Protrusion Limits. Objects with leading edges more than 27 inches (685 mm) and not more than 80 inches (2030 mm) above the finish floor or ground shall protrude 4 inches (100 mm) maximum horizontally into the *circulation path*.

EXCEPTION: Handrails shall be permitted to protrude 4½ inches (115 mm) maximum.

Advisory 307.2 Protrusion Limits. When a cane is used and the element is in the detectable range, it gives a person sufficient time to detect the element with the cane before there is body contact. Elements located on circulation paths, including operable elements, must comply with requirements for protruding objects. For example, awnings and their supporting structures cannot reduce the minimum required vertical clearance. Similarly, casement windows, when open, cannot encroach more than 4 inches (100 mm) into circulation paths above 27 inches (685 mm).

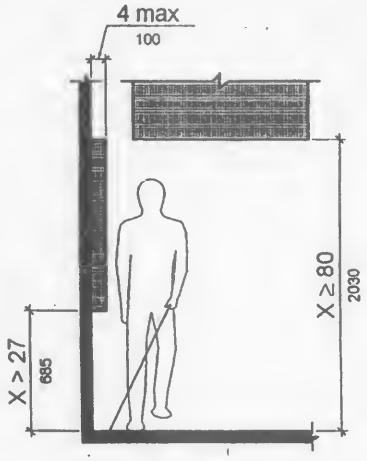


Figure 307.2
Limits of Protruding Objects

307.3 Post-Mounted Objects. Free-standing objects mounted on posts or pylons shall overhang *circulation paths* 12 inches (305 mm) maximum when located 27 inches (685 mm) minimum and 80 inches (2030 mm) maximum above the finish floor or ground. Where a sign or other obstruction is mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 inches (305 mm), the lowest edge of such sign or obstruction shall be 27 inches (685 mm) maximum or 80 inches (2030 mm) minimum above the finish floor or ground.

EXCEPTION: The sloping portions of handrails serving stairs and *ramps* shall not be required to comply with 307.3.

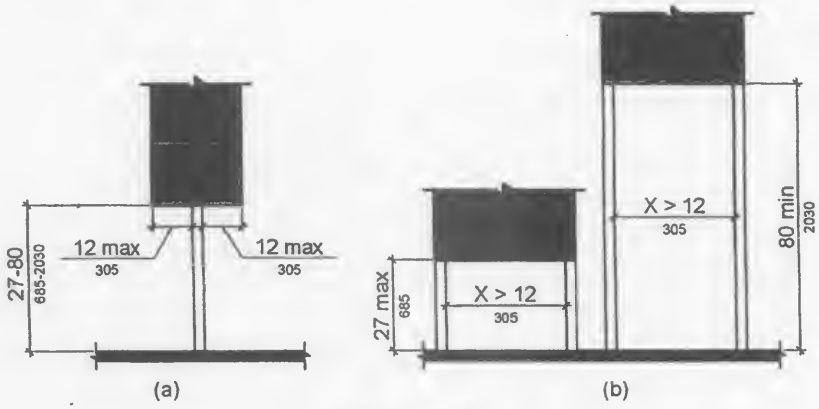


Figure 307.3
Post-Mounted Protruding Objects

307.4 Vertical Clearance. Vertical clearance shall be 80 inches (2030 mm) high minimum. Guardrails or other barriers shall be provided where the vertical clearance is less than 80 inches (2030 mm) high. The leading edge of such guardrail or barrier shall be located 27 inches (685 mm) maximum above the finish floor or ground.

EXCEPTION: Door closers and door stops shall be permitted to be 78 inches (1980 mm) minimum above the finish floor or ground.

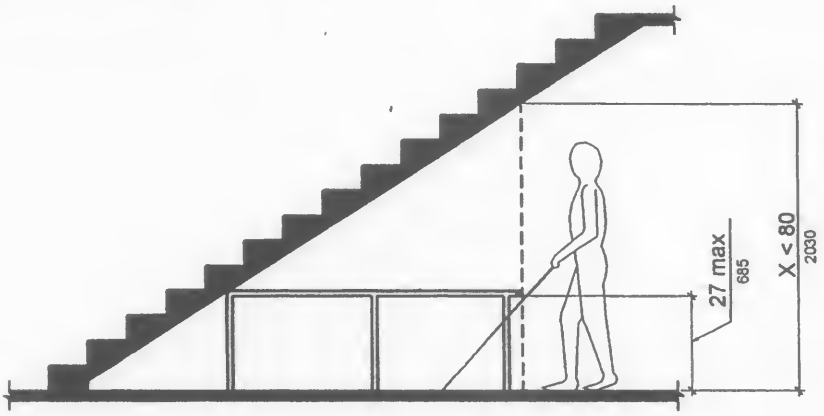


Figure 307.4
Vertical Clearance

307.5 Required Clear Width. Protruding objects shall not reduce the clear width required for *accessible* routes.

308 Reach Ranges

308.1 General. Reach ranges shall comply with 308.

Advisory 308.1 General. The following table provides guidance on reach ranges for children according to age where building elements such as coat hooks, lockers, or operable parts are designed for use primarily by children. These dimensions apply to either forward or side reaches. Accessible elements and operable parts designed for adult use or children over age 12 can be located outside these ranges but must be within the adult reach ranges required by 308.

Children's Reach Ranges

Forward or Side Reach	Ages 3 and 4	Ages 5 through 8	Ages 9 through 12
High (maximum)	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
Low (minimum)	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

308.2 Forward Reach.

308.2.1 Unobstructed. Where a forward reach is unobstructed, the high forward reach shall be 48 inches (1220 mm) maximum and the low forward reach shall be 15 inches (380 mm) minimum above the finish floor or ground.

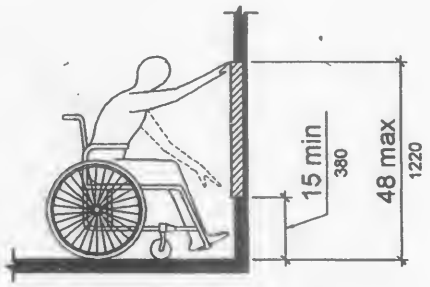


Figure 308.2.1
Unobstructed Forward Reach

308.2.2 Obstructed High Reach. Where a high forward reach is over an obstruction, the clear floor *space* shall extend beneath the *element* for a distance not less than the required reach depth over the obstruction. The high forward reach shall be 48 inches (1220 mm) maximum where the reach depth is 20 inches (510 mm) maximum. Where the reach depth exceeds 20 inches (510 mm), the high forward reach shall be 44 inches (1120 mm) maximum and the reach depth shall be 25 inches (635 mm) maximum.

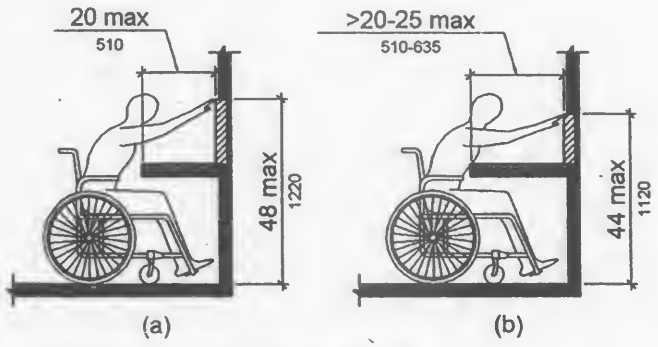


Figure 308.2.2
Obstructed High Forward Reach

308.3 Side Reach.

308.3.1 Unobstructed. Where a clear floor or ground *space* allows a parallel approach to an *element* and the side reach is unobstructed, the high side reach shall be 48 inches (1220 mm)

maximum and the low side reach shall be 15 inches (380 mm) minimum above the finish floor or ground.

EXCEPTIONS: 1. An obstruction shall be permitted between the clear floor or ground *space* and the *element* where the depth of the obstruction is 10 inches (255 mm) maximum.

2. *Operable parts* of fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum measured from the surface of the *vehicular way* where fuel dispensers are installed on existing curbs.

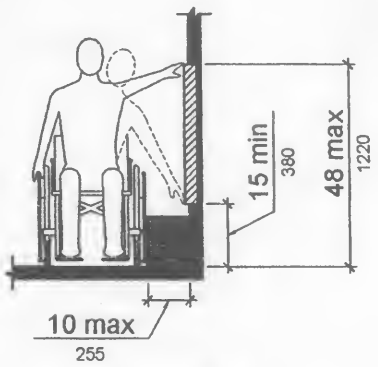


Figure 308.3.1
Unobstructed Side Reach

308.3.2 Obstructed High Reach. Where a clear floor or ground *space* allows a parallel approach to an *element* and the high side reach is over an obstruction, the height of the obstruction shall be 34 inches (865 mm) maximum and the depth of the obstruction shall be 24 inches (610 mm) maximum. The high side reach shall be 48 inches (1220 mm) maximum for a reach depth of 10 inches (255 mm) maximum. Where the reach depth exceeds 10 inches (255 mm), the high side reach shall be 46 inches (1170 mm) maximum for a reach depth of 24 inches (610 mm) maximum.

EXCEPTIONS: 1. The top of washing machines and clothes dryers shall be permitted to be 36 inches (915 mm) maximum above the finish floor.

2. *Operable parts* of fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum measured from the surface of the *vehicular way* where fuel dispensers are installed on existing curbs.

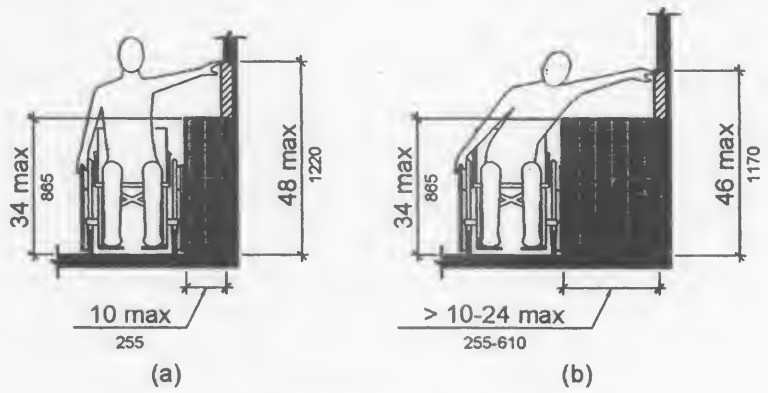


Figure 308.3.2
Obstructed High Side Reach

309 Operable Parts

309.1 General. *Operable parts* shall comply with 309.

309.2 Clear Floor Space. A clear floor or ground *space* complying with 305 shall be provided.

309.3 Height. *Operable parts* shall be placed within one or more of the reach ranges specified in 308.

309.4 Operation. *Operable parts* shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate *operable parts* shall be 5 pounds (22.2 N) maximum.

EXCEPTION: Gas pump nozzles shall not be required to provide *operable parts* that have an activating force of 5 pounds (22.2 N) maximum.

CHAPTER 4: ACCESSIBLE ROUTES

401 General

401.1 Scope. The provisions of Chapter 4 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

402 Accessible Routes

402.1 General. *Accessible* routes shall comply with 402.

402.2 Components. *Accessible* routes shall consist of one or more of the following components: walking surfaces with a *running slope* not steeper than 1:20, doorways, *ramps*, *curb ramps* excluding the flared sides, elevators, and platform lifts. All components of an *accessible* route shall comply with the applicable requirements of Chapter 4.

> **Advisory 402.2 Components.** Walking surfaces must have running slopes not steeper than 1:20, see 403.3. Other components of accessible routes, such as ramps (405) and curb ramps (406), are permitted to be more steeply sloped.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an *accessible* route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The *running slope* of walking surfaces shall not be steeper than 1:20. The *cross slope* of walking surfaces shall not be steeper than 1:48.

403.4 Changes in Level. Changes in level shall comply with 303.

403.5 Clearances. Walking surfaces shall provide clearances complying with 403.5.

EXCEPTION: Within *employee work areas*, clearances on *common use circulation paths* shall be permitted to be decreased by *work area equipment* provided that the decrease is essential to the function of the work being performed.

403.5.1 Clear Width. Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum.

EXCEPTION: The clear width shall be permitted to be reduced to 32 inches (815 mm) minimum for a length of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

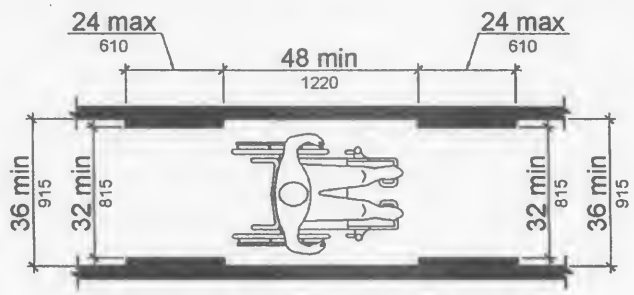


Figure 403.5.1
Clear Width of an Accessible Route

403.5.2 Clear Width at Turn. Where the *accessible* route makes a 180 degree turn around an *element* which is less than 48 inches (1220 mm) wide, clear width shall be 42 inches (1065 mm) minimum approaching the turn, 48 inches (1220 mm) minimum at the turn and 42 inches (1065 mm) minimum leaving the turn.

EXCEPTION: Where the clear width at the turn is 60 inches (1525 mm) minimum compliance with 403.5.2 shall not be required.

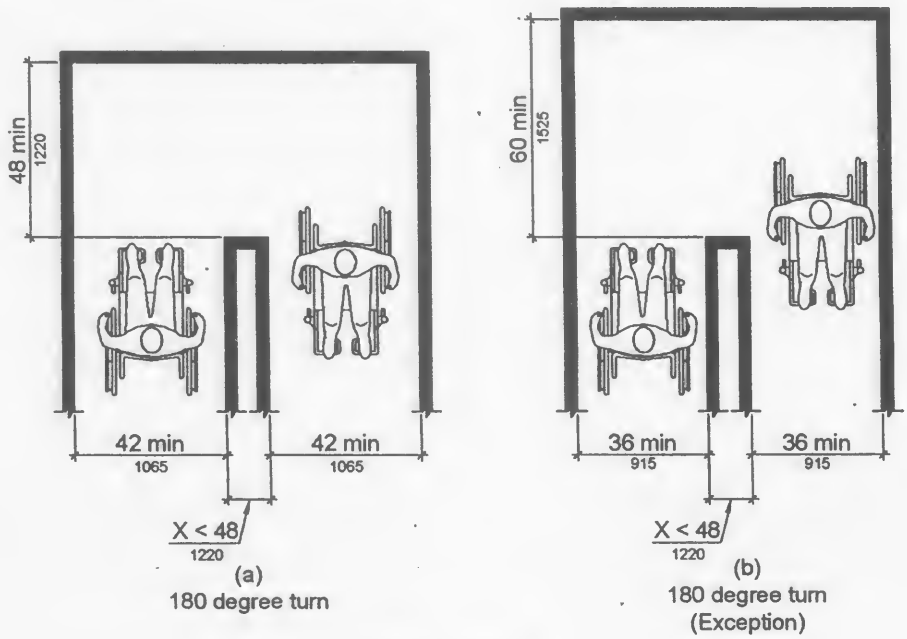


Figure 403.5.2
Clear Width at Turn

403.5.3 Passing Spaces. An *accessible* route with a clear width less than 60 inches (1525 mm) shall provide passing *spaces* at intervals of 200 feet (61 m) maximum. Passing *spaces* shall be either: a *space* 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum; or, an intersection of two walking surfaces providing a T-shaped *space* complying with 304.3.2 where the base and arms of the T-shaped *space* extend 48 inches (1220 mm) minimum beyond the intersection.

403.6 Handrails. Where handrails are provided along walking surfaces with *running slopes* not steeper than 1:20 they shall comply with 505.

> **Advisory 403.6 Handrails.** Handrails provided in elevator cabs and platform lifts are not required to comply with the requirements for handrails on walking surfaces.

404 Doors, Doorways, and Gates

404.1 General. Doors, doorways, and gates that are part of an *accessible* route shall comply with 404.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall not be required to comply with 404.2.7, 404.2.8, 404.2.9, 404.3.2 and 404.3.4 through 404.3.7.

> **Advisory 404.1 General Exception.** Security personnel must have sole control of doors that are eligible for the Exception at 404.1. It would not be acceptable for security personnel to operate the doors for people with disabilities while allowing others to have independent access.

404.2 Manual Doors, Doorways, and Manual Gates. Manual doors and doorways and manual gates intended for user passage shall comply with 404.2.

404.2.1 Revolving Doors, Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an *accessible* route.

404.2.2 Double-Leaf Doors and Gates. At least one of the active leaves of doorways with two leaves shall comply with 404.2.3 and 404.2.4.

404.2.3 Clear Width. Door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm).

EXCEPTIONS: 1. In *alterations*, a projection of 5/8 inch (16 mm) maximum into the required clear width shall be permitted for the latch side stop.

2. Door closers and door stops shall be permitted to be 78 inches (1980 mm) minimum above the finish floor or ground.

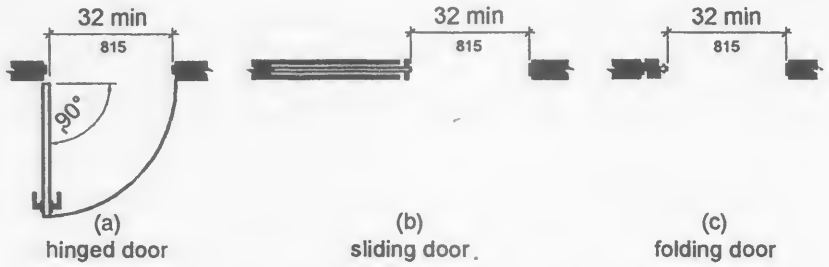


Figure 404.2.3
Clear Width of Doorways

404.2.4 Maneuvering Clearances. Minimum maneuvering clearances at doors and gates shall comply with 404.2.4. Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

EXCEPTION: Entry doors to hospital patient rooms shall not be required to provide the clearance beyond the latch side of the door.

404.2.4.1 Swinging Doors and Gates. Swinging doors and gates shall have maneuvering clearances complying with Table 404.2.4.1.

Table 404.2.4.1 Maneuvering Clearances at Manual Swinging Doors and Gates

Type of Use		Minimum Maneuvering Clearance	
Approach Direction	**Door or Gate Side**	**Perpendicular to Doorway**	**Parallel to Doorway (beyond latch side unless noted)**
From front	Pull	60 inches (1525 mm)	18 inches (455 mm)
From front	Push	48 inches (1220 mm)	0 inches (0 mm)[1]
From hinge side	Pull	60 inches (1525 mm)	36 inches (915 mm)
From hinge side	Pull	54 inches (1370 mm)	42 inches (1065 mm)
From hinge side	Push	42 inches (1065 mm)[2]	22 inches (560 mm)[3]
From latch side	Pull	48 inches (1220 mm)[4]	24 inches (610 mm)
From latch side	Push	42 inches (1065 mm)[4]	24 inches (610 mm)

1. Add 12 inches (305 mm) if closer and latch are provided.
2. Add 6 inches (150 mm) if closer and latch are provided.
3. Beyond hinge side.
4. Add 6 inches (150 mm) if closer is provided.

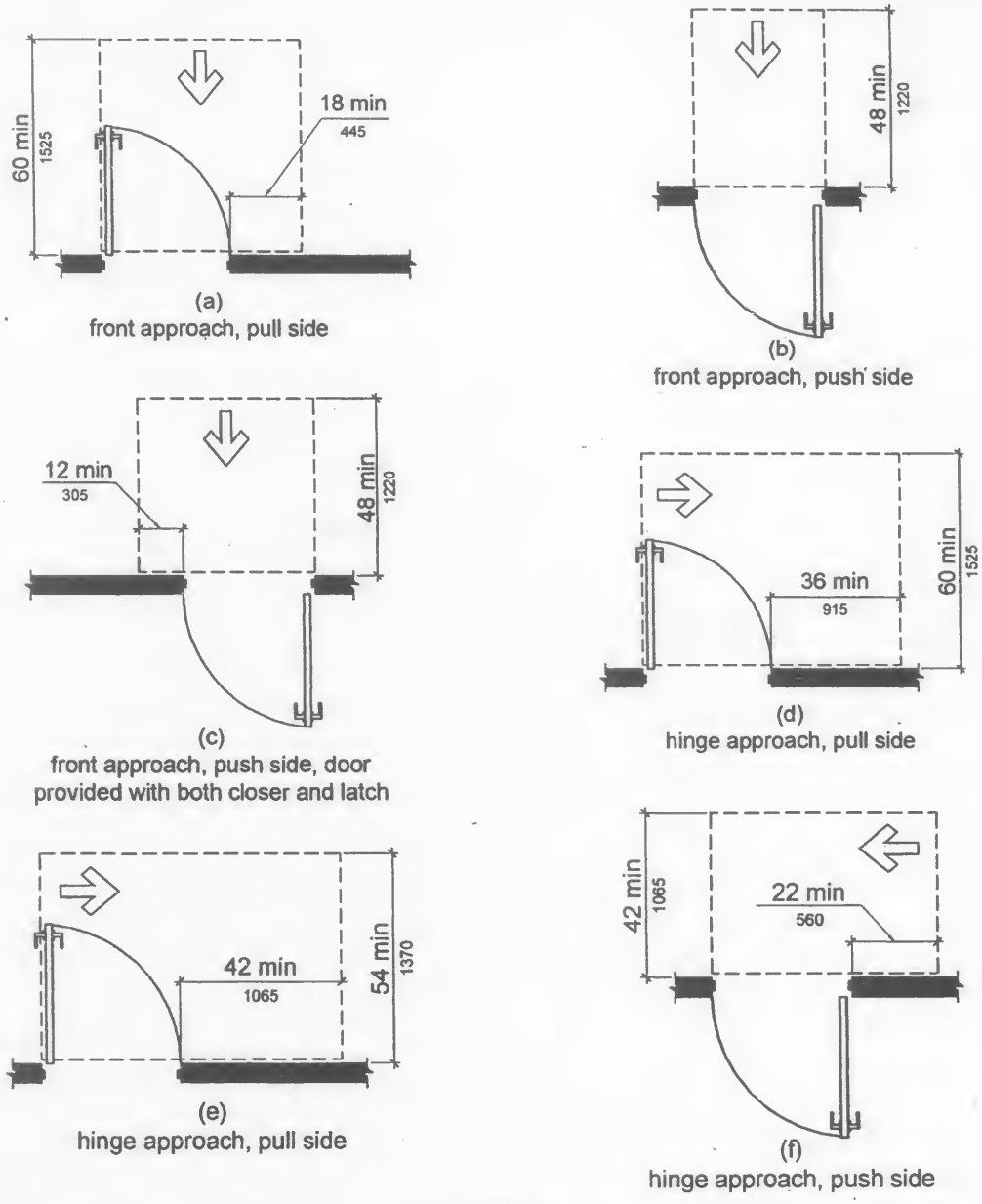
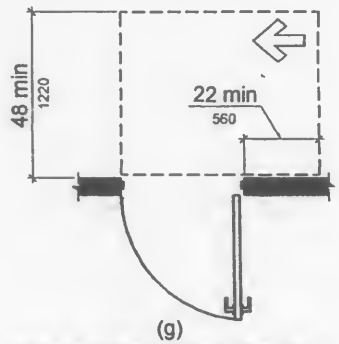
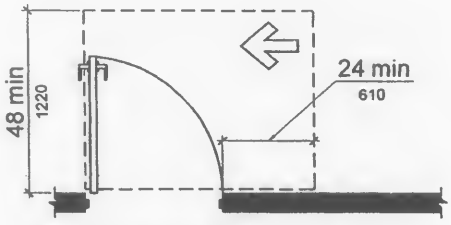


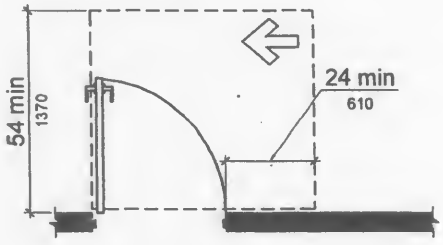
Figure 404.2.4.1
Maneuvering Clearances at Manual Swinging Doors and Gates



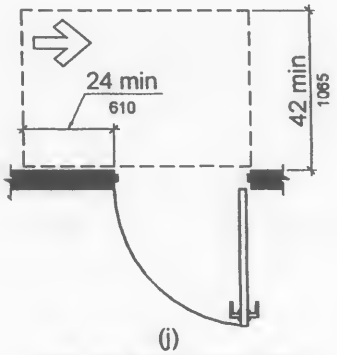
(g)
hinge approach, push side, door provided with both closer and latch



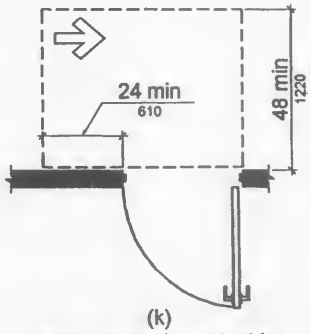
(h)
latch approach, pull side



(i)
latch approach, pull side, door provided with closer



(j)
latch approach, push side



(k)
latch approach, push side, door provided with closer

Figure 404.2.4.1
Maneuvering Clearances at Manual Swinging Doors and Gates

404.2.4.2 Doorways without Doors or Gates, Sliding Doors, and Folding Doors. Doorways less than 36 inches (915 mm) wide without doors or gates, sliding doors, or folding doors shall have maneuvering clearances complying with Table 404.2.4.2.

Table 404.2.4.2 Maneuvering Clearances at Doorways without Doors or Gates, Manual Sliding Doors, and Manual Folding Doors

	Minimum Maneuvering Clearance	
Approach Direction	**Perpendicular to Doorway**	**Parallel to Doorway (beyond stop/latch side unless noted)**
From Front	48 inches (1220 mm)	0 inches (0 mm)
From side[1]	42 inches (1065 mm)	0 inches (0 mm)
From pocket/hinge side	42 inches (1065 mm)	22 inches (560 mm)[2]
From stop/latch side	42 inches (1065 mm)	24 inches (610 mm)

1. Doorway with no door only.
2. Beyond pocket/hinge side.

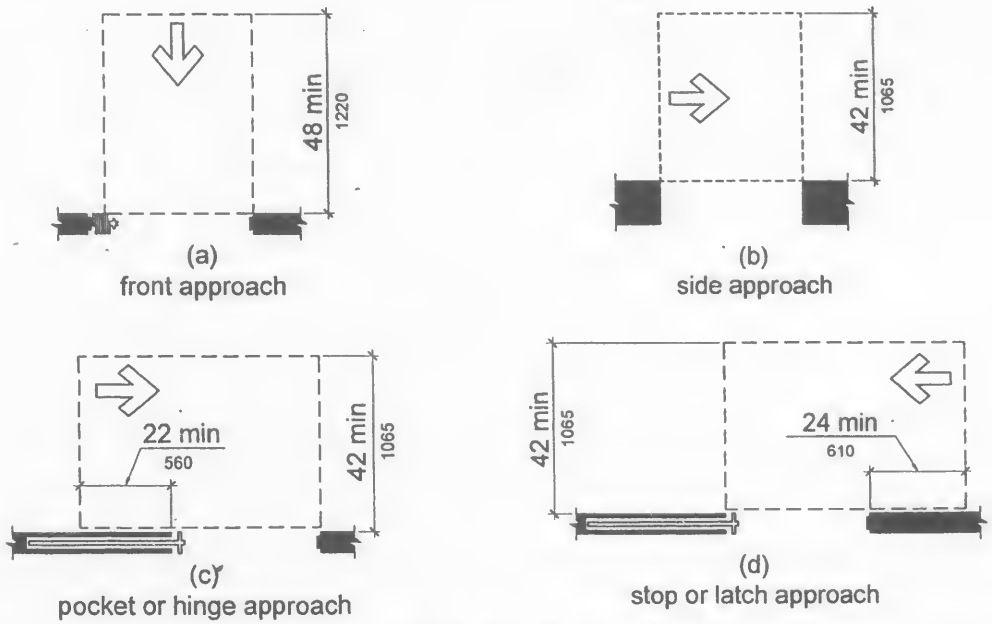


Figure 404.2.4.2
Maneuvering Clearances at Doorways without Doors, Sliding Doors, Gates, and Folding Doors

404.2.4.3 Recessed Doors and Gates. Maneuvering clearances for forward approach shall be provided when any obstruction within 18 inches (455 mm) of the latch side of a doorway projects more than 8 inches (205 mm) beyond the face of the door, measured perpendicular to the face of the door or gate.

Advisory 404.2.4.3 Recessed Doors and Gates. A door can be recessed due to wall thickness or because of the placement of casework and other fixed elements adjacent to the doorway. This provision must be applied wherever doors are recessed.

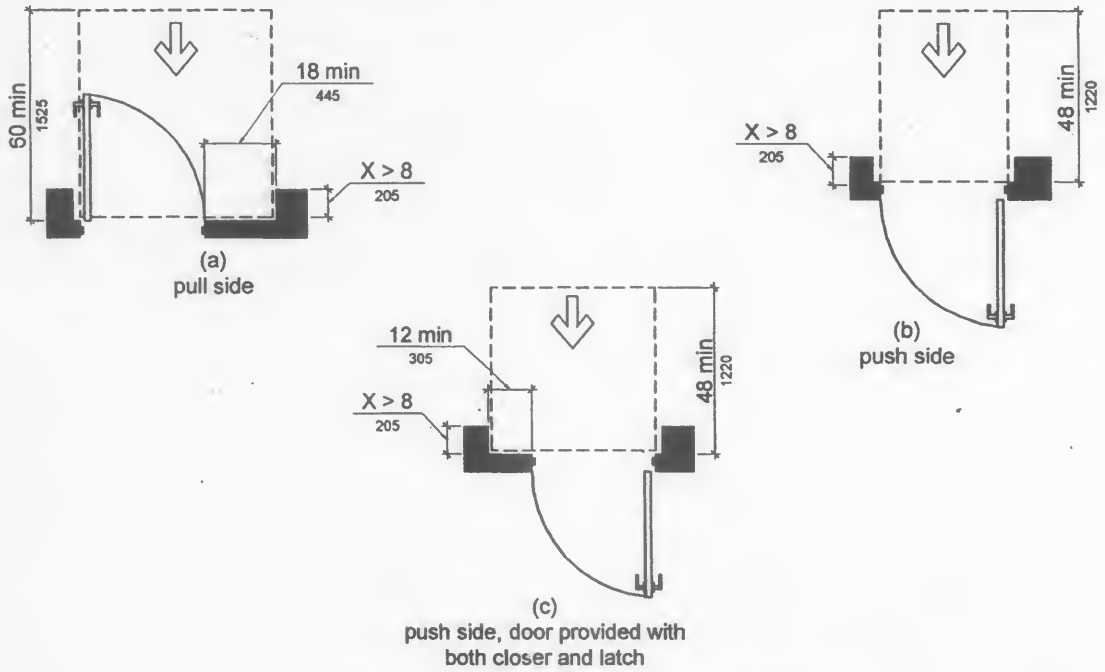


Figure 404.2.4.3
Maneuvering Clearances at Recessed Doors and Gates

404.2.4.4 Floor or Ground Surface. Floor or ground surface within required maneuvering clearances shall comply with 302. Changes in level are not permitted.

EXCEPTIONS: 1. Slopes not steeper than 1:48 shall be permitted.

2. Changes in level at thresholds complying with 404.2.5 shall be permitted.

404.2.5 Thresholds. Thresholds, if provided at doorways, shall be ½ inch (13 mm) high maximum. Raised thresholds and changes in level at doorways shall comply with 302 and 303.

EXCEPTION: Existing or *altered* thresholds ¾ inch (19 mm) high maximum that have a beveled edge on each side with a slope not steeper than 1:2 shall not be required to comply with 404.2.5.

404.2.6 Doors in Series and Gates in Series. The distance between two hinged or pivoted doors in series and gates in series shall be 48 inches (1220 mm) minimum plus the width of doors or gates swinging into the *space*.

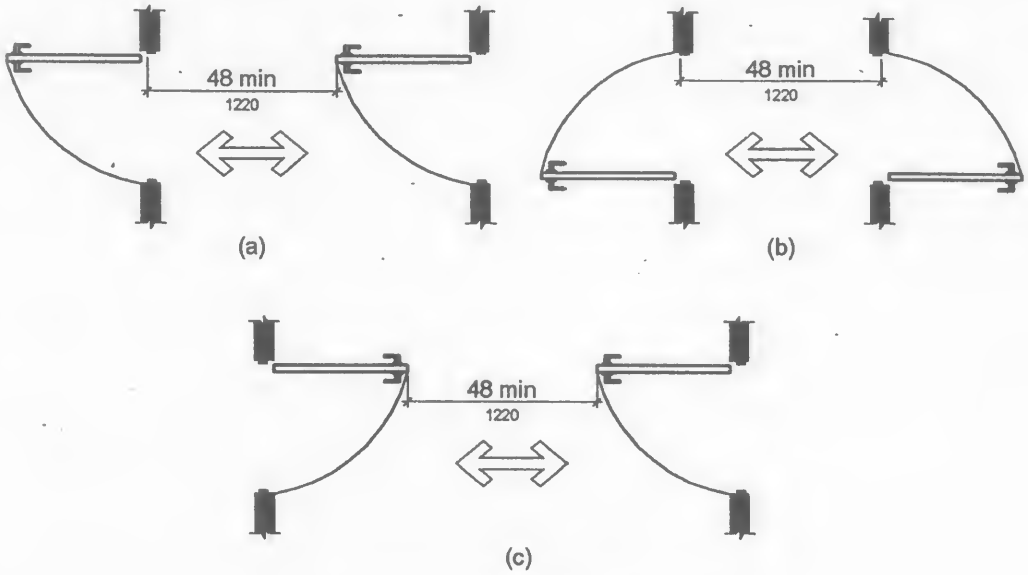


Figure 404.2.6
Doors in Series and Gates in Series

404.2.7 Door and Gate Hardware. Handles, pulls, latches, locks, and other *operable parts* on doors and gates shall comply with 309.4. *Operable parts* of such hardware shall be 34 inches (865 mm) minimum and 48 inches (1220 mm) maximum above the finish floor or ground. Where sliding doors are in the fully open position, operating hardware shall be exposed and usable from both sides.

EXCEPTIONS: 1. Existing locks shall be permitted in any location at existing glazed doors without stiles, existing overhead rolling doors or grilles, and similar existing doors or grilles that are designed with locks that are activated only at the top or bottom rail.

2. Access gates in barrier walls and fences protecting pools, spas, and hot tubs shall be permitted to have *operable parts* of the release of latch on self-latching devices at 54 inches (1370 mm) maximum above the finish floor or ground provided the self-latching devices are not also self-locking devices and operated by means of a key, electronic opener, or integral combination lock.

Advisory 404.2.7 Door and Gate Hardware. Door hardware that can be operated with a closed fist or a loose grip accommodates the greatest range of users. Hardware that requires simultaneous hand and finger movements require greater dexterity and coordination, and is not recommended.

404.2.8 Closing Speed. Door and gate closing speed shall comply with 404.2.8.

404.2.8.1 Door Closers and Gate Closers. Door closers and gate closers shall be adjusted so that from an open position of 90 degrees, the time required to move the door to a position of 12 degrees from the latch is 5 seconds minimum.

404.2.8.2 Spring Hinges. Door and gate spring hinges shall be adjusted so that from the open position of 70 degrees, the door or gate shall move to the closed position in 1.5 seconds minimum.

404.2.9 Door and Gate Opening Force. Fire doors shall have a minimum opening force allowable by the appropriate *administrative authority.* The force for pushing or pulling open a door or gate other than fire doors shall be as follows:

1. Interior hinged doors and gates: 5 pounds (22.2 N) maximum.
2. Sliding or folding doors: 5 pounds (22.2 N) maximum.

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door or gate in a closed position.

Advisory 404.2.9 Door and Gate Opening Force. The maximum force pertains to the continuous application of force necessary to fully open a door, not the initial force needed to overcome the inertia of the door. It does not apply to the force required to retract bolts or to disengage other devices used to keep the door in a closed position.

404.2.10 Door and Gate Surfaces. Swinging door and gate surfaces within 10 inches (255 mm) of the finish floor or ground measured vertically shall have a smooth surface on the push side extending the full width of the door or gate. Parts creating horizontal or vertical joints in these surfaces shall be within 1/16 inch (1.6 mm) of the same plane as the other. Cavities created by added kick plates shall be capped.

EXCEPTIONS: 1. Sliding doors shall not be required to comply with 404.2.10.

2. Tempered glass doors without stiles and having a bottom rail or shoe with the top leading edge tapered at 60 degrees minimum from the horizontal shall not be required to meet the 10 inch (255 mm) bottom smooth surface height requirement.

3. Doors and gates that do not extend to within 10 inches (255 mm) of the finish floor or ground shall not be required to comply with 404.2.10.

4. Existing doors and gates without smooth surfaces within 10 inches (255 mm) of the finish floor or ground shall not be required to provide smooth surfaces complying with 404.2.10 provided that if added kick plates are installed, cavities created by such kick plates are capped.

404.2.11 Vision Lights. Doors, gates, and side lights adjacent to doors or gates, containing one or more glazing panels that permit viewing through the panels shall have the bottom of at least one glazed panel located 43 inches (1090 mm) maximum above the finish floor.

EXCEPTION: Vision lights with the lowest part more than 66 inches (1675 mm) from the finish floor or ground shall not be required to comply with 404.2.11.

404.3 Automatic and Power-Assisted Doors and Gates. Automatic doors and automatic gates shall comply with 404.3. Full-powered automatic doors shall comply with ANSI/BHMA A156.10 (incorporated

by reference, see "Referenced Standards" in Chapter 1). Low-energy and power-assisted doors shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

404.3.1 Clear Width. Doorways shall provide a clear opening of 32 inches (815 mm) minimum in power-on and power-off mode. The minimum clear width for automatic door systems in a doorway shall be based on the clear opening provided by all leaves in the open position.

404.3.2 Maneuvering Clearance. Clearances at power-assisted doors and gates shall comply with 404.2.4. Clearances at automatic doors and gates without standby power and serving an *accessible means of egress* shall comply with 404.2.4.

EXCEPTION: Where automatic doors and gates remain open in the power-off condition, compliance with 404.2.4 shall not be required.

404.3.3 Thresholds. Thresholds and changes in level at doorways shall comply with 404.2.5.

404.3.4 Doors in Series and Gates in Series. Doors in series and gates in series shall comply with 404.2.6.

404.3.5 Controls. Manually operated controls shall comply with 309. The clear floor *space* adjacent to the control shall be located beyond the arc of the door swing.

404.3.6 Break Out Opening. Where doors and gates without standby power are a part of a means of egress, the clear break out opening at swinging or sliding doors and gates shall be 32 inches (815 mm) minimum when operated in emergency mode.

EXCEPTION: Where manual swinging doors and gates comply with 404.2 and serve the same means of egress compliance with 404.3.6 shall not be required.

404.3.7 Revolving Doors, Revolving Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an *accessible* route.

405 Ramps

405.1 General. *Ramps* on *accessible* routes shall comply with 405.

EXCEPTION: In *assembly areas*, aisle *ramps* adjacent to seating and not serving *elements* required to be on an *accessible* route shall not be required to comply with 405.

405.2 Slope. *Ramp* runs shall have a *running slope* not steeper than 1:12.

EXCEPTION: In existing *sites*, *buildings*, and *facilities*, *ramps* shall be permitted to have *running slopes* steeper than 1:12 complying with Table 405.2 where such slopes are necessary due to *space* limitations.

Table 405.2 Maximum Ramp Slope and Rise for Existing Sites, Buildings, and Facilities

Slope[1]	Maximum Rise
Steeper than 1:10 but not steeper than 1:8	3 inches (75 mm)
Steeper than 1:12 but not steeper than 1:10	6 inches (150 mm)

1. A slope steeper than 1:8 is prohibited.

Advisory 405.2 Slope. To accommodate the widest range of users, provide ramps with the least possible running slope and, wherever possible, accompany ramps with stairs for use by those individuals for whom distance presents a greater barrier than steps, e.g., people with heart disease or limited stamina.

405.3 Cross Slope. *Cross slope* of *ramp* runs shall not be steeper than 1:48.

Advisory 405.3 Cross Slope. Cross slope is the slope of the surface perpendicular to the direction of travel. Cross slope is measured the same way as slope is measured (i.e., the rise over the run).

405.4 Floor or Ground Surfaces. Floor or ground surfaces of *ramp* runs shall comply with 302. Changes in level other than the *running slope* and *cross slope* are not permitted on *ramp* runs.

405.5 Clear Width. The clear width of a *ramp* run and, where handrails are provided, the clear width between handrails shall be 36 inches (915 mm) minimum.

EXCEPTION: Within *employee work areas*, the required clear width of *ramps* that are a part of *common use circulation paths* shall be permitted to be decreased by *work area equipment* provided that the decrease is essential to the function of the work being performed.

405.6 Rise. The rise for any *ramp* run shall be 30 inches (760 mm) maximum.

405.7 Landings. *Ramps* shall have landings at the top and the bottom of each *ramp* run. Landings shall comply with 405.7.

Advisory 405.7 Landings. Ramps that do not have level landings at changes in direction can create a compound slope that will not meet the requirements of this document. Circular or curved ramps continually change direction. Curvilinear ramps with small radii also can create compound cross slopes and cannot, by their nature, meet the requirements for accessible routes. A level landing is needed at the accessible door to permit maneuvering and simultaneously door operation.

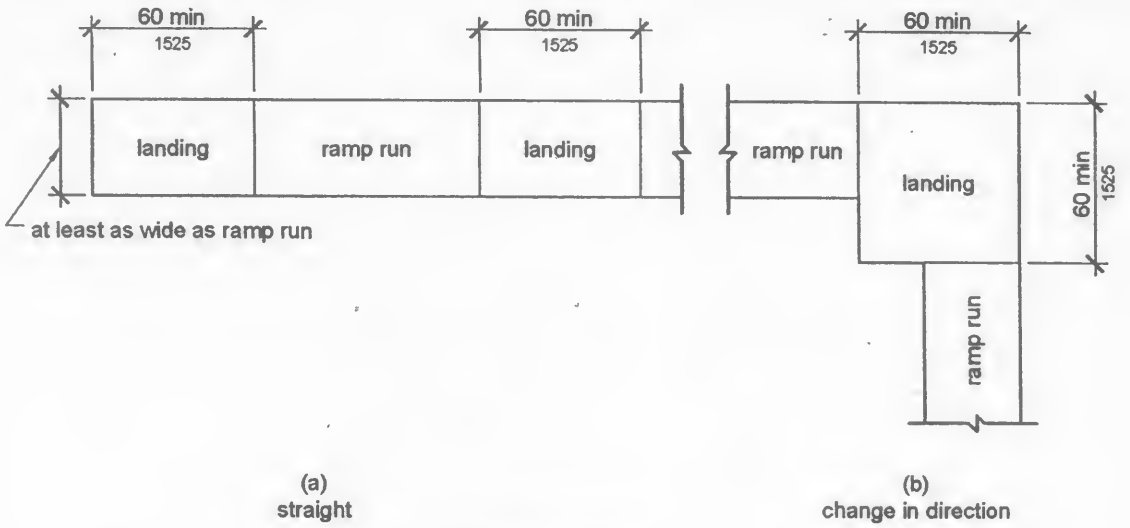


Figure 405.7
Ramp Landings

405.7.1 Slope. Landings shall comply with 302. Changes in level are not permitted.
EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

405.7.2 Width. The landing clear width shall be at least as wide as the widest *ramp* run leading to the landing.

405.7.3 Length. The landing clear length shall be 60 inches (1525 mm) long minimum.

405.7.4 Change in Direction. *Ramps* that change direction between runs at landings shall have a clear landing 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum.

405.7.5 Doorways. Where doorways are located adjacent to a *ramp* landing, maneuvering clearances required by 404.2.4 and 404.3.2 shall be permitted to overlap the required landing area.

405.8 Handrails. *Ramp* runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505.
EXCEPTION: Within *employee work areas*, handrails shall not be required where *ramps* that are part of *common use circulation paths* are designed to permit the installation of handrails complying with 505. *Ramps* not subject to the exception to 405.5 shall be designed to maintain a 36 inch (915 mm) minimum clear width when handrails are installed.

405.9 Edge Protection. Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of *ramp* runs and at each side of *ramp* landings.

EXCEPTIONS: 1. Edge protection shall not be required on *ramps* that are not required to have handrails and have sides complying with 406.3.
2. Edge protection shall not be required on the sides of *ramp* landings serving an adjoining *ramp* run or stairway.
3. Edge protection shall not be required on the sides of *ramp* landings having a vertical drop-off of ½ inch (13 mm) maximum within 10 inches (255 mm) horizontally of the minimum landing area specified in 405.7.

405.9.1 Extended Floor or Ground Surface. The floor or ground surface of the *ramp* run or landing shall extend 12 inches (305 mm) minimum beyond the inside face of a handrail complying with 505.

Advisory 405.9.1 Extended Floor or Ground Surface. The extended surface prevents wheelchair casters and crutch tips from slipping off the ramp surface.

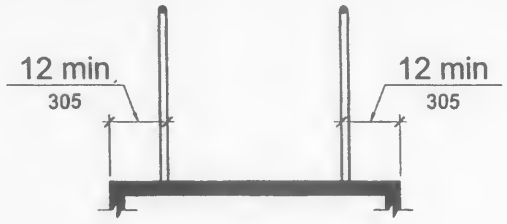


Figure 405.9.1
Extended Floor or Ground Surface Edge Protection

405.9.2 Curb or Barrier. A curb or barrier shall be provided that prevents the passage of a 4 inch (100 mm) diameter sphere, where any portion of the sphere is within 4 inches (100 mm) of the finish floor or ground surface.

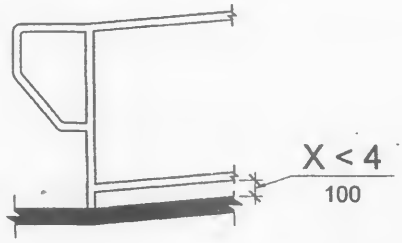


Figure 405.9.2
Curb or Barrier Edge Protection

405.10 Wet Conditions. Landings subject to wet conditions shall be designed to prevent the accumulation of water.

406 Curb Ramps

406.1 General. *Curb ramps* on *accessible* routes shall comply with 406, 405.2 through 405.5, and 405.10.

406.2 Counter Slope. Counter slopes of adjoining gutters and road surfaces immediately adjacent to the *curb ramp* shall not be steeper than 1:20. The adjacent surfaces at transitions at *curb ramps* to *walks*, gutters, and streets shall be at the same level.

Figure 406.2
Counter Slope of Surfaces Adjacent to Curb Ramps

406.3 Sides of Curb Ramps. Where provided, *curb ramp* flares shall not be steeper than 1:10.

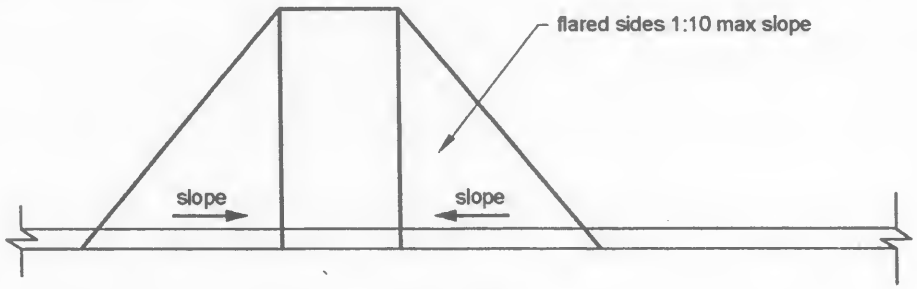


Figure 406.3
Sides of Curb Ramps

406.4 Landings. Landings shall be provided at the tops of *curb ramps*. The landing clear length shall be 36 inches (915 mm) minimum. The landing clear width shall be at least as wide as the *curb ramp*, excluding flared sides, leading to the landing.

EXCEPTION: In *alterations*, where there is no landing at the top of *curb ramps*, *curb ramp* flares shall be provided and shall not be steeper than 1:12.

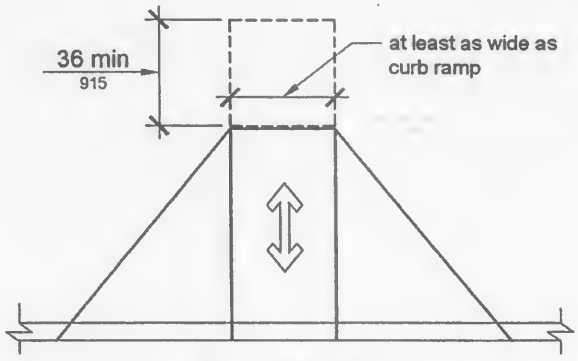


Figure 406.4
Landings at the Top of Curb Ramps

406.5 Location. *Curb ramps* and the flared sides of *curb ramps* shall be located so that they do not project into vehicular traffic lanes, parking *spaces*, or parking access aisles. *Curb ramps* at *marked crossings* shall be wholly contained within the markings, excluding any flared sides.

406.6 Diagonal Curb Ramps. Diagonal or corner type *curb ramps* with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. The bottom of diagonal *curb ramps* shall have a clear *space* 48 inches (1220 mm) minimum outside active traffic lanes of the roadway. Diagonal *curb ramps* provided at *marked crossings* shall provide the 48 inches (1220 mm) minimum clear *space* within the markings. Diagonal *curb ramps* with flared sides shall have a segment of curb 24 inches (610 mm) long minimum located on each side of the *curb ramp* and within the *marked crossing*.

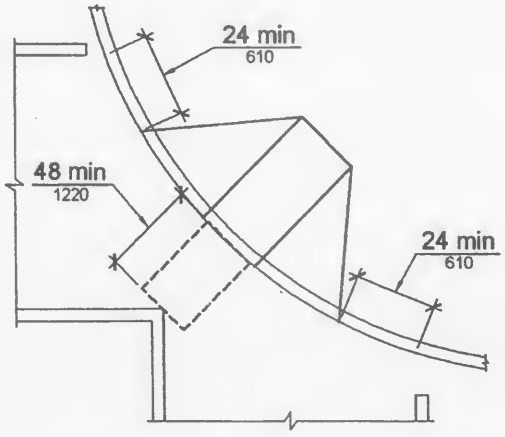


Figure 406.6
Diagonal or Corner Type Curb Ramps

406.7 Islands. Raised islands in crossings shall be cut through level with the street or have *curb ramps* at both sides. Each *curb ramp* shall have a level area 48 inches (1220 mm) long minimum by 36 inches (915 mm) wide minimum at the top of the *curb ramp* in the part of the island intersected by the crossings. Each 48 inch (1220 mm) minimum by 36 inch (915 mm) minimum area shall be oriented so that the 48 inch (1220 mm) minimum length is in the direction of the *running slope* of the *curb ramp* it serves. The 48 inch (1220 mm) minimum by 36 inch (915 mm) minimum areas and the *accessible* route shall be permitted to overlap.

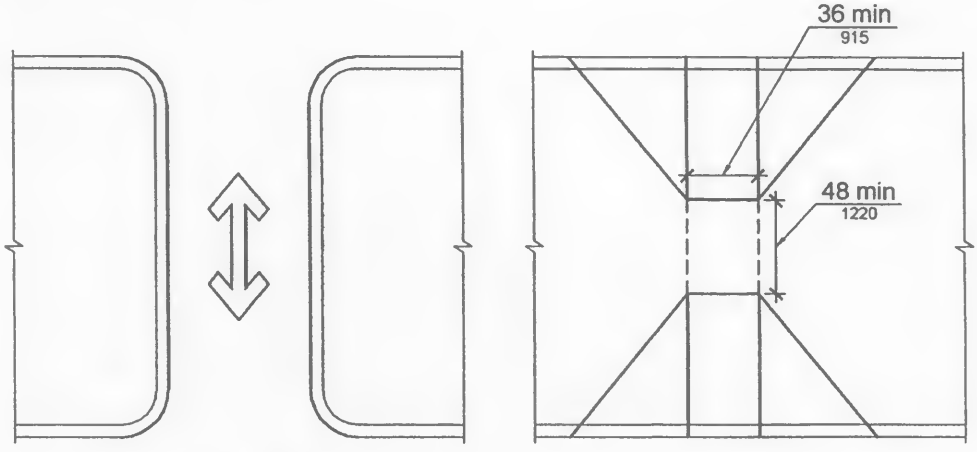


Figure 406.7
Islands in Crossings

407 Elevators

407.1 General. Elevators shall comply with 407 and with ASME A17.1 (incorporated by reference, see "Referenced Standards" in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

> **Advisory 407.1 General.** The ADA and other Federal civil rights laws require that accessible features be maintained in working order so that they are accessible to and usable by those people they are intended to benefit. Building owners should note that the ASME Safety Code for Elevators and Escalators requires routine maintenance and inspections. Isolated or temporary interruptions in service due to maintenance or repairs may be unavoidable; however, failure to take prompt action to effect repairs could constitute a violation of Federal laws and these requirements.

407.2 Elevator Landing Requirements. Elevator landings shall comply with 407.2.

407.2.1 Call Controls. Where elevator call buttons or keypads are provided, they shall comply with 407.2.1 and 309.4. Call buttons shall be raised or flush.

EXCEPTION: Existing elevators shall be permitted to have recessed call buttons.

407.2.1.1 Height. Call buttons and keypads shall be located within one of the reach ranges specified in 308, measured to the centerline of the highest *operable part*.

EXCEPTION: Existing call buttons and existing keypads shall be permitted to be located at 54 inches (1370 mm) maximum above the finish floor, measured to the centerline of the highest *operable part*.

407.2.1.2 Size. Call buttons shall be ¾ inch (19 mm) minimum in the smallest dimension.

EXCEPTION: Existing elevator call buttons shall not be required to comply with 407.2.1.2.

407.2.1.3 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided at call controls.

Advisory 407.2.1.3 Clear Floor or Ground Space. The clear floor or ground space required at elevator call buttons must remain free of obstructions including ashtrays, plants, and other decorative elements that prevent wheelchair users and others from reaching the call buttons. The height of the clear floor or ground space is considered to be a volume from the floor to 80 inches (2030 mm) above the floor. Recessed ashtrays should not be placed near elevator call buttons so that persons who are blind or visually impaired do not inadvertently contact them or their contents as they reach for the call buttons.

407.2.1.4 Location. The call button that designates the up direction shall be located above the call button that designates the down direction.

EXCEPTION: Destination-oriented elevators shall not be required to comply with 407.2.1.4.

Advisory 407.2.1.4 Location Exception. A destination-oriented elevator system provides lobby controls enabling passengers to select floor stops, lobby indicators designating which elevator to use, and a car indicator designating the floors at which the car will stop. Responding cars are programmed for maximum efficiency by reducing the number of stops any passenger experiences.

407.2.1.5 Signals. Call buttons shall have visible signals to indicate when each call is registered and when each call is answered.

EXCEPTIONS: 1. Destination-oriented elevators shall not be required to comply with 407.2.1.5 provided that visible and audible signals complying with 407.2.2 indicating which elevator car to enter are provided.

2. Existing elevators shall not be required to comply with 407.2.1.5.

407.2.1.6 Keypads. Where keypads are provided, keypads shall be in a standard telephone keypad arrangement and shall comply with 407.4.7.2.

407.2.2 Hall Signals. Hall signals, including in-car signals, shall comply with 407.2.2.

407.2.2.1 Visible and Audible Signals. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call and the car's direction of travel. Where in-car signals are provided, they shall be visible from the floor area adjacent to the hall call buttons.

EXCEPTIONS: 1. Visible and audible signals shall not be required at each destination-oriented elevator where a visible and audible signal complying with 407.2.2 is provided indicating the elevator car designation information.

2. In existing elevators, a signal indicating the direction of car travel shall not be required.

407.2.2.2 Visible Signals. Visible signal fixtures shall be centered at 72 inches (1830 mm) minimum above the finish floor or ground. The visible signal *elements* shall be 2-½ inches (64 mm) minimum measured along the vertical centerline of the *element*. Signals shall be visible from the floor area adjacent to the hall call button.

EXCEPTIONS: 1. Destination-oriented elevators shall be permitted to have signals visible from the floor area adjacent to the hoistway entrance:

2. Existing elevators shall not be required to comply with 407.2.2.2.

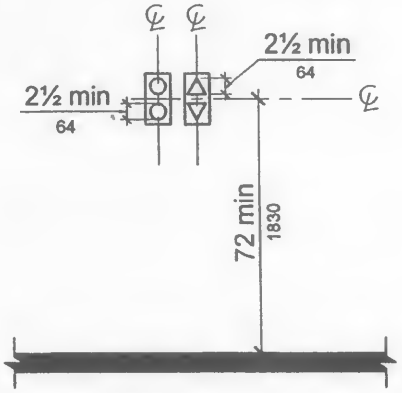


Figure 407.2.2.2
Visible Hall Signals

407.2.2.3 Audible Signals. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that indicate the direction of elevator car travel. Audible signals shall have a frequency of 1500 Hz maximum. Verbal annunciators shall have a frequency of 300 Hz minimum and 3000 Hz maximum. The audible signal and verbal annunciator shall be 10 dB minimum above ambient, but shall not exceed 80 dB, measured at the hall call button.

EXCEPTIONS: 1. Destination-oriented elevators shall not be required to comply with 407.2.2.3 provided that the audible tone and verbal announcement is the same as those given at the call button or call button keypad.

2. Existing elevators shall not be required to comply with the requirements for frequency and dB range of audible signals.

407.2.2.4 Differentiation. Each destination-oriented elevator in a bank of elevators shall have audible and visible means for differentiation.

407.2.3 Hoistway Signs. Signs at elevator hoistways shall comply with 407.2.3.

407.2.3.1 Floor Designation. Floor designations complying with 703.2 and 703.4.1 and shall be provided on both jambs of elevator hoistway entrances. Floor designations shall be provided in both *tactile characters* and braille. *Tactile characters* shall be 2 inches (51 mm) high minimum. A *tactile* star shall be provided on both jambs at the main entry level.

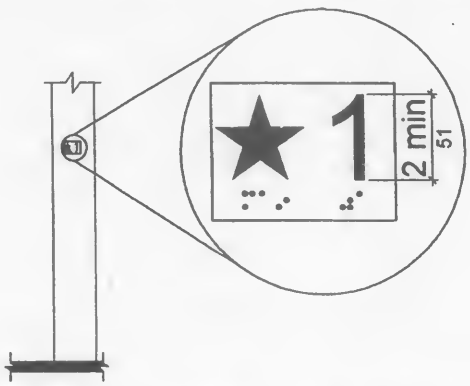


Figure 407.2.3.1
Floor Designations on Jambs of Elevator Hoistway Entrances

407.2.3.2 Car Designations. Destination-oriented elevators shall provide *tactile* car identification complying with 703.2 on both jambs of the hoistway immediately below the floor designation. Car designations shall be provided in both *tactile characters* and braille. *Tactile characters* shall be 2 inches (51 mm) high minimum.

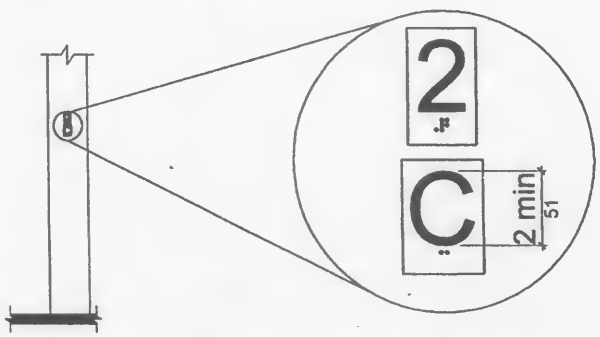


Figure 407.2.3.2
Car Designations on Jambs of Destination-Oriented Elevator Hoistway Entrances

407.3 Elevator Door Requirements. Hoistway and car doors shall comply with 407.3.

407.3.1 Type. Elevator doors shall be the horizontal sliding type. Car gates shall be prohibited.

407.3.2 Operation. Elevator hoistway and car doors shall open and close automatically.

EXCEPTION: Existing manually operated hoistway swing doors shall be permitted provided that they comply with 404.2.3 and 404.2.9. Car door closing shall not be initiated until the hoistway door is closed.

407.3.3 Reopening Device. Elevator doors shall be provided with a reopening device complying with 407.3.3 that shall stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person.

EXCEPTION: Existing elevators with manually operated doors shall not be required to comply with 407.3.3.

407.3.3.1 Height. The device shall be activated by sensing an obstruction passing through the opening at 5 inches (125 mm) nominal and 29 inches (735 mm) nominal above the finish floor.

407.3.3.2 Contact. The device shall not require physical contact to be activated, although contact is permitted to occur before the door reverses.

407.3.3.3 Duration. Door reopening devices shall remain effective for 20 seconds minimum.

407.3.4 Door and Signal Timing. The minimum acceptable time from notification that a car is answering a call or notification of the car assigned at the means for the entry of destination information until the doors of that car start to close shall be calculated from the following equation:

$T = D/(1.5 \text{ ft/s})$ or $T = D/(455 \text{ mm/s}) = 5$ seconds minimum where T equals the total time in seconds and D equals the distance (in feet or millimeters) from the point in the lobby or corridor 60 inches (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door.

EXCEPTIONS: 1. For cars with in-car lanterns, T shall be permitted to begin when the signal is visible from the point 60 inches (1525 mm) directly in front of the farthest hall call button and the audible signal is sounded.

2. Destination-oriented elevators shall not be required to comply with 407.3.4.

407.3.5 Door Delay. Elevator doors shall remain fully open in response to a car call for 3 seconds minimum.

407.3.6 Width. The width of elevator doors shall comply with Table 407.4.1.

EXCEPTION: In existing elevators, a power-operated car door complying with 404.2.3 shall be permitted.

407.4 Elevator Car Requirements. Elevator cars shall comply with 407.4.

407.4.1 Car Dimensions. Inside dimensions of elevator cars and clear width of elevator doors shall comply with Table 407.4.1.

EXCEPTION: Existing elevator car configurations that provide a clear floor area of 16 square feet (1.5 m^2) minimum and also provide an inside clear depth 54 inches (1370 mm) minimum and a clear width 36 inches (915 mm) minimum shall be permitted.

Table 407.4.1 Elevator Car Dimensions

	Minimum Dimensions			
Door Location	**Door Clear Width**	**Inside Car, Side to Side**	**Inside Car, Back Wall to Front Return**	**Inside Car, Back Wall to Inside Face of Door**
Centered	42 inches (1065 mm)	80 inches (2030 mm)	51 inches (1295 mm)	54 inches (1370 mm)
Side (off-centered)	36 inches (915 mm)[1]	68 inches (1725 mm)	51 inches (1295 mm)	54 inches (1370 mm)
Any	36 inches (915 mm)[1]	54 inches (1370 mm)	80 inches (2030 mm)	80 inches (2030 mm)
Any	36 inches (915 mm)[1]	60 inches (1525 mm)[2]	60 inches (1525 mm)[2]	60 inches (1525 mm)[2]

1. A tolerance of minus 5/8 inch (16 mm) is permitted.
2. Other car configurations that provide a turning *space* complying with 304 with the door closed shall be permited.

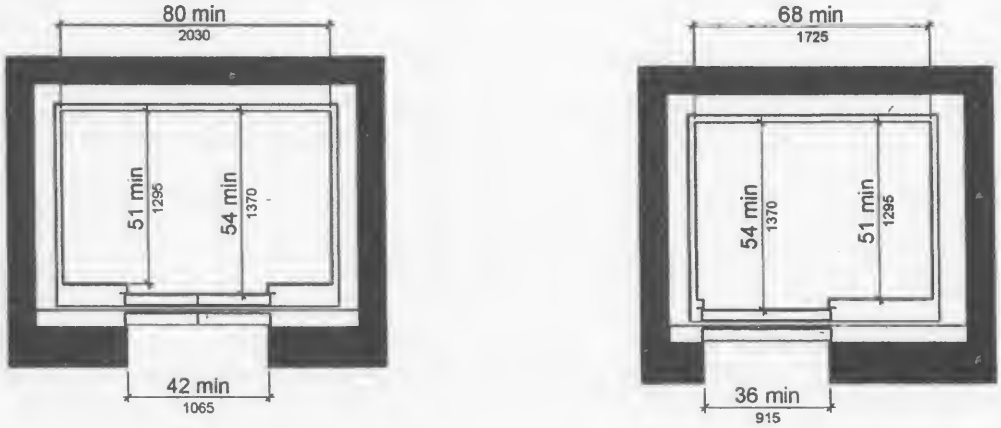
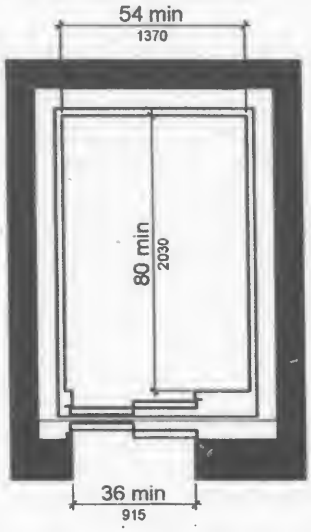
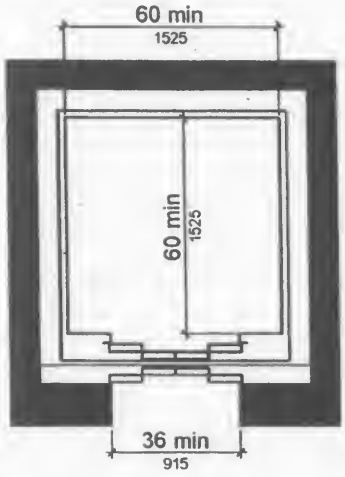


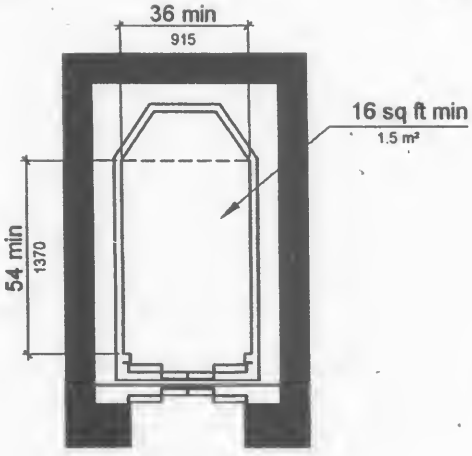
Figure 407.4.1
Elevator Car Dimensions



(c)
any door location



(d)
any door location



(e)
Exception
existing elevator car configuration

Figure 407.4.1
Elevator Car Dimensions

407.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

407.4.3 Platform to Hoistway Clearance. The clearance between the car platform sill and the edge of any hoistway landing shall be 1¼ inch (32 mm) maximum.

407.4.4 Leveling. Each car shall be equipped with a self-leveling feature that will automatically bring and maintain the car at floor landings within a tolerance of ½ inch (13 mm) under rated loading to zero loading conditions.

407.4.5 Illumination. The level of illumination at the car controls, platform, car threshold and car landing sill shall be 5 foot candles (54 lux) minimum.

407.4.6 Elevator Car Controls. Where provided, elevator car controls shall comply with 407.4.6 and 309.4.

EXCEPTION: In existing elevators, where a new car operating panel complying with 407.4.6 is provided, existing car operating panels shall not be required to comply with 407.4.6.

407.4.6.1 Location. Controls shall be located within one of the reach ranges specified in 308.

EXCEPTIONS: 1. Where the elevator panel serves more than 16 openings and a parallel approach is provided, buttons with floor designations shall be permitted to be 54 inches (1370 mm) maximum above the finish floor.

2. In existing elevators, car control buttons with floor designations shall be permitted to be located 54 inches (1370 mm) maximum above the finish floor where a parallel approach is provided.

407.4.6.2 Buttons. Car control buttons with floor designations shall comply with 407.4.6.2 and shall be raised or flush.

EXCEPTION: In existing elevators, buttons shall be permitted to be recessed.

407.4.6.2.1 Size. Buttons shall be 3/4 inch (19 mm) minimum in their smallest dimension.

407.4.6.2.2 Arrangement. Buttons shall be arranged with numbers in ascending order. When two or more columns of buttons are provided they shall read from left to right.

407.4.6.3 Keypads. Car control keypads shall be in a standard telephone keypad arrangement and shall comply with 407.4.7.2.

407.4.6.4 Emergency Controls. Emergency controls shall comply with 407.4.6.4.

407.4.6.4.1 Height. Emergency control buttons shall have their centerlines 35 inches (890 mm) minimum above the finish floor.

407.4.6.4.2 Location. Emergency controls, including the emergency alarm, shall be grouped at the bottom of the panel.

407.4.7 Designations and Indicators of Car Controls. Designations and indicators of car controls shall comply with 407.4.7.

EXCEPTION: In existing elevators, where a new car operating panel complying with 407.4.7 is provided, existing car operating panels shall not be required to comply with 407.4.7.

407.4.7.1 Buttons. Car control buttons shall comply with 407.4.7.1.

407.4.7.1.1 Type. Control buttons shall be identified by *tactile characters* complying with 703.2.

407.4.7.1.2 Location. Raised *character* and braille designations shall be placed immediately to the left of the control button to which the designations apply.

EXCEPTION: Where *space* on an existing car operating panel precludes *tactile* markings to the left of the controls, markings shall be placed as near to the control as possible.

407.4.7.1.3 Symbols. The control button for the emergency stop, alarm, door open, door close, main entry floor, and phone, shall be identified with *tactile* symbols as shown in Table 407.4.7.1.3.

Table 407.4.7.1.3 Elevator Control Button Identification

Control Button	Tactile Symbol	Braille Message
Emergency Stop		"ST"OP" Three cells
Alarm		AL"AR"M Four cells
Door Open		OP"EN" Three cells
Door Close		CLOSE Five cells
Main Entry Floor		MA"IN" Three cells
Phone		PH"ONE" Four cells

407.4.7.1.4 Visible Indicators. Buttons with floor designations shall be provided with visible indicators to show that a call has been registered. The visible indication shall extinguish when the car arrives at the designated floor.

407.4.7.2 Keypads. Keypads shall be identified by *characters* complying with 703.5 and shall be centered on the corresponding keypad button. The number five key shall have a single raised dot. The dot shall be 0.118 inch (3 mm) to 0.120 inch (3.05 mm) base diameter and in other aspects comply with Table 703.3.1.

407.4.8 Car Position Indicators. Audible and visible car position indicators shall be provided in elevator cars.

407.4.8.1 Visible Indicators. Visible indicators shall comply with 407.4.8.1.

407.4.8.1.1 Size. *Characters* shall be ½ inch (13 mm) high minimum.

407.4.8.1.2 Location. Indicators shall be located above the car control panel or above the door.

407.4.8.1.3 Floor Arrival. As the car passes a floor and when a car stops at a floor served by the elevator, the corresponding *character* shall illuminate.

EXCEPTION: Destination-oriented elevators shall not be required to comply with 407.4.8.1.3 provided that the visible indicators extinguish when the call has been answered.

407.4.8.1.4 Destination Indicator. In destination-oriented elevators, a display shall be provided in the car with visible indicators to show car destinations.

407.4.8.2 Audible Indicators. Audible indicators shall comply with 407.4.8.2.

407.4.8.2.1 Signal Type. The signal shall be an automatic verbal annunciator which announces the floor at which the car is about to stop.

EXCEPTION: For elevators other than destination-oriented elevators that have a rated speed of 200 feet per minute (1 m/s) or less, a non-verbal audible signal with a frequency of 1500 Hz maximum which sounds as the car passes or is about to stop at a floor served by the elevator shall be permitted.

407.4.8.2.2 Signal Level. The verbal annunciator shall be 10 dB minimum above ambient, but shall not exceed 80 dB, measured at the annunciator.

407.4.8.2.3 Frequency. The verbal annunciator shall have a frequency of 300 Hz minimum to 3000 Hz maximum.

407.4.9 Emergency Communication. Emergency two-way communication systems shall comply with 308. *Tactile* symbols and *characters* shall be provided adjacent to the device and shall comply with 703.2.

408 Limited-Use/Limited-Application Elevators

408.1 General. Limited-use/limited-application elevators shall comply with 408 and with ASME A17.1 (incorporated by reference, see "Referenced Standards" in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

408.2 Elevator Landings. Landings serving limited-use/limited-application elevators shall comply with 408.2.

408.2.1 Call Buttons. Elevator call buttons and keypads shall comply with 407.2.1.

408.2.2 Hall Signals. Hall signals shall comply with 407.2.2.

408.2.3 Hoistway Signs. Signs at elevator hoistways shall comply with 407.2.3.1.

408.3 Elevator Doors. Elevator hoistway doors shall comply with 408.3.

408.3.1 Sliding Doors. Sliding hoistway and car doors shall comply with 407.3.1 through 407.3.3 and 408.4.1.

408.3.2 Swinging Doors. Swinging hoistway doors shall open and close automatically and shall comply with 404, 407.3.2 and 408.3.2.

408.3.2.1 Power Operation. Swinging doors shall be power-operated and shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

408.3.2.2 Duration. Power-operated swinging doors shall remain open for 20 seconds minimum when activated.

408.4 Elevator Cars. Elevator cars shall comply with 408.4.

408.4.1 Car Dimensions and Doors. Elevator cars shall provide a clear width 42 inches (1065 mm) minimum and a clear depth 54 inches (1370 mm) minimum. Car doors shall be positioned at the narrow ends of cars and shall provide 32 inches (815 mm) minimum clear width.

EXCEPTIONS: 1. Cars that provide a clear width 51 inches (1295 mm) minimum shall be permitted to provide a clear depth 51 inches (1295 mm) minimum provided that car doors provide a clear opening 36 inches (915 mm) wide minimum.

2. Existing elevator cars shall be permitted to provide a clear width 36 inches (915 mm) minimum, clear depth 54 inches (1370 mm) minimum, and a net clear platform area 15 square feet (1.4 m^2) minimum.

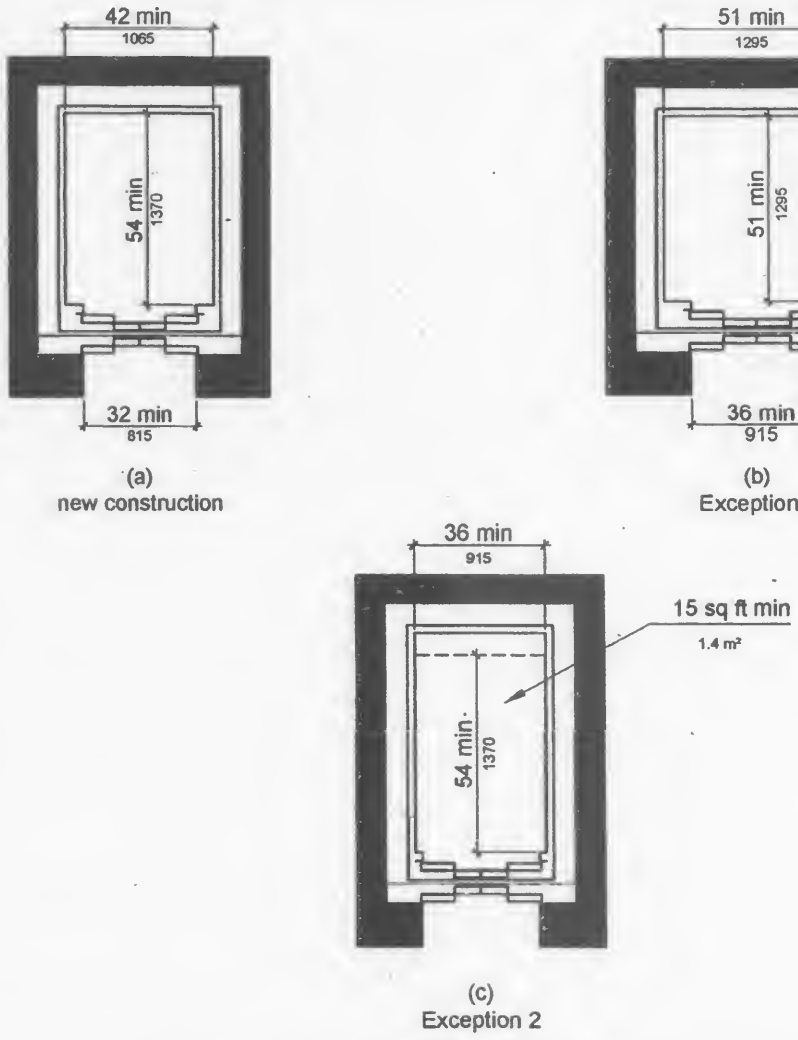


Figure 408.4.1
Limited-Use/Limited-Application (LULA) Elevator Car Dimensions

408.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

408.4.3 Platform to Hoistway Clearance. The platform to hoistway clearance shall comply with 407.4.3.

408.4.4 Leveling. Elevator car leveling shall comply with 407.4.4.

408.4.5 Illumination. Elevator car illumination shall comply with 407.4.5.

408.4.6 Car Controls. Elevator car controls shall comply with 407.4.6. Control panels shall be centered on a side wall.

408.4.7 Designations and Indicators of Car Controls. Designations and indicators of car controls shall comply with 407.4.7.

408.4.8 Emergency Communications. Car emergency signaling devices complying with 407.4.9 shall be provided.

409 Private Residence Elevators

409.1 General. Private residence elevators that are provided within a *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4 shall comply with 409 and with ASME A17.1 (incorporated by reference, see "Referenced Standards" in Chapter 1). They shall be passenger elevators as classified by ASME A17.1. Elevator operation shall be automatic.

409.2 Call Buttons. Call buttons shall be ¾ inch (19 mm) minimum in the smallest dimension and shall comply with 309.

409.3 Elevator Doors. Hoistway doors, car doors, and car gates shall comply with 409.3 and 404.

EXCEPTION: Doors shall not be required to comply with the maneuvering clearance requirements in 404.2.4.1 for approaches to the push side of swinging doors.

409.3.1 Power Operation. Elevator car and hoistway doors and gates shall be power operated and shall comply with ANSI/BHMA A156.19 (1997 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1). Power operated doors and gates shall remain open for 20 seconds minimum when activated.

EXCEPTION: In elevator cars with more than one opening, hoistway doors and gates shall be permitted to be of the manual-open, self-close type.

409.3.2 Location. Elevator car doors or gates shall be positioned at the narrow end of the clear floor *spaces* required by 409.4.1.

409.4 Elevator Cars. Private residence elevator cars shall comply with 409.4.

409.4.1 Inside Dimensions of Elevator Cars. Elevator cars shall provide a clear floor *space* of 36 inches (915 mm) minimum by 48 inches (1220 mm) minimum and shall comply with 305.

409.4.2 Floor Surfaces. Floor surfaces in elevator cars shall comply with 302 and 303.

409.4.3 Platform to Hoistway Clearance. The clearance between the car platform and the edge of any landing sill shall be 1½ inch (38 mm) maximum.

409.4.4 Leveling. Each car shall automatically stop at a floor landing within a tolerance of ½ inch (13 mm) under rated loading to zero loading conditions.

409.4.5 Illumination Levels. Elevator car illumination shall comply with 407.4.5.

409.4.6 Car Controls. Elevator car control buttons shall comply with 409.4.6, 309.3, 309.4, and shall be raised or flush.

409.4.6.1 Size. Control buttons shall be 3/4 inch (19 mm) minimum in their smallest dimension.

409.4.6.2 Location. Control panels shall be on a side wall, 12 inches (305 mm) minimum from any adjacent wall.

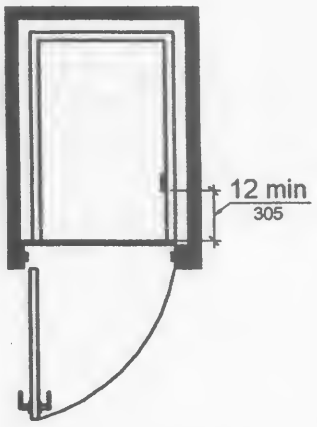


Figure 409.4.6.2
Location of Private Residence Elevator Control Panel

409.4.7 Emergency Communications. Emergency two-way communication systems shall comply with 409.4.7.

409.4.7.1 Type. A telephone and emergency signal device shall be provided in the car.

409.4.7.2 Operable Parts. The telephone and emergency signaling device shall comply with 309.3 and 309.4.

409.4.7.3 Compartment. If the telephone or device is in a closed compartment, the compartment door hardware shall comply with 309.

409.4.7.4 Cord. The telephone cord shall be 29 inches (735 mm) long minimum.

410 Platform Lifts

410.1 General. Platform lifts shall comply with ASME A18.1 (1999 edition or 2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1). Platform lifts shall not be attendant-operated and shall provide unassisted entry and exit from the lift.

> **Advisory 410.1 General.** Inclined stairway chairlifts and inclined and vertical platform lifts are available for short-distance vertical transportation. Because an accessible route requires an 80 inch (2030 mm) vertical clearance, care should be taken in selecting lifts as they may not be equally suitable for use by people using wheelchairs and people standing. If a lift does not provide 80 inch (2030 mm) vertical clearance, it cannot be considered part of an accessible route in new construction.
>
> The ADA and other Federal civil rights laws require that accessible features be maintained in working order so that they are accessible to and usable by those people they are intended to benefit. Building owners are reminded that the ASME A18 Safety Standard for Platform Lifts and Stairway Chairlifts requires routine maintenance and inspections. Isolated or temporary interruptions in service due to maintenance or repairs may be unavoidable; however, failure to take prompt action to effect repairs could constitute a violation of Federal laws and these requirements.

410.2 Floor Surfaces. Floor surfaces in platform lifts shall comply with 302 and 303.

410.3 Clear Floor Space. Clear floor *space* in platform lifts shall comply with 305.

410.4 Platform to Runway Clearance. The clearance between the platform sill and the edge of any runway landing shall be 1¼ inch (32 mm) maximum.

410.5 Operable Parts. Controls for platform lifts shall comply with 309.

410.6 Doors and Gates. Platform lifts shall have low-energy power-operated doors or gates complying with 404.3. Doors shall remain open for 20 seconds minimum. End doors and gates shall provide a clear width 32 inches (815 mm) minimum. Side doors and gates shall provide a clear width 42 inches (1065 mm) minimum.

EXCEPTION: Platform lifts serving two landings maximum and having doors or gates on opposite sides shall be permitted to have self-closing manual doors or gates.

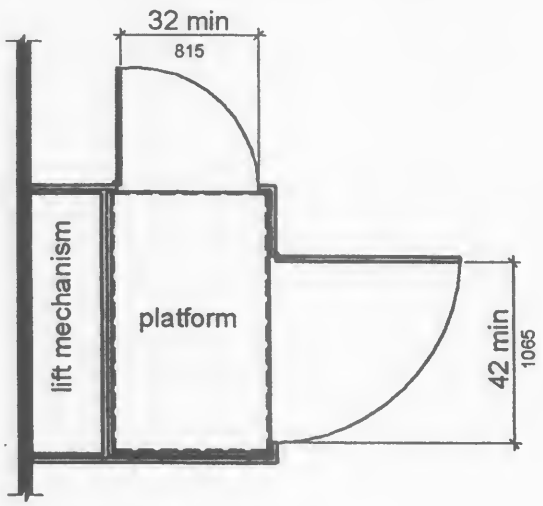


Figure 410.6
Platform Lift Doors and Gates

CHAPTER 5: GENERAL SITE AND BUILDING ELEMENTS

501 General

501.1 Scope. The provisions of Chapter 5 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

502 Parking Spaces

502.1 General. Car and van parking *spaces* shall comply with 502. Where parking *spaces* are marked with lines, width measurements of parking *spaces* and access aisles shall be made from the centerline of the markings.

EXCEPTION: Where parking *spaces* or access aisles are not adjacent to another parking *space* or access aisle, measurements shall be permitted to include the full width of the line defining the parking *space* or access aisle.

502.2 Vehicle Spaces. Car parking *spaces* shall be 96 inches (2440 mm) wide minimum and van parking *spaces* shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.

EXCEPTION: Van parking *spaces* shall be permitted to be 96 inches (2440 mm) wide minimum where the access aisle is 96 inches (2440 mm) wide minimum.

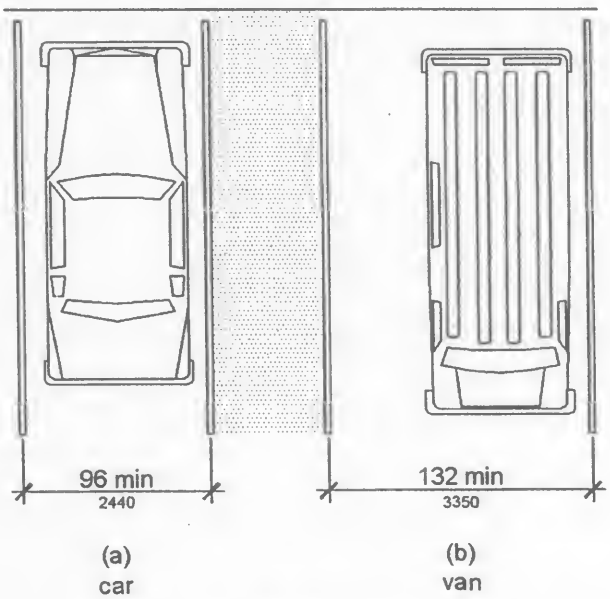


Figure 502.2
Vehicle Parking Spaces

502.3 Access Aisle. Access aisles serving parking *spaces* shall comply with 502.3. Access aisles shall adjoin an *accessible* route. Two parking *spaces* shall be permitted to share a common access aisle.

> **Advisory 502.3 Access Aisle.** Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids. Where possible, it is preferable that the accessible route not pass behind parked vehicles.

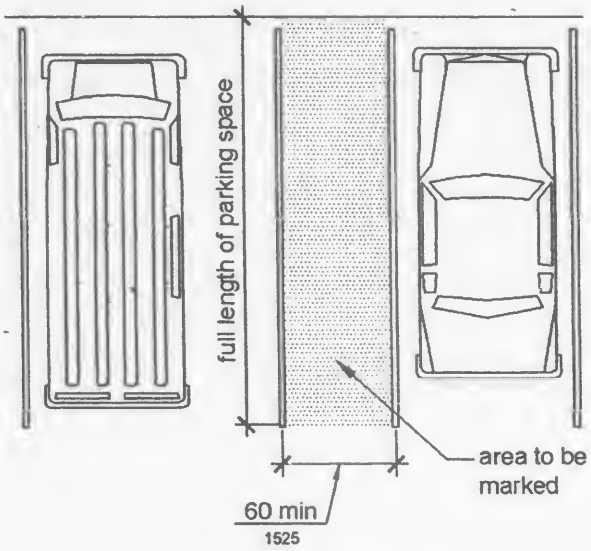


Figure 502.3
Parking Space Access Aisle

502.3.1 Width. Access aisles serving car and van parking *spaces* shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking *spaces* they serve.

502.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

> **Advisory 502.3.3 Marking.** The method and color of marking are not specified by these requirements but may be addressed by State or local laws or regulations. Because these requirements permit the van access aisle to be as wide as a parking space, it is important that the aisle be clearly marked.

502.3.4 Location. Access aisles shall not overlap the *vehicular way*. Access aisles shall be permitted to be placed on either side of the parking *space* except for angled van parking *spaces* which shall have access aisles located on the passenger side of the parking *spaces*.

Advisory 502.3.4 Location. Wheelchair lifts typically are installed on the passenger side of vans. Many drivers, especially those who operate vans, find it more difficult to back into parking spaces than to back out into comparatively unrestricted vehicular lanes. For this reason, where a van and car share an access aisle, consider locating the van space so that the access aisle is on the passenger side of the van space.

502.4 Floor or Ground Surfaces. Parking *spaces* and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking *spaces* they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

Advisory 502.4 Floor or Ground Surfaces. Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles. The exception allows sufficient slope for drainage. Built-up curb ramps are not permitted to project into access aisles and parking spaces because they would create slopes greater than 1:48.

502.5 Vertical Clearance. Parking *spaces* for vans and access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2490 mm) minimum.

Advisory 502.5 Vertical Clearance. Signs provided at entrances to parking facilities informing drivers of clearances and the location of van accessible parking spaces can provide useful customer assistance.

502.6 Identification. Parking *space* identification signs shall include the International Symbol of *Accessibility* complying with 703.7.2.1. Signs identifying van parking *spaces* shall contain the designation "van accessible." Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

Advisory 502.6 Identification. The required "van accessible" designation is intended to be informative, not restrictive, in identifying those spaces that are better suited for van use. Enforcement of motor vehicle laws, including parking privileges, is a local matter.

502.7 Relationship to Accessible Routes. Parking *spaces* and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent *accessible* routes.

Advisory 502.7 Relationship to Accessible Routes. Wheel stops are an effective way to prevent vehicle overhangs from reducing the clear width of accessible routes.

503 Passenger Loading Zones

503.1 General. Passenger loading zones shall comply with 503.

503.2 Vehicle Pull-Up Space. Passenger loading zones shall provide a vehicular pull-up *space* 96 inches (2440 mm) wide minimum and 20 feet (6100 mm) long minimum.

503.3 Access Aisle. Passenger loading zones shall provide access aisles complying with 503 adjacent to the vehicle pull-up space. Access aisles shall adjoin an *accessible* route and shall not overlap the *vehicular way.*

503.3.1 Width. Access aisles serving vehicle pull-up *spaces* shall be 60 inches (1525 mm) wide minimum.

503.3.2 Length. Access aisles shall extend the full length of the vehicle pull-up *spaces* they serve.

503.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

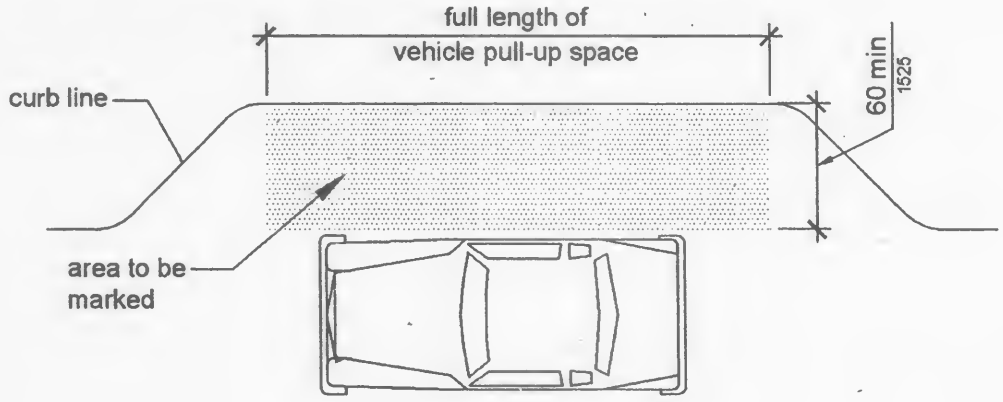


Figure 503.3
Passenger Loading Zone Access Aisle

503.4 Floor and Ground Surfaces. Vehicle pull-up *spaces* and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the vehicle pull-up *space* they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

503.5 Vertical Clearance. Vehicle pull-up *spaces*, access aisles serving them, and a vehicular route from an *entrance* to the passenger loading zone, and from the passenger loading zone to a vehicular exit shall provide a vertical clearance of 114 inches (2895 mm) minimum.

504 Stairways

504.1 General. Stairs shall comply with 504.

504.2 Treads and Risers. All steps on a flight of stairs shall have uniform riser heights and uniform tread depths. Risers shall be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum. Treads shall be 11 inches (280 mm) deep minimum.

504.3 Open Risers. Open risers are not permitted.

504.4 Tread Surface. Stair treads shall comply with 302. Changes in level are not permitted.
EXCEPTION: Treads shall be permitted to have a slope not steeper than 1:48.

> **Advisory 504.4 Tread Surface.** Consider providing visual contrast on tread nosings, or at the leading edges of treads without nosings, so that stair treads are more visible for people with low vision.

504.5 Nosings. The radius of curvature at the leading edge of the tread shall be ½ inch (13 mm) maximum. Nosings that project beyond risers shall have the underside of the leading edge curved or beveled. Risers shall be permitted to slope under the tread at an angle of 30 degrees maximum from vertical. The permitted projection of the nosing shall extend 1½ inches (38 mm) maximum over the tread below.

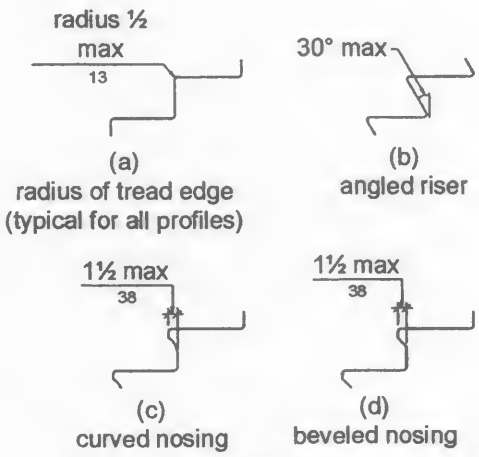


Figure 504.5
Stair Nosings

504.6 Handrails. Stairs shall have handrails complying with 505.

504.7 Wet Conditions. Stair treads and landings subject to wet conditions shall be designed to prevent the accumulation of water.

505 Handrails

505.1 General. Handrails provided along walking surfaces complying with 403, required at *ramps* complying with 405, and required at stairs complying with 504 shall comply with 505.

> **Advisory 505.1 General.** Handrails are required on ramp runs with a rise greater than 6 inches (150 mm) (see 405.8) and on certain stairways (see 504). Handrails are not required on walking surfaces with running slopes less than 1:20. However, handrails are required to comply with 505 when they are provided on walking surfaces with running slopes less than 1:20 (see 403.6). Sections 505.2, 505.3, and 505.10 do not apply to handrails provided on walking surfaces with running slopes less than 1:20 as these sections only reference requirements for ramps and stairs.

505.2 Where Required. Handrails shall be provided on both sides of stairs and *ramps*.

EXCEPTION: In *assembly areas*, handrails shall not be required on both sides of aisle *ramps* where a handrail is provided at either side or within the aisle width.

505.3 Continuity. Handrails shall be continuous within the full length of each stair flight or *ramp* run. Inside handrails on switchback or dogleg stairs and *ramps* shall be continuous between flights or runs.

EXCEPTION: In *assembly areas*, handrails on *ramps* shall not be required to be continuous in aisles serving seating.

505.4 Height. Top of gripping surfaces of handrails shall be 34 inches (865 mm) minimum and 38 inches (965 mm) maximum vertically above walking surfaces, stair nosings, and *ramp* surfaces. Handrails shall be at a consistent height above walking surfaces, stair nosings, and *ramp* surfaces.

> **Advisory 505.4 Height.** The requirements for stair and ramp handrails in this document are for adults. When children are the principle users in a building or facility (e.g., elementary schools), a second set of handrails at an appropriate height can assist them and aid in preventing accidents. A maximum height of 28 inches (710 mm) measured to the top of the gripping surface from the ramp surface or stair nosing is recommended for handrails designed for children. Sufficient vertical clearance between upper and lower handrails, 9 inches (230 mm) minimum, should be provided to help prevent entrapment.

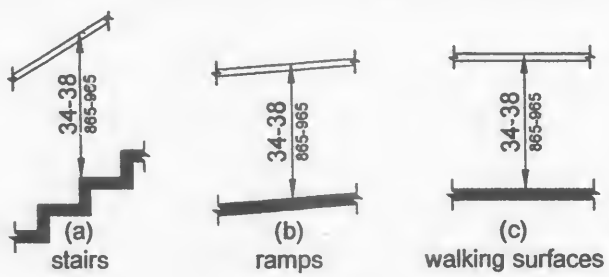


Figure 505.4
Handrail Height

505.5 Clearance. Clearance between handrail gripping surfaces and adjacent surfaces shall be 1½ inches (38 mm) minimum.

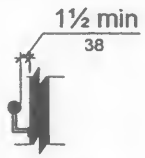


Figure 505.5
Handrail Clearance

505.6 Gripping Surface. Handrail gripping surfaces shall be continuous along their length and shall not be obstructed along their tops or sides. The bottoms of handrail gripping surfaces shall not be obstructed for more than 20 percent of their length. Where provided, horizontal projections shall occur 1½ inches (38 mm) minimum below the bottom of the handrail gripping surface.

EXCEPTIONS: 1. Where handrails are provided along walking surfaces with slopes not steeper than 1:20, the bottoms of handrail gripping surfaces shall be permitted to be obstructed along their entire length where they are integral to crash rails or bumper guards.

2. The distance between horizontal projections and the bottom of the gripping surface shall be permitted to be reduced by 1/8 inch (3.2 mm) for each ½ inch (13 mm) of additional handrail perimeter dimension that exceeds 4 inches (100 mm).

Advisory 505.6 Gripping Surface. People with disabilities, older people, and others benefit from continuous gripping surfaces that permit users to reach the fingers outward or downward to grasp the handrail, particularly as the user senses a loss of equilibrium or begins to fall.

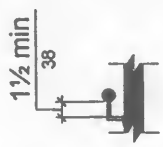


Figure 505.6
Horizontal Projections Below Gripping Surface

505.7 Cross Section. Handrail gripping surfaces shall have a cross section complying with 505.7.1 or 505.7.2.

505.7.1 Circular Cross Section. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 1¼ inches (32 mm) minimum and 2 inches (51 mm) maximum.

505.7.2 Non-Circular Cross Sections. Handrail gripping surfaces with a non-circular cross section shall have a perimeter dimension of 4 inches (100 mm) minimum and 6¼ inches (160 mm) maximum, and a cross-section dimension of 2¼ inches (57 mm) maximum.

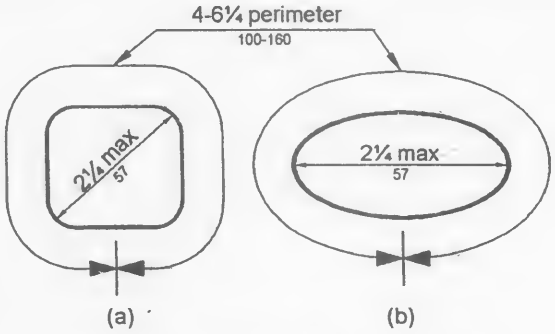


Figure 505.7.2
Handrail Non-Circular Cross Section

505.8 Surfaces. Handrail gripping surfaces and any surfaces adjacent to them shall be free of sharp or abrasive *elements* and shall have rounded edges.

505.9 Fittings. Handrails shall not rotate within their fittings.

505.10 Handrail Extensions. Handrail gripping surfaces shall extend beyond and in the same direction of stair flights and *ramp* runs in accordance with 505.10.

EXCEPTIONS: 1. Extensions shall not be required for continuous handrails at the inside turn of switchback or dogleg stairs and *ramps*.

2. In *assembly areas*, extensions shall not be required for *ramp* handrails in aisles serving seating where the handrails are discontinuous to provide access to seating and to permit crossovers within aisles.

3. In *alterations*, full extensions of handrails shall not be required where such extensions would be hazardous due to plan configuration.

505.10.1 Top and Bottom Extension at Ramps. *Ramp* handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beyond the top and bottom of *ramp* runs. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent *ramp* run.

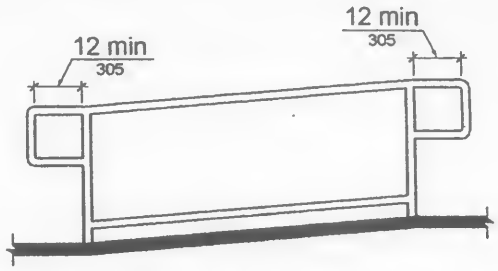


Figure 505.10.1
Top and Bottom Handrail Extension at Ramps

505.10.2 Top Extension at Stairs. At the top of a stair flight, handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beginning directly above the first riser nosing. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.

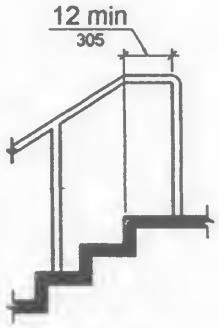
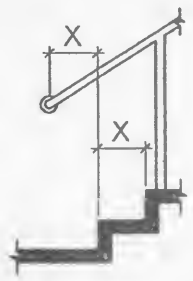


Figure 505.10.2
Top Handrail Extension at Stairs

505.10.3 Bottom Extension at Stairs. At the bottom of a stair flight, handrails shall extend at the slope of the stair flight for a horizontal distance at least equal to one tread depth beyond the last riser nosing. Extension shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent stair flight.



Note: X = tread depth

Figure 505.10.3
Bottom Handrail Extension at Stairs

CHAPTER 6: PLUMBING ELEMENTS AND FACILITIES

601 General

601.1 Scope. The provisions of Chapter 6 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

602 Drinking Fountains

602.1 General. Drinking fountains shall comply with 307 and 602.

602.2 Clear Floor Space. Units shall have a clear floor or ground *space* complying with 305 positioned for a forward approach and centered on the unit. Knee and toe clearance complying with 306 shall be provided.

EXCEPTION: A parallel approach complying with 305 shall be permitted at units for *children's use* where the spout is 30 inches (760 mm) maximum above the finish floor or ground and is 3½ inches (90 mm) maximum from the front edge of the unit, including bumpers.

602.3 Operable Parts. *Operable parts* shall comply with 309.

602.4 Spout Height. Spout outlets shall be 36 inches (915 mm) maximum above the finish floor or ground.

602.5 Spout Location. The spout shall be located 15 inches (380 mm) minimum from the vertical support and 5 inches (125 mm) maximum from the front edge of the unit, including bumpers.

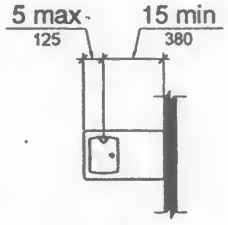


Figure 602.5
Drinking Fountain Spout Location

602.6 Water Flow. The spout shall provide a flow of water 4 inches (100 mm) high minimum and shall be located 5 inches (125 mm) maximum from the front of the unit. The angle of the water stream shall be measured horizontally relative to the front face of the unit. Where spouts are located less than 3 inches (75 mm) of the front of the unit, the angle of the water stream shall be 30 degrees maximum. Where spouts are located between 3 inches (75 mm) and 5 inches (125 mm) maximum from the front of the unit, the angle of the water stream shall be 15 degrees maximum.

Advisory 602.6 Water Flow. The purpose of requiring the drinking fountain spout to produce a flow of water 4 inches (100 mm) high minimum is so that a cup can be inserted under the flow of water to provide a drink of water for an individual who, because of a disability, would otherwise be incapable of using the drinking fountain.

602.7 Drinking Fountains for Standing Persons. Spout outlets of drinking fountains for standing persons shall be 38 inches (965 mm) minimum and 43 inches (1090 mm) maximum above the finish floor or ground.

603 Toilet and Bathing Rooms

603.1 General. Toilet and bathing rooms shall comply with 603.

603.2 Clearances. Clearances shall comply with 603.2.

603.2.1 Turning Space. Turning *space* complying with 304 shall be provided within the room.

603.2.2 Overlap. Required clear floor *spaces*, clearance at fixtures, and turning *space* shall be permitted to overlap.

603.2.3 Door Swing. Doors shall not swing into the clear floor *space* or clearance required for any fixture. Doors shall be permitted to swing into the required turning *space*.

EXCEPTIONS: 1. Doors to a toilet room or bathing room for a single occupant accessed only through a private office and not for *common use* or *public use* shall be permitted to swing into the clear floor *space* or clearance provided the swing of the door can be reversed to comply with 603.2.3.

2. Where the toilet room or bathing room is for individual use and a clear floor *space* complying with 305.3 is provided within the room beyond the arc of the door swing, doors shall be permitted to swing into the clear floor *space* or clearance required for any fixture.

Advisory 603.2.3 Door Swing Exception 1. At the time the door is installed, and if the door swing is reversed in the future, the door must meet all the requirements specified in 404. Additionally, the door swing cannot reduce the required width of an accessible route. Also, avoid violating other building or life safety codes when the door swing is reversed.

603.3 Mirrors. Mirrors located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 40 inches (1015 mm) maximum above the finish floor or ground. Mirrors not located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 35 inches (890 mm) maximum above the finish floor or ground.

Advisory 603.3 Mirrors. A single full-length mirror can accommodate a greater number of people, including children. In order for mirrors to be usable by people who are ambulatory and people and people who use wheelchairs, the top edge of mirrors should be 74 inches (1880 mm) minimum from the floor or ground.

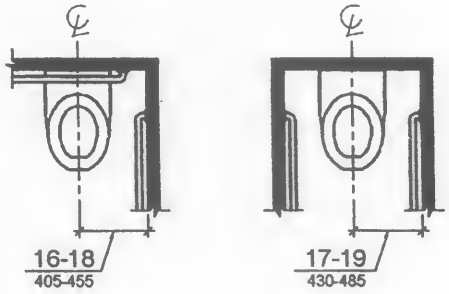
603.4 Coat Hooks and Shelves. Coat hooks shall be located within one of the reach ranges specified in 308. Shelves shall be located 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor.

604 Water Closets and Toilet Compartments

604.1 General. Water closets and toilet compartments shall comply with 604.2 through 604.8.

EXCEPTION: Water closets and toilet compartments for *children's use* shall be permitted to comply with 604.9.

604.2 Location. The water closet shall be positioned with a wall or partition to the rear and to one side. The centerline of the water closet shall be 16 inches (405 mm) minimum to 18 inches (455 mm) maximum from the side wall or partition, except that the water closet shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum from the side wall or partition in the ambulatory *accessible* toilet compartment specified in 604.8.2. Water closets shall be arranged for a left-hand or right-hand approach.



(a) wheelchair accessible water closets

(b) ambulatory accessible water closets

Figure 604.2
Water Closet Location

604.3 Clearance. Clearances around water closets and in toilet compartments shall comply with 604.3.

604.3.1 Size. Clearance around a water closet shall be 60 inches (1525 mm) minimum measured perpendicular from the side wall and 56 inches (1420 mm) minimum measured perpendicular from the rear wall.

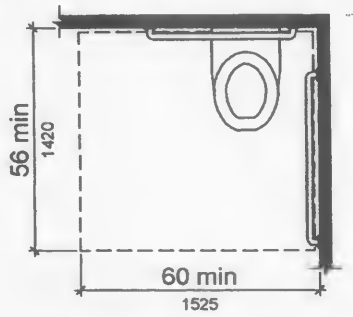


Figure 604.3.1
Size of Clearance at Water Closets

604.3.2 Overlap. The required clearance around the water closet shall be permitted to overlap the water closet, associated grab bars, dispensers, sanitary napkin disposal units, coat hooks, shelves, *accessible* routes, clear floor *space* and clearances required at other fixtures, and the turning *space*. No other fixtures or obstructions shall be located within the required water closet clearance.

EXCEPTION: In *residential dwelling units*, a lavatory complying with 606 shall be permitted on the rear wall 18 inches (455 mm) minimum from the water closet centerline where the clearance at the water closet is 66 inches (1675 mm) minimum measured perpendicular from the rear wall.

Advisory 604.3.2 Overlap. When the door to the toilet room is placed directly in front of the water closet, the water closet cannot overlap the required maneuvering clearance for the door inside the room.

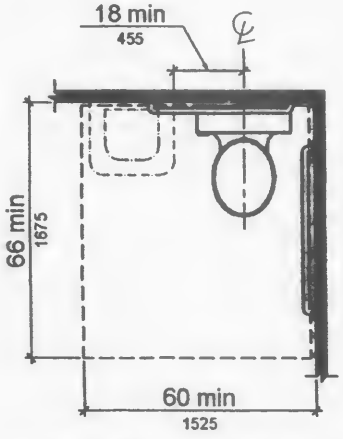


Figure 604.3.2 (Exception)
Overlap of Water Closet Clearance in Residential Dwelling Units

604.4 Seats. The seat height of a water closet above the finish floor shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum measured to the top of the seat. Seats shall not be sprung to return to a lifted position.

EXCEPTIONS: 1. A water closet in a toilet room for a single occupant accessed only through a private office and not for *common use* or *public use* shall not be required to comply with 604.4.

2. In *residential dwelling units*, the height of water closets shall be permitted to be 15 inches (380 mm) minimum and 19 inches (485 mm) maximum above the finish floor measured to the top of the seat.

604.5 Grab Bars. Grab bars for water closets shall comply with 609. Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a toilet room for a single occupant accessed only through a private office and not for *common use* or *public use* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

2. In *residential dwelling units*, grab bars shall not be required to be installed in toilet or bathrooms provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

3. In detention or correction *facilities*, grab bars shall not be required to be installed in housing or holding cells that are specially designed without protrusions for purposes of suicide prevention.

Advisory 604.5 Grab Bars Exception 2. Reinforcement must be sufficient to permit the installation of rear and side wall grab bars that fully meet all accessibility requirements including, but not limited to, required length, installation height, and structural strength.

604.5.1 Side Wall. The side wall grab bar shall be 42 inches (1065 mm) long minimum, located 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm) minimum from the rear wall.

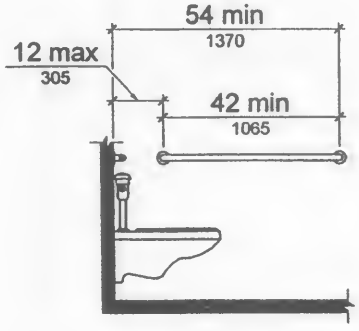


Figure 604.5.1
Side Wall Grab Bar at Water Closets

604.5.2 Rear Wall. The rear wall grab bar shall be 36 inches (915 mm) long minimum and extend from the centerline of the water closet 12 inches (305 mm) minimum on one side and 24 inches (610 mm) minimum on the other side.

EXCEPTIONS: 1. The rear grab bar shall be permitted to be 24 inches (610 mm) long minimum, centered on the water closet, where wall *space* does not permit a length of 36 inches (915 mm) minimum due to the location of a recessed fixture adjacent to the water closet.

2. Where an *administrative authority* requires flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then the rear grab bar shall be permitted to be split or shifted to the open side of the toilet area.

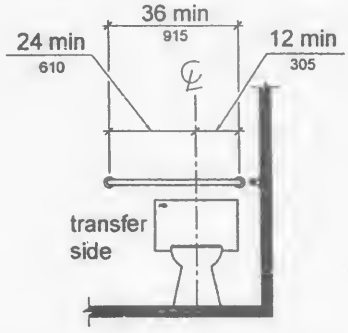


Figure 604.5.2
Rear Wall Grab Bar at Water Closets

604.6 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309. Flush controls shall be located on the open side of the water closet except in ambulatory *accessible* compartments complying with 604.8.2.

Advisory 604.6 Flush Controls. If plumbing valves are located directly behind the toilet seat, flush valves and related plumbing can cause injury or imbalance when a person leans back against them. To prevent causing injury or imbalance, the plumbing can be located behind walls or to the side of the toilet; or if approved by the local authority having jurisdiction, provide a toilet seat lid.

604.7 Dispensers. Toilet paper dispensers shall comply with 309.4 and shall be 7 inches (180 mm) minimum and 9 inches (230 mm) maximum in front of the water closet measured to the centerline of the dispenser. The outlet of the dispenser shall be 15 inches (380 mm) minimum and 48 inches (1220 mm) maximum above the finish floor and shall not be located behind grab bars. Dispensers shall not be of a type that controls delivery or that does not allow continuous paper flow.

Advisory 604.7 Dispensers. If toilet paper dispensers are installed above the side wall grab bar, the outlet of the toilet paper dispenser must be 48 inches (1220 mm) maximum above the finish floor and the top of the gripping surface of the grab bar must be 33 inches (840 mm) minimum and 36 inches (915 mm) maximum above the finish floor.

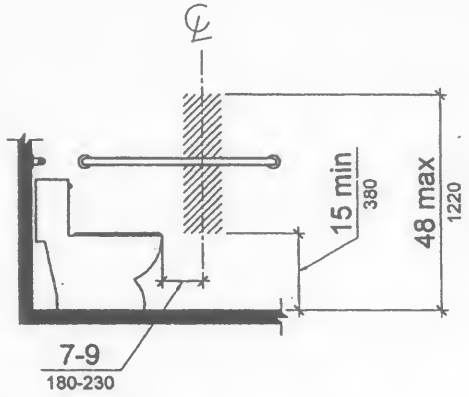


Figure 604.7
Dispenser Outlet Location

604.8 Toilet Compartments. Wheelchair *accessible* toilet compartments shall meet the requirements of 604.8.1 and 604.8.3. Compartments containing more than one plumbing fixture shall comply with 603. Ambulatory *accessible* compartments shall comply with 604.8.2 and 604.8.3.

604.8.1 Wheelchair Accessible Compartments. Wheelchair *accessible* compartments shall comply with 604.8.1.

604.8.1.1 Size. Wheelchair *accessible* compartments shall be 60 inches (1525 mm) wide minimum measured perpendicular to the side wall, and 56 inches (1420 mm) deep minimum for wall hung water closets and 59 inches (1500 mm) deep minimum for floor mounted water closets measured perpendicular to the rear wall. Wheelchair *accessible* compartments for *children's use* shall be 60 inches (1525 mm) wide minimum measured perpendicular to the side wall, and 59 inches (1500 mm) deep minimum for wall hung and floor mounted water closets measured perpendicular to the rear wall.

Advisory 604.8.1.1 Size. The minimum space required in toilet compartments is provided so that a person using a wheelchair can maneuver into position at the water closet. This space cannot be obstructed by baby changing tables or other fixtures or conveniences, except as specified at 604.3.2 (Overlap). If toilet compartments are to be used to house fixtures other than those associated with the water closet, they must be designed to exceed the minimum space requirements. Convenience fixtures such as baby changing tables must also be accessible to people with disabilities as well as to other users. Toilet compartments that are designed to meet, and not exceed, the minimum space requirements may not provide adequate space for maneuvering into position at a baby changing table.

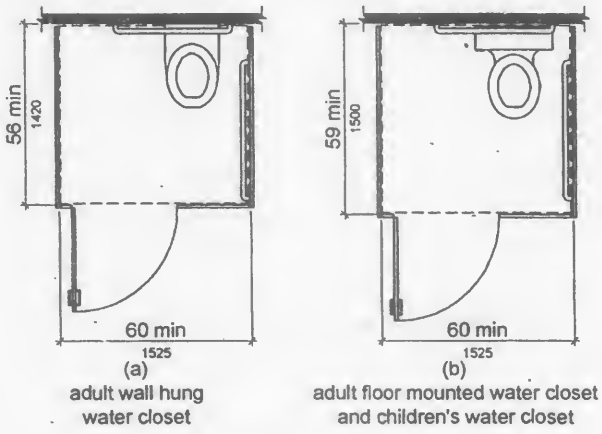


Figure 604.8.1.1
Size of Wheelchair Accessible Toilet Compartment

604.8.1.2 Doors. Toilet compartment doors, including door hardware, shall comply with 404 except that if the approach is to the latch side of the compartment door, clearance between the door side of the compartment and any obstruction shall be 42 inches (1065 mm) minimum. Doors shall be located in the front partition or in the side wall or partition farthest from the water closet. Where located in the front partition, the door opening shall be 4 inches (100 mm) maximum from the side wall or partition farthest from the water closet. Where located in the side wall or partition, the door opening shall be 4 inches (100 mm) maximum from the front partition. The door shall be self-closing. A door pull complying with 404.2.7 shall be placed on both sides of the door near the latch. Toilet compartment doors shall not swing into the minimum required compartment area.

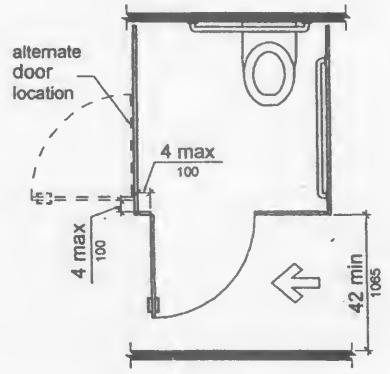


Figure 604.8.1.2
Wheelchair Accessible Toilet Compartment Doors

604.8.1.3 Approach. Compartments shall be arranged for left-hand or right-hand approach to the water closet.

604.8.1.4 Toe Clearance. The front partition and at least one side partition shall provide a toe clearance of 9 inches (230 mm) minimum above the finish floor and 6 inches (150 mm) deep minimum beyond the compartment-side face of the partition, exclusive of partition support members. Compartments for *children's use* shall provide a toe clearance of 12 inches (305 mm) minimum above the finish floor.

EXCEPTION: Toe clearance at the front partition is not required in a compartment greater than 62 inches (1575 mm) deep with a wall-hung water closet or 65 inches (1650 mm) deep with a floor-mounted water closet. Toe clearance at the side partition is not required in a compartment greater than 66 inches (1675 mm) wide. Toe clearance at the front partition is not required in a compartment for *children's use* that is greater than 65 inches (1650 mm) deep.

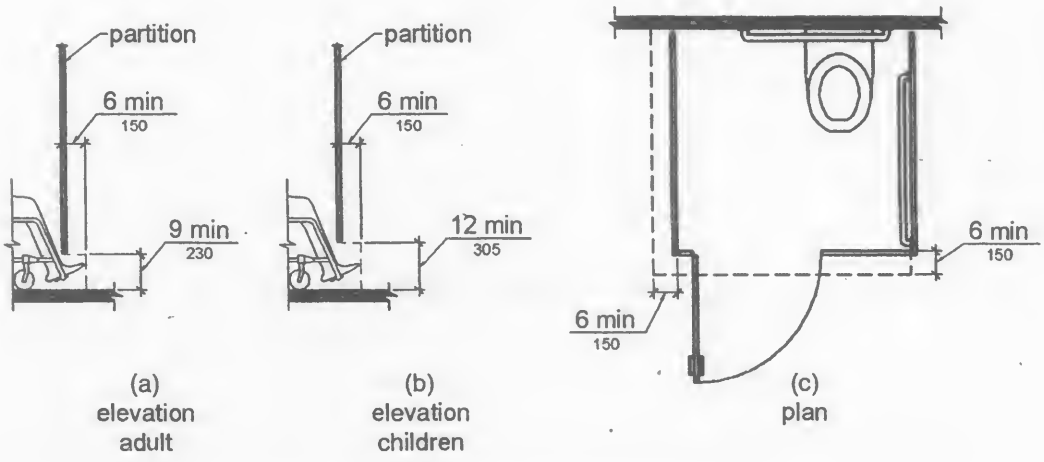


Figure 604.8.1.4
Wheelchair Accessible Toilet Compartment Toe Clearance

604.8.1.5 Grab Bars. Grab bars shall comply with 609. A side-wall grab bar complying with 604.5.1 shall be provided and shall be located on the wall closest to the water closet. In addition, a rear-wall grab bar complying with 604.5.2 shall be provided.

604.8.2 Ambulatory Accessible Compartments. Ambulatory *accessible* compartments shall comply with 604.8.2.

604.8.2.1 Size. Ambulatory *accessible* compartments shall have a depth of 60 inches (1525 mm) minimum and a width of 35 inches (890 mm) minimum and 37 inches (940 mm) maximum.

604.8.2.2 Doors. Toilet compartment doors, including door hardware, shall comply with 404, except that if the approach is to the latch side of the compartment door, clearance between the door side of the compartment and any obstruction shall be 42 inches (1065 mm) minimum. The door shall be self-closing. A door pull complying with 404.2.7 shall be placed on both sides of the door near the latch. Toilet compartment doors shall not swing into the minimum required compartment area.

604.8.2.3 Grab Bars. Grab bars shall comply with 609. A side-wall grab bar complying with 604.5.1 shall be provided on both sides of the compartment.

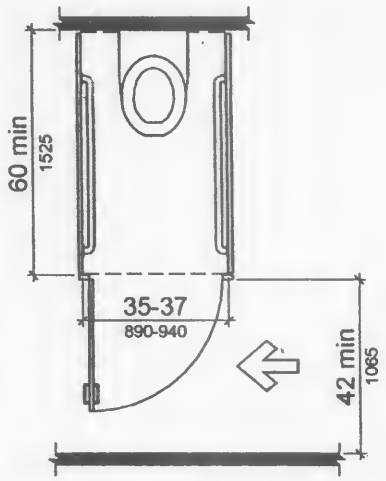


Figure 604.8.2
Ambulatory Accessible Toilet Compartment

604.8.3 Coat Hooks and Shelves. Coat hooks shall be located within one of the reach ranges specified in 308. Shelves shall be located 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor.

604.9 Water Closets and Toilet Compartments for Children's Use. Water closets and toilet compartments for *children's use* shall comply with 604.9.

Advisory 604.9 Water Closets and Toilet Compartments for Children's Use. The requirements in 604.9 are to be followed where the exception for children's water closets in 604.1 is used. The following table provides additional guidance in applying the specifications for water closets for children according to the age group served and reflects the differences in the size, stature, and reach ranges of children ages 3 through 12. The specifications chosen should correspond to the age of the primary user group. The specifications of one age group should be applied consistently in the installation of a water closet and related elements.

Advisory Specifications for Water Closets Serving Children Ages 3 through 12			
	Ages 3 and 4	**Ages 5 through 8**	**Ages 9 through 12**
Water Closet Centerline	12 inches (305 mm)	12 to 15 inches (305 to 380 mm)	15 to 18 inches (380 to 455 mm)
Toilet Seat Height	11 to 12 inches (280 to 305 mm)	12 to 15 inches (305 to 380 mm)	15 to 17 inches (380 to 430 mm)
Grab Bar Height	18 to 20 inches (455 to 510 mm)	20 to 25 inches (510 to 635 mm)	25 to 27 inches (635 to 685 mm)
Dispenser Height	14 inches (355 mm)	14 to 17 inches (355 to 430 mm)	17 to 19 inches (430 to 485 mm)

604.9.1 Location. The water closet shall be located with a wall or partition to the rear and to one side. The centerline of the water closet shall be 12 inches (305 mm) minimum and 18 inches (455 mm) maximum from the side wall or partition, except that the water closet shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum from the side wall or partition in the ambulatory *accessible* toilet compartment specified in 604.8.2. Compartments shall be arranged for left-hand or right-hand approach to the water closet.

604.9.2 Clearance. Clearance around a water closet shall comply with 604.3.

604.9.3 Height. The height of water closets shall be 11 inches (280 mm) minimum and 17 inches (430 mm) maximum measured to the top of the seat. Seats shall not be sprung to return to a lifted position.

604.9.4 Grab Bars. Grab bars for water closets shall comply with 604.5.

604.9.5 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309.2 and 309.4 and shall be installed 36 inches (915 mm) maximum above the finish floor. Flush controls shall be located on the open side of the water closet except in ambulatory *accessible* compartments complying with 604.8.2.

604.9.6 Dispensers. Toilet paper dispensers shall comply with 309.4 and shall be 7 inches (180 mm) minimum and 9 inches (230 mm) maximum in front of the water closet measured to the centerline of the dispenser. The outlet of the dispenser shall be 14 inches (355 mm) minimum and 19 inches (485 mm) maximum above the finish floor. There shall be a clearance of 1½ inches (38 mm) minimum below the grab bar. Dispensers shall not be of a type that controls delivery or that does not allow continuous paper flow.

604.9.7 Toilet Compartments. Toilet compartments shall comply with 604.8.

605 Urinals

605.1 General. Urinals shall comply with 605.

> **Advisory 605.1 General.** Stall-type urinals provide greater accessibility for a broader range of persons, including people of short stature.

605.2 Height and Depth. Urinals shall be the stall-type or the wall-hung type with the rim 17 inches (430 mm) maximum above the finish floor or ground. Urinals shall be 13½ inches (345 mm) deep minimum measured from the outer face of the urinal rim to the back of the fixture.

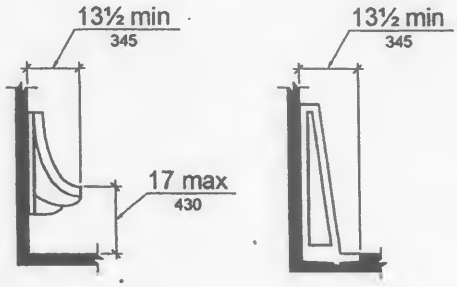


Figure 605.2
Height and Depth of Urinals

605.3 Clear Floor Space. A clear floor or ground *space* complying with 305 positioned for forward approach shall be provided.

605.4 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with 309.

606 Lavatories and Sinks

606.1 General. Lavatories and sinks shall comply with 606.

> **Advisory 606.1 General.** If soap and towel dispensers are provided, they must be located within the reach ranges specified in 308. Locate soap and towel dispensers so that they are conveniently usable by a person at the accessible lavatory.

606.2 Clear Floor Space. A clear floor *space* complying with 305, positioned for a forward approach, and knee and toe clearance complying with 306 shall be provided.

EXCEPTIONS: 1. A parallel approach complying with 305 shall be permitted to a kitchen sink in a *space* where a cook top or conventional range is not provided and to wet bars.

2. A lavatory in a toilet room or bathing *facility* for a single occupant accessed only through a private office and not for *common use* or *public use* shall not be required to provide knee and toe clearance complying with 306.

3. In *residential dwelling units*, cabinetry shall be permitted under lavatories and kitchen sinks provided that all of the following conditions are met:

(a) the cabinetry can be removed without removal or replacement of the fixture;

(b) the finish floor extends under the cabinetry; and

(c) the walls behind and surrounding the cabinetry are finished.

4. A knee clearance of 24 inches (610 mm) minimum above the finish floor or ground shall be permitted at lavatories and sinks used primarily by children 6 through 12 years where the rim or counter surface is 31 inches (785 mm) maximum above the finish floor or ground.

5. A parallel approach complying with 305 shall be permitted to lavatories and sinks used primarily by children 5 years and younger.

6. The dip of the overflow shall not be considered in determining knee and toe clearances.

7. No more than one bowl of a multi-bowl sink shall be required to provide knee and toe clearance complying with 306.

606.3 Height. Lavatories and sinks shall be installed with the front of the higher of the rim or counter surface 34 inches (865 mm) maximum above the finish floor or ground.

EXCEPTIONS: 1. A lavatory in a toilet or bathing *facility* for a single occupant accessed only through a private office and not for *common use* or *public use* shall not be required to comply with 606.3.

2. In *residential dwelling unit* kitchens, sinks that are adjustable to variable heights, 29 inches (735 mm) minimum and 36 inches (915 mm) maximum, shall be permitted where rough-in plumbing permits connections of supply and drain pipes for sinks mounted at the height of 29 inches (735 mm).

606.4 Faucets. Controls for faucets shall comply with 309. Hand-operated metering faucets shall remain open for 10 seconds minimum.

606.5 Exposed Pipes and Surfaces. Water supply and drain pipes under lavatories and sinks shall be insulated or otherwise configured to protect against contact. There shall be no sharp or abrasive surfaces under lavatories and sinks.

607 Bathtubs

607.1 General. Bathtubs shall comply with 607.

607.2 Clearance. Clearance in front of bathtubs shall extend the length of the bathtub and shall be 30 inches (760 mm) wide minimum. A lavatory complying with 606 shall be permitted at the control end of the clearance. Where a permanent seat is provided at the head end of the bathtub, the clearance shall extend 12 inches (305 mm) minimum beyond the wall at the head end of the bathtub.

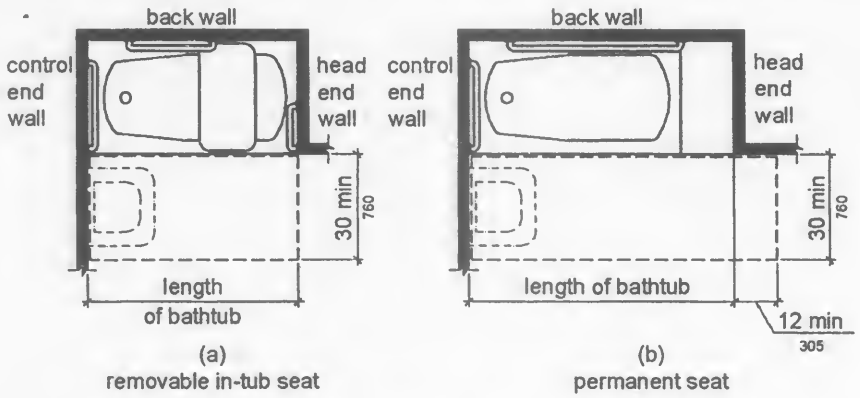


Figure 607.2
Clearance for Bathtubs

607.3 Seat. A permanent seat at the head end of the bathtub or a removable in-tub seat shall be provided. Seats shall comply with 610.

607.4 Grab Bars. Grab bars for bathtubs shall comply with 609 and shall be provided in accordance with 607.4.1 or 607.4.2.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a bathtub located in a bathing *facility* for a single occupant accessed only through a private office and not for *common use* or *public use* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 607.4.

2. In *residential dwelling units*, grab bars shall not be required to be installed in bathtubs located in bathing *facilities* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 607.4.

607.4.1 Bathtubs With Permanent Seats. For bathtubs with permanent seats, grab bars shall be provided in accordance with 607.4.1.

607.4.1.1 Back Wall. Two grab bars shall be installed on the back wall, one located in accordance with 609.4 and the other located 8 inches (205 mm) minimum and 10 inches (255 mm) maximum above the rim of the bathtub. Each grab bar shall be installed 15 inches (380 mm) maximum from the head end wall and 12 inches (305 mm) maximum from the control end wall.

607.4.1.2 Control End Wall. A grab bar 24 inches (610 mm) long minimum shall be installed on the control end wall at the front edge of the bathtub.

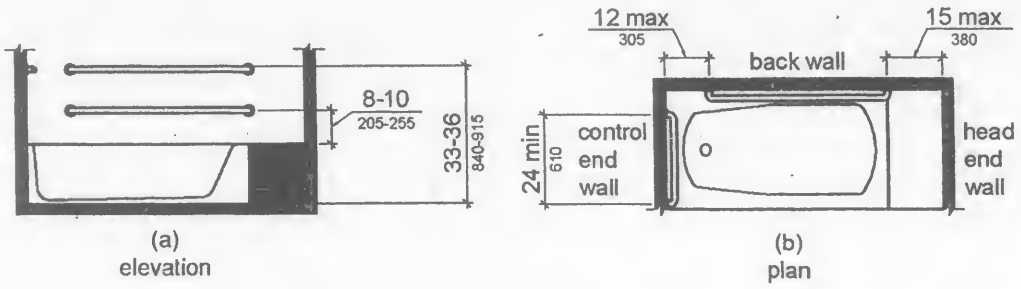


Figure 607.4.1
Grab Bars for Bathtubs with Permanent Seats

607.4.2 Bathtubs Without Permanent Seats. For bathtubs without permanent seats, grab bars shall comply with 607.4.2.

607.4.2.1 Back Wall. Two grab bars shall be installed on the back wall, one located in accordance with 609.4 and other located 8 inches (205 mm) minimum and 10 inches (255 mm) maximum above the rim of the bathtub. Each grab bar shall be 24 inches (610 mm) long minimum and shall be installed 24 inches (610 mm) maximum from the head end wall and 12 inches (305 mm) maximum from the control end wall.

607.4.2.2 Control End Wall. A grab bar 24 inches (610 mm) long minimum shall be installed on the control end wall at the front edge of the bathtub.

607.4.2.3 Head End Wall. A grab bar 12 inches (305 mm) long minimum shall be installed on the head end wall at the front edge of the bathtub.

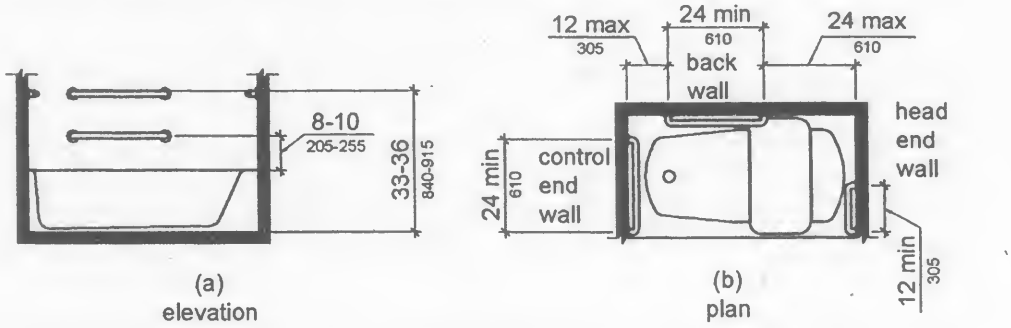


Figure 607.4.2
Grab Bars for Bathtubs with Removable In-Tub Seats

607.5 Controls. Controls, other than drain stoppers, shall be located on an end wall. Controls shall be between the bathtub rim and grab bar, and between the open side of the bathtub and the centerline of the width of the bathtub. Controls shall comply with 309.4.

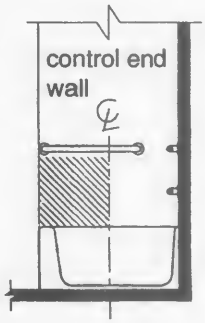


Figure 607.5
Bathtub Control Location

607.6 Shower Spray Unit and Water. A shower spray unit with a hose 59 inches (1500 mm) long minimum that can be used both as a fixed-position shower head and as a hand-held shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable-height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Bathtub shower spray units shall deliver water that is 120°F (49°C) maximum.

> **Advisory 607.6 Shower Spray Unit and Water.** Ensure that hand-held shower spray units are capable of delivering water pressure substantially equivalent to fixed shower heads.

607.7 Bathtub Enclosures. Enclosures for bathtubs shall not obstruct controls, faucets, shower and spray units or obstruct transfer from wheelchairs onto bathtub seats or into bathtubs. Enclosures on bathtubs shall not have tracks installed on the rim of the open face of the bathtub.

608 Shower Compartments

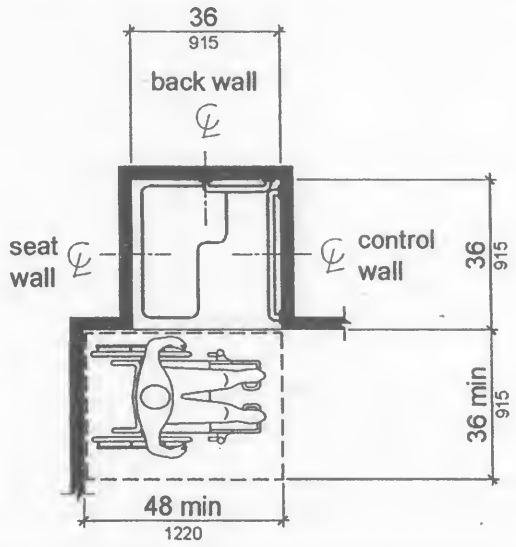
608.1 General. Shower compartments shall comply with 608.

> **Advisory 608.1 General.** Shower stalls that are 60 inches (1525 mm) wide and have no curb may increase the usability of a bathroom because the shower area provides additional maneuvering space.

608.2 Size and Clearances for Shower Compartments. Shower compartments shall have sizes and clearances complying with 608.2.

608.2.1 Transfer Type Shower Compartments. Transfer type shower compartments shall be 36 inches (915 mm) by 36 inches (915 mm) clear inside dimensions measured at the center points of opposing sides and shall have a 36 inch (915 mm) wide minimum entry on the face of the shower

compartment. Clearance of 36 inches (915 mm) wide minimum by 48 inches (1220 mm) long minimum measured from the control wall shall be provided.



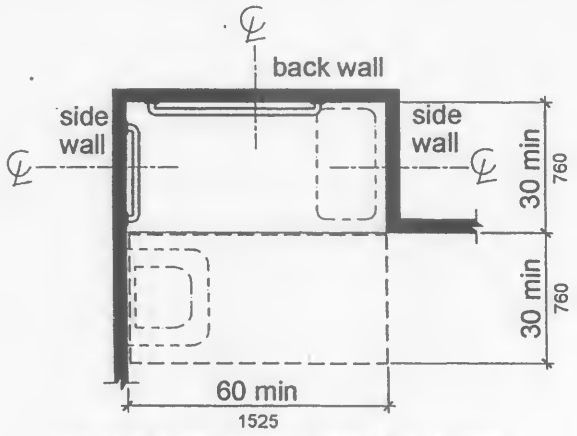
Note: inside finished dimensions measured at the center points of opposing sides

Figure 608.2.1
Transfer Type Shower Compartment Size and Clearance

608.2.2 Standard Roll-In Type Shower Compartments. Standard roll-in type shower compartments shall be 30 inches (760 mm) wide minimum by 60 inches (1525 mm) deep minimum clear inside dimensions measured at center points of opposing sides and shall have a 60 inches (1525 mm) wide minimum entry on the face of the shower compartment.

608.2.2.1 Clearance. A 30 inch (760 mm) wide minimum by 60 inch (1525 mm) long minimum clearance shall be provided adjacent to the open face of the shower compartment.

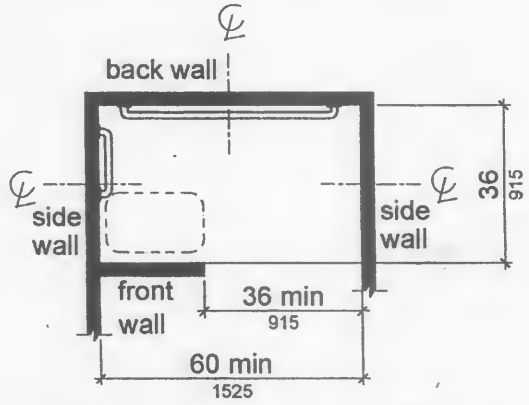
EXCEPTION: A lavatory complying with 606 shall be permitted on one 30 inch (760 mm) wide minimum side of the clearance provided that it is not on the side of the clearance adjacent to the controls or, where provided, not on the side of the clearance adjacent to the shower seat.



Note: inside finished dimensions measured at the center points of opposing sides

Figure 608.2.2
Standard Roll-In Type Shower Compartment Size and Clearance

608.2.3 Alternate Roll-In Type Shower Compartments. Alternate roll-in type shower compartments shall be 36 inches (915 mm) wide and 60 inches (1525 mm) deep minimum clear inside dimensions measured at center points of opposing sides. A 36 inch (915 mm) wide minimum entry shall be provided at one end of the long side of the compartment.



Note: inside finished dimensions measured at the center points of opposing sides

Figure 608.2.3
Alternate Roll-In Type Shower Compartment Size and Clearance

608.3 Grab Bars. Grab bars shall comply with 609 and shall be provided in accordance with 608.3. Where multiple grab bars are used, required horizontal grab bars shall be installed at the same height above the finish floor.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a shower located in a bathing *facility* for a single occupant accessed only through a private office, and not for *common use* or *public use* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

2. In *residential dwelling units*, grab bars shall not be required to be installed in showers located in bathing *facilities* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

608.3.1 Transfer Type Shower Compartments. In transfer type compartments, grab bars shall be provided across the control wall and back wall to a point 18 inches (455 mm) from the control wall.

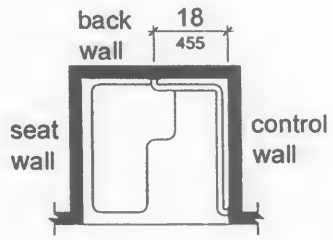


Figure 608.3.1
Grab Bars for Transfer Type Showers

608.3.2 Standard Roll-In Type Shower Compartments. Where a seat is provided in standard roll-in type shower compartments, grab bars shall be provided on the back wall and the side wall opposite the seat. Grab bars shall not be provided above the seat. Where a seat is not provided in standard roll-in type shower compartments, grab bars shall be provided on three walls. Grab bars shall be installed 6 inches (150 mm) maximum from adjacent walls.

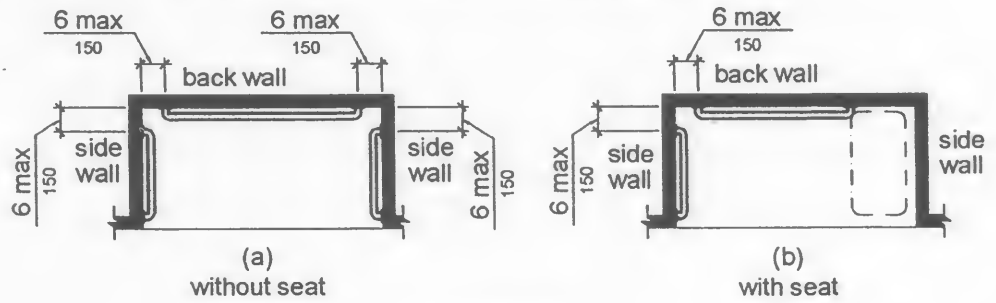


Figure 608.3.2
Grab Bars for Standard Roll-In Type Showers

608.3.3 Alternate Roll-In Type Shower Compartments. In alternate roll-in type shower compartments, grab bars shall be provided on the back wall and the side wall farthest from the compartment entry. Grab bars shall not be provided above the seat. Grab bars shall be installed 6 inches (150 mm) maximum from adjacent walls.

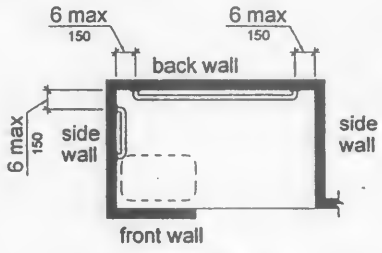


Figure 608.3.3
Grab Bars for Alternate Roll-In Type Showers

608.4 Seats. A folding or non-folding seat shall be provided in transfer type shower compartments. A folding seat shall be provided in roll-in type showers required in *transient lodging* guest rooms with mobility features complying with 806.2. Seats shall comply with 610.

EXCEPTION: In *residential dwelling units*, seats shall not be required in transfer type shower compartments provided that reinforcement has been installed in walls so as to permit the installation of seats complying with 608.4.

608.5 Controls. Controls, faucets, and shower spray units shall comply with 309.4.

608.5.1 Transfer Type Shower Compartments. In transfer type shower compartments, the controls, faucets, and shower spray unit shall be installed on the side wall opposite the seat 38 inches (965 mm) minimum and 48 inches (1220 mm) maximum above the shower floor and shall be located on the control wall 15 inches (380 mm) maximum from the centerline of the seat toward the shower opening.

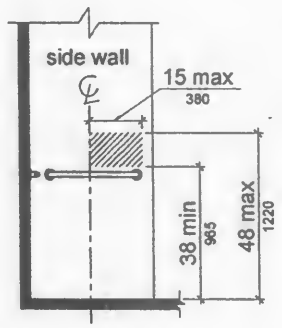


Figure 608.5.1
Transfer Type Shower Compartment Control Location

608.5.2 Standard Roll-In Type Shower Compartments. In standard roll-in type shower compartments, the controls, faucets, and shower spray unit shall be located above the grab bar, but no higher than 48 inches (1220 mm) above the shower floor. Where a seat is provided, the controls, faucets, and shower spray unit shall be installed on the back wall adjacent to the seat wall and shall be located 27 inches (685 mm) maximum from the seat wall.

Advisory 608.5.2 Standard Roll-in Type Shower Compartments. In standard roll-in type showers without seats, the shower head and operable parts can be located on any of the three walls of the shower without adversely affecting accessibility.

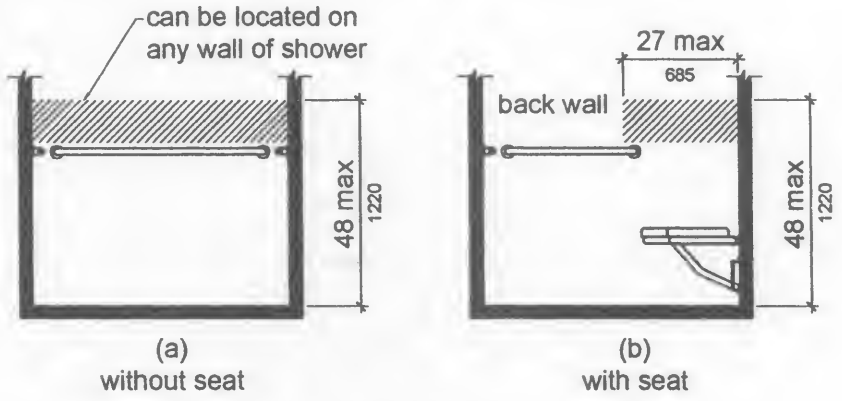


Figure 608.5.2
Standard Roll-In Type Shower Compartment Control Location

608.5.3 Alternate Roll-In Type Shower Compartments. In alternate roll-in type shower compartments, the controls, faucets, and shower spray unit shall be located above the grab bar, but no higher than 48 inches (1220 mm) above the shower floor. Where a seat is provided, the controls, faucets, and shower spray unit shall be located on the side wall adjacent to the seat 27 inches (685 mm) maximum from the side wall behind the seat or shall be located on the back wall opposite the seat 15 inches (380 mm) maximum, left or right, of the centerline of the seat. Where a seat is not provided, the controls, faucets, and shower spray unit shall be installed on the side wall farthest from the compartment entry.

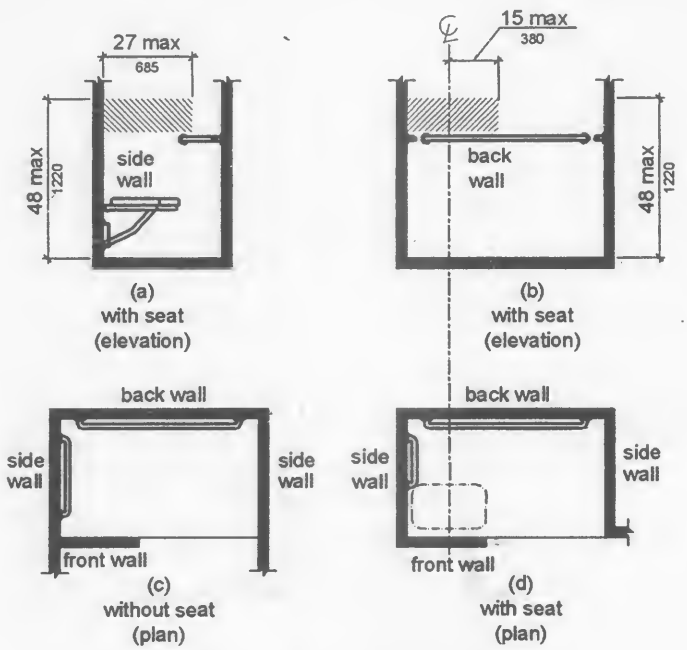


Figure 608.5.3
Alternate Roll-In Type Shower Compartment Control Location

608.6 Shower Spray Unit and Water. A shower spray unit with a hose 59 inches (1500 mm) long minimum that can be used both as a fixed-position shower head and as a hand-held shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable-height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Shower spray units shall deliver water that is 120°F (49°C) maximum.

EXCEPTION: A fixed shower head located at 48 inches (1220 mm) maximum above the shower finish floor shall be permitted instead of a hand-held spray unit in *facilities* that are not medical care *facilities*, long-term care *facilities*, *transient lodging* guest rooms, or *residential dwelling units*.

Advisory 608.6 Shower Spray Unit and Water. Ensure that hand-held shower spray units are capable of delivering water pressure substantially equivalent to fixed shower heads.

608.7 Thresholds. Thresholds in roll-in type shower compartments shall be ½ inch (13 mm) high maximum in accordance with 303. In transfer type shower compartments, thresholds ½ inch (13 mm) high maximum shall be beveled, rounded, or vertical.

EXCEPTION: A threshold 2 inches (51 mm) high maximum shall be permitted in transfer type shower compartments in existing *facilities* where provision of a ½ inch (13 mm) high threshold would disturb the structural reinforcement of the floor slab.

608.8 Shower Enclosures. Enclosures for shower compartments shall not obstruct controls, faucets, and shower spray units or obstruct transfer from wheelchairs onto shower seats.

609 Grab Bars

609.1 General. Grab bars in toilet *facilities* and bathing *facilities* shall comply with 609.

609.2 Cross Section. Grab bars shall have a cross section complying with 609.2.1 or 609.2.2.

609.2.1 Circular Cross Section. Grab bars with circular cross sections shall have an outside diameter of 1¼ inches (32 mm) minimum and 2 inches (51 mm) maximum.

609.2.2 Non-Circular Cross Section. Grab bars with non-circular cross sections shall have a cross-section dimension of 2 inches (51 mm) maximum and a perimeter dimension of 4 inches (100 mm) minimum and 4.8 inches (120 mm) maximum.

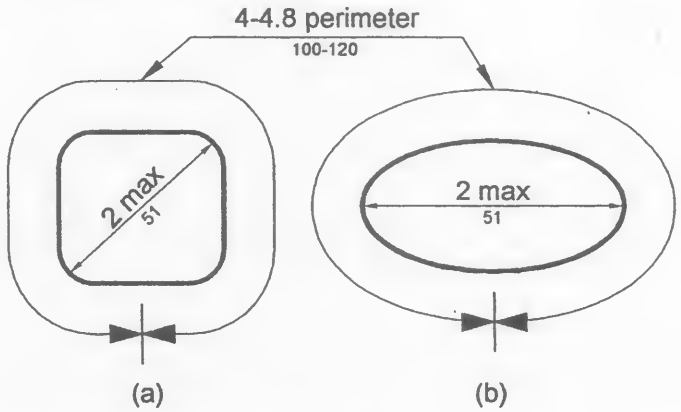


Figure 609.2.2
Grab Bar Non-Circular Cross Section

609.3 Spacing. The *space* between the wall and the grab bar shall be 1½ inches (38 mm). The *space* between the grab bar and projecting objects below and at the ends shall be 1½ inches (38 mm) minimum. The *space* between the grab bar and projecting objects above shall be 12 inches (305 mm) minimum.

EXCEPTION: The *space* between the grab bars and shower controls, shower fittings, and other grab bars above shall be permitted to be 1½ inches (38 mm) minimum.

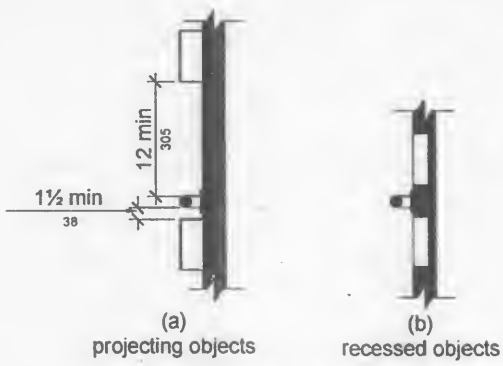


Figure 609.3
Spacing of Grab Bars

609.4 Position of Grab Bars. Grab bars shall be installed in a horizontal position, 33 inches (840 mm) minimum and 36 inches (915 mm) maximum above the finish floor measured to the top of the gripping surface, except that at water closets for *children's use* complying with 604.9, grab bars shall be installed in a horizontal position 18 inches (455 mm) minimum and 27 inches (685 mm) maximum above the finish floor measured to the top of the gripping surface. The height of the lower grab bar on the back wall of a bathtub shall comply with 607.4.1.1 or 607.4.2.1.

609.5 Surface Hazards. Grab bars and any wall or other surfaces adjacent to grab bars shall be free of sharp or abrasive *elements* and shall have rounded edges.

609.6 Fittings. Grab bars shall not rotate within their fittings.

609.7 Installation. Grab bars shall be installed in any manner that provides a gripping surface at the specified locations and that does not obstruct the required clear floor *space*.

609.8 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the grab bar, fastener, mounting device, or supporting structure.

610 Seats

610.1 General. Seats in bathtubs and shower compartments shall comply with 610.

610.2 Bathtub Seats. The top of bathtub seats shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the bathroom finish floor. The depth of a removable in-tub seat shall be 15 inches (380 mm) minimum and 16 inches (405 mm) maximum. The seat shall be capable of secure placement. Permanent seats at the head end of the bathtub shall be 15 inches (380 mm) deep minimum and shall extend from the back wall to or beyond the outer edge of the bathtub.

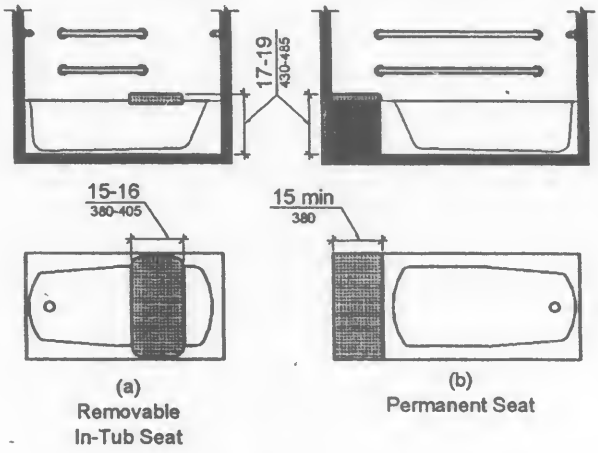


Figure 610.2
Bathtub Seats

610.3 Shower Compartment Seats. Where a seat is provided in a standard roll-in shower compartment, it shall be a folding type, shall be installed on the side wall adjacent to the controls, and shall extend from the back wall to a point within 3 inches (75 mm) of the compartment entry. Where a seat is provided in an alternate roll-in type shower compartment, it shall be a folding type, shall be installed on the front wall opposite the back wall, and shall extend from the adjacent side wall to a point within 3 inches (75 mm) of the compartment entry. In transfer-type showers, the seat shall extend from the back wall to a point within 3 inches (75 mm) of the compartment entry. The top of the seat shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the bathroom finish floor. Seats shall comply with 610.3.1 or 610.3.2.

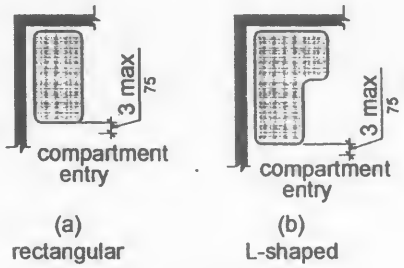


Figure 610.3
Extent of Seat

610.3.1 Rectangular Seats. The rear edge of a rectangular seat shall be 2½ inches (64 mm) maximum and the front edge 15 inches (380 mm) minimum and 16 inches (405 mm) maximum from

the seat wall. The side edge of the seat shall be 1½ inches (38 mm) maximum from the adjacent wall.

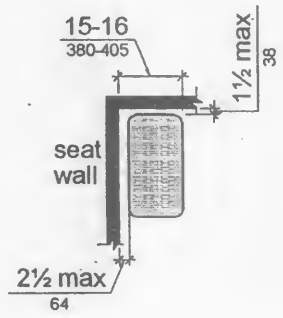


Figure 610.3.1
Rectangular Shower Seat

610.3.2 L-Shaped Seats. The rear edge of an L-shaped seat shall be 2½ inches (64 mm) maximum and the front edge 15 inches (380 mm) minimum and 16 inches (405 mm) maximum from the seat wall. The rear edge of the "L" portion of the seat shall be 1½ inches (38 mm) maximum from the wall and the front edge shall be 14 inches (355 mm) minimum and 15 inches (380 mm) maximum from the wall. The end of the "L" shall be 22 inches (560 mm) minimum and 23 inches maximum (585 mm) from the main seat wall.

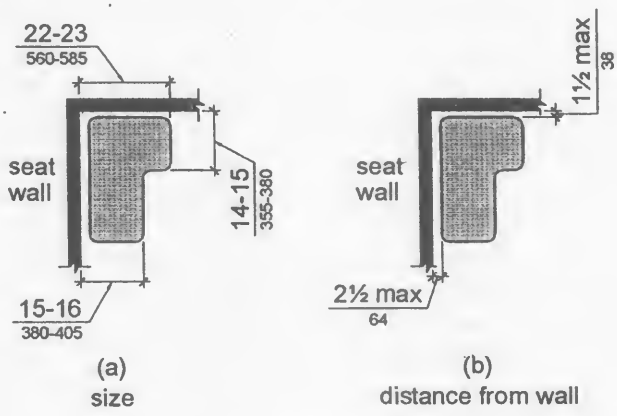


Figure 610.3.2
L-Shaped Shower Seat

610.4 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

611 Washing Machines and Clothes Dryers

611.1 General. Washing machines and clothes dryers shall comply with 611.

611.2 Clear Floor Space. A clear floor or ground *space* complying with 305 positioned for parallel approach shall be provided. The clear floor or ground *space* shall be centered on the appliance.

611.3 Operable Parts. *Operable parts*, including doors, lint screens, and detergent and bleach compartments shall comply with 309.

611.4 Height. Top loading machines shall have the door to the laundry compartment located 36 inches (915 mm) maximum above the finish floor. Front loading machines shall have the bottom of the opening to the laundry compartment located 15 inches (380 mm) minimum and 36 inches (915 mm) maximum above the finish floor.

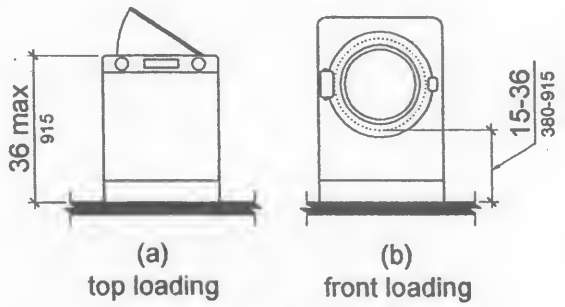


Figure 611.4
Height of Laundry Compartment Opening

612 Saunas and Steam Rooms

612.1 General. Saunas and steam rooms shall comply with 612.

612.2 Bench. Where seating is provided in saunas and steam rooms, at least one bench shall comply with 903. Doors shall not swing into the clear floor *space* required by 903.2.

EXCEPTION: A readily removable bench shall be permitted to obstruct the turning *space* required by 612.3 and the clear floor or ground *space* required by 903.2.

612.3 Turning Space. A turning *space* complying with 304 shall be provided within saunas and steam rooms.

CHAPTER 7: COMMUNICATION ELEMENTS AND FEATURES

701 General

701.1 Scope. The provisions of Chapter 7 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

702 Fire Alarm Systems

702.1 General. Fire alarm systems shall have permanently installed audible and visible alarms complying with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1), except that the maximum allowable sound level of audible notification appliances complying with section 4-3.2.1 of NFPA 72 (1999 edition) shall have a sound level no more than 110 dB at the minimum hearing distance from the audible appliance. In addition, alarms in guest rooms required to provide communication features shall comply with sections 4-3 and 4-4 of NFPA 72 (1999 edition) or sections 7.4 and 7.5 of NFPA 72 (2002 edition).

EXCEPTION: Fire alarm systems in medical care *facilities* shall be permitted to be provided in accordance with industry practice.

703 Signs

703.1 General. Signs shall comply with 703. Where both visual and *tactile characters* are required, either one sign with both visual and *tactile characters*, or two separate signs, one with visual, and one with *tactile characters*, shall be provided.

703.2 Raised Characters. Raised *characters* shall comply with 703.2 and shall be duplicated in braille complying with 703.3. Raised *characters* shall be installed in accordance with 703.4.

> **Advisory 703.2 Raised Characters.** Signs that are designed to be read by touch should not have sharp or abrasive edges.

703.2.1 Depth. Raised *characters* shall be 1/32 inch (0.8 mm) minimum above their background.

703.2.2 Case. *Characters* shall be uppercase.

703.2.3 Style. *Characters* shall be sans serif. *Characters* shall not be italic, oblique, script, highly decorative, or of other unusual forms.

703.2.4 Character Proportions. *Characters* shall be selected from fonts where the width of the uppercase letter "O" is 55 percent minimum and 110 percent maximum of the height of the uppercase letter "I".

703.2.5 Character Height. *Character* height measured vertically from the baseline of the *character* shall be 5/8 inch (16 mm) minimum and 2 inches (51 mm) maximum based on the height of the uppercase letter "I".

EXCEPTION: Where separate raised and visual *characters* with the same information are provided, raised *character* height shall be permitted to be ½ inch (13 mm) minimum.

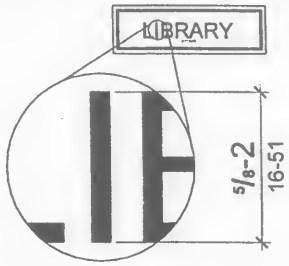


Figure 703.2.5
Height of Raised Characters

703.2.6 Stroke Thickness. Stroke thickness of the uppercase letter "I" shall be 15 percent maximum of the height of the *character.*

703.2.7 Character Spacing. *Character* spacing shall be measured between the two closest points of adjacent raised *characters* within a message, excluding word *spaces.* Where *characters* have rectangular cross sections, spacing between individual raised *characters* shall be 1/8 inch (3.2 mm) minimum and 4 times the raised *character* stroke width maximum. Where *characters* have other cross sections, spacing between individual raised *characters* shall be 1/16 inch (1.6 mm) minimum and 4 times the raised *character* stroke width maximum at the base of the cross sections, and 1/8 inch (3.2 mm) minimum and 4 times the raised *character* stroke width maximum at the top of the cross sections. *Characters* shall be separated from raised borders and decorative *elements* 3/8 inch (9.5 mm) minimum.

703.2.8 Line Spacing. Spacing between the baselines of separate lines of raised *characters* within a message shall be 135 percent minimum and 170 percent maximum of the raised *character* height.

703.3 Braille. Braille shall be contracted (Grade 2) and shall comply with 703.3 and 703.4.

703.3.1 Dimensions and Capitalization. Braille dots shall have a domed or rounded shape and shall comply with Table 703.3.1. The indication of an uppercase letter or letters shall only be used before the first word of sentences, proper nouns and names, individual letters of the alphabet, initials, and acronyms.

Table 703.3.1 Braille Dimensions

Measurement Range	Minimum in Inches Maximum in Inches
Dot base diameter	0.059 (1.5 mm) to 0.063 (1.6 mm)
Distance between two dots in the same cell[1]	0.090 (2.3 mm) to 0.100 (2.5 mm)
Distance between corresponding dots in adjacent cells[1]	0.241 (6.1 mm) to 0.300 (7.6 mm)
Dot height	0.025 (0.6 mm) to 0.037 (0.9 mm)
Distance between corresponding dots from one cell directly below[1]	0.395 (10 mm) to 0.400 (10.2 mm)

1. Measured center to center.

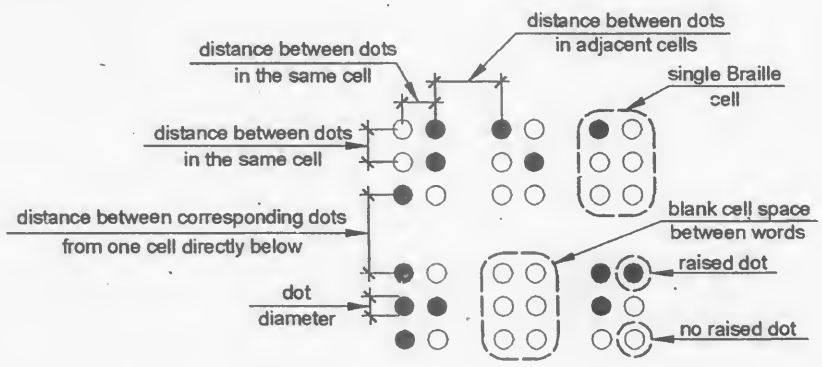


Figure 703.3.1
Braille Measurement

703.3.2 Position. Braille shall be positioned below the corresponding text. If text is multi-lined, braille shall be placed below the entire text. Braille shall be separated 3/8 inch (9.5 mm) minimum from any other *tactile characters* and 3/8 inch (9.5 mm) minimum from raised borders and decorative *elements*.

EXCEPTION: Braille provided on elevator car controls shall be separated 3/16 inch (4.8 mm) minimum and shall be located either directly below or adjacent to the corresponding raised *characters* or symbols.

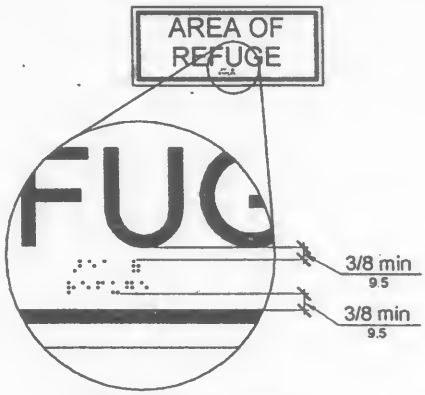


Figure 703.3.2
Position of Braille

703.4 Installation Height and Location. Signs with *tactile characters* shall comply with 703.4.

703.4.1 Height Above Finish Floor or Ground. *Tactile characters* on signs shall be located 48 inches (1220 mm) minimum above the finish floor or ground surface, measured from the baseline of the lowest *tactile character* and 60 inches (1525 mm) maximum above the finish floor or ground surface, measured from the baseline of the highest *tactile character*.

EXCEPTION: *Tactile characters* for elevator car controls shall not be required to comply with 703.4.1.

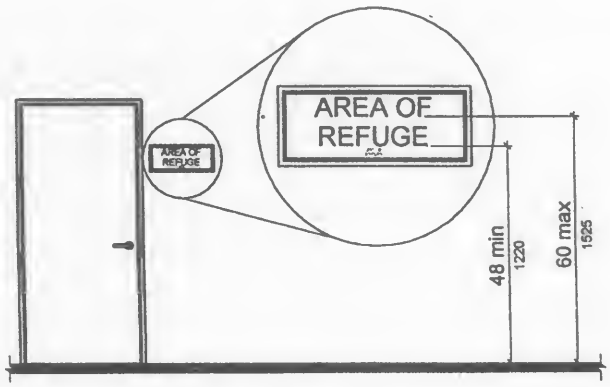


Figure 703.4.1
Height of Tactile Characters Above Finish Floor or Ground

703.4.2 Location. Where a *tactile* sign is provided at a door, the sign shall be located alongside the door at the latch side. Where a *tactile* sign is provided at double doors with one active leaf, the sign shall be located on the inactive leaf. Where a *tactile* sign is provided at double doors with two active leafs, the sign shall be located to the right of the right hand door. Where there is no wall *space* at the latch side of a single door or at the right side of double doors, signs shall be located on the nearest adjacent wall. Signs containing *tactile characters* shall be located so that a clear floor *space* of 18 inches (455 mm) minimum by 18 inches (455 mm) minimum, centered on the *tactile characters*, is provided beyond the arc of any door swing between the closed position and 45 degree open position.

EXCEPTION: Signs with *tactile characters* shall be permitted on the push side of doors with closers and without hold-open devices.

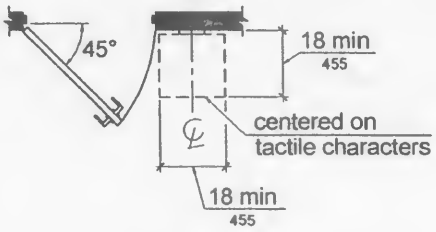


Figure 703.4.2
Location of Tactile Signs at Doors

703.5 Visual Characters. Visual *characters* shall comply with 703.5.

EXCEPTION: Where visual *characters* comply with 703.2 and are accompanied by braille complying with 703.3, they shall not be required to comply with 703.5.2 through 703.5.9.

703.5.1 Finish and Contrast. *Characters* and their background shall have a non-glare finish. *Characters* shall contrast with their background with either light *characters* on a dark background or dark *characters* on a light background.

Advisory 703.5.1 Finish and Contrast. Signs are more legible for persons with low vision when characters contrast as much as possible with their background. Additional factors affecting the ease with which the text can be distinguished from its background include shadows cast by lighting sources, surface glare, and the uniformity of the text and its background colors and textures.

703.5.2 Case. *Characters* shall be uppercase or lowercase or a combination of both.

703.5.3 Style. *Characters* shall be conventional in form. *Characters* shall not be italic, oblique, script, highly decorative, or of other unusual forms.

703.5.4 Character Proportions. *Characters* shall be selected from fonts where the width of the uppercase letter "O" is 55 percent minimum and 110 percent maximum of the height of the uppercase letter "I".

703.5.5 Character Height. Minimum *character* height shall comply with Table 703.5.5. Viewing distance shall be measured as the horizontal distance between the *character* and an obstruction preventing further approach towards the sign. *Character* height shall be based on the uppercase letter "I".

Table 703.5.5 Visual Character Height

Height to Finish Floor or Ground From Baseline of Character	Horizontal Viewing Distance	Minimum Character Height
40 inches (1015 mm) to less than or equal to 70 inches (1780 mm)	less than 72 inches (1830 mm)	5/8 inch (16 mm)
	72 inches (1830 mm) and greater	5/8 inch (16 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 72 inches (1830 mm)
Greater than 70 inches (1780 mm) to less than or equal to 120 inches (3050 mm)	less than 180 inches (4570 mm)	2 inches (51 mm)
	180 inches (4570 mm) and greater	2 inches (51 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 180 inches (4570 mm)
greater than 120 inches (3050 mm)	less than 21 feet (6400 mm)	3 inches (75 mm)
	21 feet (6400 mm) and greater	3 inches (75 mm), plus 1/8 inch (3.2 mm) per foot (305 mm) of viewing distance above 21 feet (6400 mm)

703.5.6 Height From Finish Floor or Ground. Visual *characters* shall be 40 inches (1015 mm) minimum above the finish floor or ground.

EXCEPTION: Visual *characters* indicating elevator car controls shall not be required to comply with 703.5.6.

703.5.7 Stroke Thickness. Stroke thickness of the uppercase letter "I" shall be 10 percent minimum and 30 percent maximum of the height of the *character*.

703.5.8 Character Spacing. *Character* spacing shall be measured between the two closest points of adjacent *characters*, excluding word *spaces*. Spacing between individual *characters* shall be 10 percent minimum and 35 percent maximum of *character* height.

703.5.9 Line Spacing. Spacing between the baselines of separate lines of *characters* within a message shall be 135 percent minimum and 170 percent maximum of the *character* height.

703.6 Pictograms. *Pictograms* shall comply with 703.6.

703.6.1 Pictogram Field. *Pictograms* shall have a field height of 6 inches (150 mm) minimum. *Characters* and braille shall not be located in the *pictogram* field.

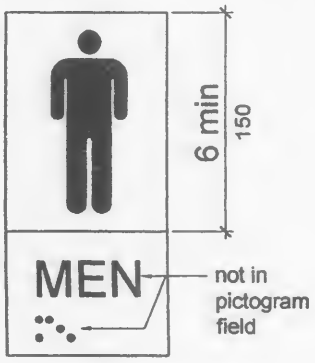


Figure 703.6.1
Pictogram Field

703.6.2 Finish and Contrast. *Pictograms* and their field shall have a non-glare finish. *Pictograms* shall contrast with their field with either a light *pictogram* on a dark field or a dark *pictogram* on a light field.

A703.6.2 Finish and Contrast. Signs are more legible for persons with low vision when characters contrast as much as possible with their background. Additional factors affecting the ease with which the text can be distinguished from its background include shadows cast by lighting sources, surface glare, and the uniformity of the text and background colors and textures.

703.6.3 Text Descriptors. *Pictograms* shall have text descriptors located directly below the *pictogram* field. Text descriptors shall comply with 703.2, 703.3 and 703.4.

703.7 Symbols of Accessibility. Symbols of *accessibility* shall comply with 703.7.

703.7.1 Finish and Contrast. Symbols of *accessibility* and their background shall have a non-glare finish. Symbols of *accessibility* shall contrast with their background with either a light symbol on a dark background or a dark symbol on a light background.

Advisory 703.7.1 Finish and Contrast. Signs are more legible for persons with low vision when characters contrast as much as possible with their background. Additional factors affecting the ease with which the text can be distinguished from its background include shadows cast by lighting sources, surface glare, and the uniformity of the text and background colors and textures.

703.7.2 Symbols.

703.7.2.1 International Symbol of Accessibility. The International Symbol of *Accessibility* shall comply with Figure 703.7.2.1.

Figure 703.7.2.1
International Symbol of Accessibility

703.7.2.2 International Symbol of TTY. The International Symbol of *TTY* shall comply with Figure 703.7.2.2.

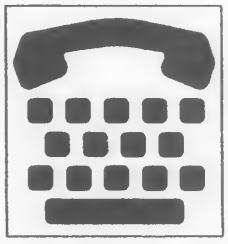


Figure 703.7.2.2
International Symbol of TTY

703.7.2.3 Volume Control Telephones. Telephones with a volume control shall be identified by a *pictogram* of a telephone handset with radiating sound waves on a square field such as shown in Figure 703.7.2.3.

Figure 703.7.2.3
Volume Control Telephone

703.7.2.4 Assistive Listening Systems. *Assistive listening systems* shall be identified by the International Symbol of Access for Hearing Loss complying with Figure 703.7.2.4.

Figure 703.7.2.4
International Symbol of Access for Hearing Loss

704 Telephones

704.1 General. Public telephones shall comply with 704.

704.2 Wheelchair Accessible Telephones. Wheelchair *accessible* telephones shall comply with 704.2.

704.2.1 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided. The clear floor or ground *space* shall not be obstructed by bases, enclosures, or seats.

Advisory 704.2.1 Clear Floor or Ground Space. Because clear floor and ground space is required to be unobstructed, telephones, enclosures and related telephone book storage cannot encroach on the required clear floor or ground space and must comply with the provisions for protruding objects. (See Section 307).

704.2.1.1 Parallel Approach. Where a parallel approach is provided, the distance from the edge of the telephone enclosure to the face of the telephone unit shall be 10 inches (255 mm) maximum.

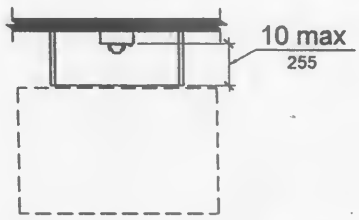


Figure 704.2.1.1
Parallel Approach to Telephone

704.2.1.2 Forward Approach. Where a forward approach is provided, the distance from the front edge of a counter within the telephone enclosure to the face of the telephone unit shall be 20 inches (510 mm) maximum.

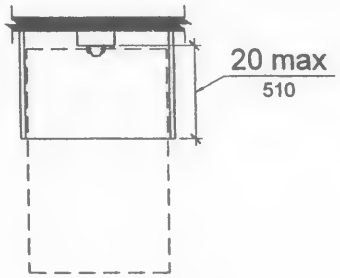


Figure 704.2.1.2
Forward Approach to Telephone

704.2.2 Operable Parts. *Operable parts* shall comply with 309. Telephones shall have push-button controls where such service is available.

704.2.3 Telephone Directories. Telephone directories, where provided, shall be located in accordance with 309.

704.2.4 Cord Length. The cord from the telephone to the handset shall be 29 inches (735 mm) long minimum.

704.3 Volume Control Telephones. Public telephones required to have volume controls shall be equipped with a receive volume control that provides a gain adjustable up to 20 dB minimum. For incremental volume control, provide at least one intermediate step of 12 dB of gain minimum. An automatic reset shall be provided.

Advisory 704.3 Volume Control Telephones. Amplifiers on pay phones are located in the base or the handset or are built into the telephone. Most are operated by pressing a button or key. If the microphone in the handset is not being used, a mute button that temporarily turns off the microphone can also reduce the amount of background noise which the person hears in the earpiece. If a volume adjustment is provided that allows the user to set the level anywhere from the base volume to the upper requirement of 20 dB, there is no need to specify a lower limit. If a stepped volume control is provided, one of the intermediate levels must provide 12 dB of gain. Consider compatibility issues when matching an amplified handset with a phone or phone system. Amplified handsets that can be switched with pay telephone handsets are available. Portable and in-line amplifiers can be used with some phones but are not practical at most public phones covered by these requirements.

704.4 TTYs. *TTYs* required at a public pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. Where an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the *TTY* and the telephone receiver.

> **Advisory 704.4 TTYs.** Ensure that sufficient electrical service is available where TTYs are to be installed.

704.4.1 Height. When in use, the touch surface of *TTY* keypads shall be 34 inches (865 mm) minimum above the finish floor.

EXCEPTION: Where seats are provided, *TTYs* shall not be required to comply with 704.4.1.

> **Advisory 704.4.1 Height.** A telephone with a TTY installed underneath cannot also be a wheelchair accessible telephone because the required 34 inches (865 mm) minimum keypad height can causes the highest operable part of the telephone, usually the coin slot, to exceed the maximum permitted side and forward reach ranges. (See Section 308).
>
> **Advisory 704.4.1 Height Exception.** While seats are not required at TTYs, reading and typing at a TTY is more suited to sitting than standing. Facilities that often provide seats at TTY's include, but are not limited to, airports and other passenger terminals or stations, courts, art galleries, and convention centers.

704.5 TTY Shelf. Public pay telephones required to accommodate portable *TTYs* shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a *TTY* and shall have 6 inches (150 mm) minimum vertical clearance above the area where the *TTY* is to be placed.

705 Detectable Warnings

705.1 General. *Detectable warnings* shall consist of a surface of truncated domes and shall comply with 705.

705.1.1 Dome Size. Truncated domes in a *detectable warning* surface shall have a base diameter of 0.9 inch (23 mm) minimum and 1.4 inches (36 mm) maximum, a top diameter of 50 percent of the base diameter minimum to 65 percent of the base diameter maximum, and a height of 0.2 inch (5.1 mm).

705.1.2 Dome Spacing. Truncated domes in a *detectable warning* surface shall have a center-to-center spacing of 1.6 inches (41 mm) minimum and 2.4 inches (61 mm) maximum, and a base-to-base spacing of 0.65 inch (17 mm) minimum, measured between the most adjacent domes on a square grid.

705.1.3 Contrast. *Detectable warning* surfaces shall contrast visually with adjacent walking surfaces either light-on-dark, or dark-on-light.

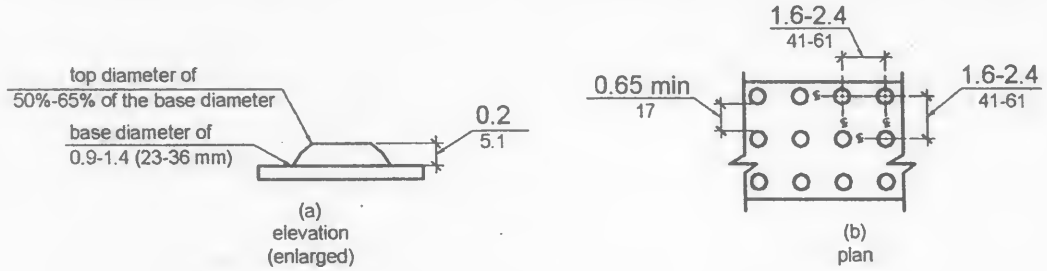


Figure 705.1
Size and Spacing of Truncated Domes

705.2 Platform Edges. *Detectable warning* surfaces at platform boarding edges shall be 24 inches (610 mm) wide and shall extend the full length of the *public use* areas of the platform.

706 Assistive Listening Systems

706.1 General. *Assistive listening systems* required in *assembly areas* shall comply with 706.

Advisory 706.1 General. Assistive listening systems are generally categorized by their mode of transmission. There are hard-wired systems and three types of wireless systems: induction loop, infrared, and FM radio transmission. Each has different advantages and disadvantages that can help determine which system is best for a given application. For example, an FM system may be better than an infrared system in some open-air assemblies since infrared signals are less effective in sunlight. On the other hand, an infrared system is typically a better choice than an FM system where confidential transmission is important because it will be contained within a given space.

The technical standards for assistive listening systems describe minimum performance levels for volume, interference, and distortion. Sound pressure levels (SPL), expressed in decibels, measure output sound volume. Signal-to-noise ratio (SNR or S/N), also expressed in decibels, represents the relationship between the loudness of a desired sound (the signal) and the background noise in a space or piece of equipment. The higher the SNR, the more intelligible the signal. The peak clipping level limits the distortion in signal output produced when high-volume sound waves are manipulated to serve assistive listening devices.

Selecting or specifying an effective assistive listening system for a large or complex venue requires assistance from a professional sound engineer. The Access Board has published technical assistance on assistive listening devices and systems.

706.2 Receiver Jacks. Receivers required for use with an *assistive listening system* shall include a 1/8 inch (3.2 mm) standard mono jack.

706.3 Receiver Hearing-Aid Compatibility. Receivers required to be hearing-aid compatible shall interface with telecoils in hearing aids through the provision of neckloops.

> **Advisory 706.3 Receiver Hearing-Aid Compatibility.** Neckloops and headsets that can be worn as neckloops are compatible with hearing aids. Receivers that are not compatible include earbuds, which may require removal of hearing aids, earphones, and headsets that must be worn over the ear, which can create disruptive interference in the transmission and can be uncomfortable for people wearing hearing aids.

706.4 Sound Pressure Level. *Assistive listening systems* shall be capable of providing a sound pressure level of 110 dB minimum and 118 dB maximum with a dynamic range on the volume control of 50 dB.

706.5 Signal-to-Noise Ratio. The signal-to-noise ratio for internally generated noise in *assistive listening systems* shall be 18 dB minimum.

706.6 Peak Clipping Level. Peak clipping shall not exceed 18 dB of clipping relative to the peaks of speech.

707 Automatic Teller Machines and Fare Machines

> **Advisory 707 Automatic Teller Machines and Fare Machines.** Interactive transaction machines (ITMs), other than ATMs, are not covered by Section 707. However, for entities covered by the ADA, the Department of Justice regulations that implement the ADA provide additional guidance regarding the relationship between these requirements and elements that are not directly addressed by these requirements. Federal procurement law requires that ITMs purchased by the Federal government comply with standards issued by the Access Board under Section 508 of the Rehabilitation Act of 1973, as amended. This law covers a variety of products, including computer hardware and software, websites, phone systems, fax machines, copiers, and similar technologies. For more information on Section 508 consult the Access Board's website at www.access-board.gov.

707.1 General. Automatic teller machines and fare machines shall comply with 707.

> **Advisory 707.1 General.** If farecards have one tactually distinctive corner they can be inserted with greater accuracy. Token collection devices that are designed to accommodate tokens which are perforated can allow a person to distinguish more readily between tokens and common coins. Place accessible gates and fare vending machines in close proximity to other accessible elements when feasible so the facility is easier to use.

707.2 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided.

EXCEPTION: Clear floor or ground *space* shall not be required at drive-up only automatic teller machines and fare machines.

707.3 Operable Parts. *Operable parts* shall comply with 309. Unless a clear or correct key is provided, each *operable part* shall be able to be differentiated by sound or touch, without activation.

EXCEPTION: Drive-up only automatic teller machines and fare machines shall not be required to comply with 309.2 and 309.3.

707.4 Privacy. Automatic teller machines shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

> **Advisory 707.4 Privacy.** In addition to people who are blind or visually impaired, people with limited reach who use wheelchairs or have short stature, who cannot effectively block the ATM screen with their bodies, may prefer to use speech output. Speech output users can benefit from an option to render the visible screen blank, thereby affording them greater personal security and privacy.

707.5 Speech Output. Machines shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be *accessible* to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized.

EXCEPTIONS: 1. Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

2. Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

3. Where speech synthesis cannot be supported, dynamic alphabetic output shall not be required to be audible.

> **Advisory 707.5 Speech Output.** If an ATM provides additional functions such as dispensing coupons, selling theater tickets, or providing copies of monthly statements, all such functions must be available to customers using speech output. To avoid confusion at the ATM, the method of initiating the speech mode should be easily discoverable and should not require specialized training. For example, if a telephone handset is provided, lifting the handset can initiate the speech mode.

707.5.1 User Control. Speech shall be capable of being repeated or interrupted. Volume control shall be provided for the speech function.

EXCEPTION: Speech output for any single function shall be permitted to be automatically interrupted when a transaction is selected.

707.5.2 Receipts. Where receipts are provided, speech output devices shall provide audible balance inquiry information, error messages, and all other information on the printed receipt necessary to complete or verify the transaction.

EXCEPTIONS: 1. Machine location, date and time of transaction, customer account number, and the machine identifier shall not be required to be audible.

2. Information on printed receipts that duplicates information available on-screen shall not be required to be presented in the form of an audible receipt.
3. Printed copies of bank statements and checks shall not be required to be audible.

707.6 Input. Input devices shall comply with 707.6.

707.6.1 Input Controls. At least one *tactilely* discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens, shall be raised above surrounding surfaces. Where membrane keys are the only method of input, each shall be *tactilely* discernable from surrounding surfaces and adjacent keys.

707.6.2 Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be *tactilely* distinct from the other keys.

Advisory 707.6.2 Numeric Keys. Telephone keypads and computer keyboards differ in one significant feature, ascending versus descending numerical order. Both types of keypads are acceptable, provided the computer-style keypad is organized similarly to the number pad located at the right on most computer keyboards, and does not resemble the line of numbers located above the computer keys.

(a) 12-key ascending (b) 12-key descending

Figure 707.6.2
Numeric Key Layout

707.6.3 Function Keys. Function keys shall comply with 707.6.3.

707.6.3.1 Contrast. Function keys shall contrast visually from background surfaces. *Characters* and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light.

EXCEPTION: *Tactile* symbols required by 707.6.3.2 shall not be required to comply with 707.6.3.1.

707.6.3.2 Tactile Symbols. Function key surfaces shall have *tactile* symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

707.7 Display Screen. The display screen shall comply with 707.7.

EXCEPTION: Drive-up only automatic teller machines and fare machines shall not be required to comply with 707.7.1.

707.7.1 Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor *space* in front of the machine.

707.7.2 Characters. *Characters* displayed on the screen shall be in a sans serif font. *Characters* shall be 3/16 inch (4.8 mm) high minimum based on the uppercase letter "I". *Characters* shall contrast with their background with either light *characters* on a dark background or dark *characters* on a light background.

707.8 Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with 703.3.

708 Two-Way Communication Systems

708.1 General. Two-way communication systems shall comply with 708.

> **Advisory 708.1 General.** Devices that do not require handsets are easier to use by people who have a limited reach.

708.2 Audible and Visual Indicators. The system shall provide both audible and visual signals.

> **Advisory 708.2 Audible and Visual Indicators.** A light can be used to indicate visually that assistance is on the way. Signs indicating the meaning of visual signals should be provided.

708.3 Handsets. Handset cords, if provided, shall be 29 inches (735 mm) long minimum.

708.4 Residential Dwelling Unit Communication Systems. Communications systems between a *residential dwelling unit* and a *site*, *building*, or floor *entrance* shall comply with 708.4.

708.4.1 Common Use or Public Use System Interface. The *common use* or *public use* system interface shall include the capability of supporting voice and *TTY* communication with the *residential dwelling unit* interface.

708.4.2 Residential Dwelling Unit Interface. The *residential dwelling unit* system interface shall include a telephone jack capable of supporting voice and *TTY* communication with the *common use* or *public use* system interface.

CHAPTER 8: SPECIAL ROOMS, SPACES, AND ELEMENTS

801 General

801.1 Scope. The provisions of Chapter 8 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

> **Advisory 801.1 Scope.** Facilities covered by these requirements are also subject to the requirements of the other chapters. For example, 806 addresses guest rooms in transient lodging facilities while 902 contains the technical specifications for dining surfaces. If a transient lodging facility contains a restaurant, the restaurant must comply with requirements in other chapters such as those applicable to certain dining surfaces.

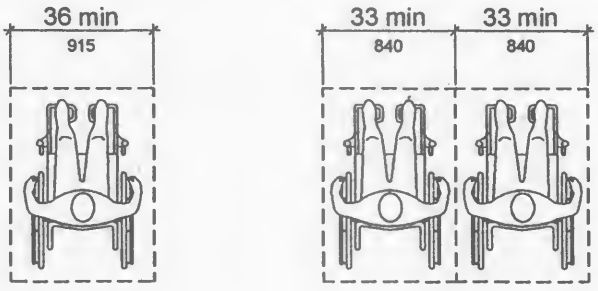
802 Wheelchair Spaces, Companion Seats, and Designated Aisle Seats

802.1 Wheelchair Spaces. *Wheelchair spaces* shall comply with 802.1.

802.1.1 Floor or Ground Surface. The floor or ground surface of *wheelchair spaces* shall comply with 302. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

802.1.2 Width. A single *wheelchair space* shall be 36 inches (915 mm) wide minimum Where two adjacent *wheelchair spaces* are provided, each *wheelchair space* shall be 33 inches (840 mm) wide minimum.



(a) single space (b) two spaces

Figure 802.1.2
Width of Wheelchair Spaces

802.1.3 Depth. Where a *wheelchair space* can be entered from the front or rear, the *wheelchair space* shall be 48 inches (1220 mm) deep minimum. Where a *wheelchair space* can be entered only from the side, the *wheelchair space* shall be 60 inches (1525 mm) deep minimum.

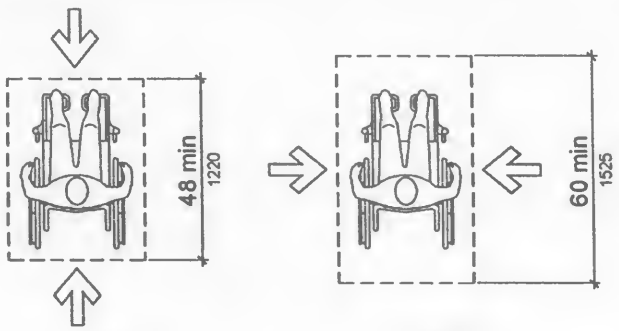


Figure 802.1.3
Depth of Wheelchair Spaces

802.1.4 Approach. *Wheelchair spaces* shall adjoin *accessible* routes. *Accessible* routes shall not overlap *wheelchair spaces*.

Advisory 802.1.4 Approach. Because accessible routes serving wheelchair spaces are not permitted to overlap the clear floor space at wheelchair spaces, access to any wheelchair space cannot be through another wheelchair space.

802.1.5 Overlap. *Wheelchair spaces* shall not overlap *circulation paths*.

Advisory 802.1.5 Overlap. The term "circulation paths" used in Section 802.1.5 means aisle width required by applicable building or life safety codes for the specific assembly occupancy. Where the circulation path provided is wider than the required aisle width, the wheelchair space may intrude into that portion of the circulation path that is provided in excess of the required aisle width.

802.2 Lines of Sight. Lines of sight to the screen, performance area, or playing field for spectators in *wheelchair spaces* shall comply with 802.2.

802.2.1 Lines of Sight Over Seated Spectators. Where spectators are expected to remain seated during events, spectators in *wheelchair spaces* shall be afforded lines of sight complying with 802.2.1.

802.2.1.1 Lines of Sight Over Heads. Where spectators are provided lines of sight over the heads of spectators seated in the first row in front of their seats, spectators seated in *wheelchair spaces* shall be afforded lines of sight over the heads of seated spectators in the first row in front of *wheelchair spaces*.

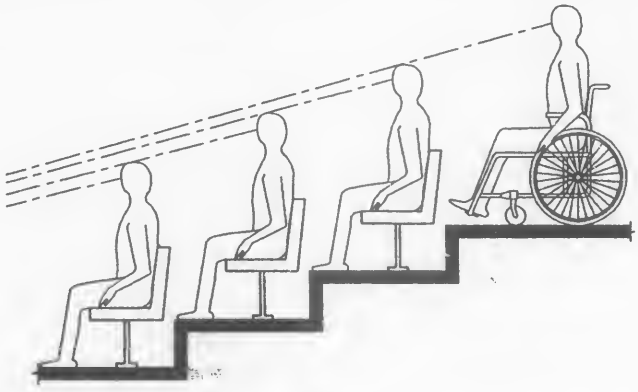


Figure 802.2.1.1
Lines of Sight Over the Heads of Seated Spectators

802.2.1.2 Lines of Sight Between Heads. Where spectators are provided lines of sight over the shoulders and between the heads of spectators seated in the first row in front of their seats, spectators seated in *wheelchair spaces* shall be afforded lines of sight over the shoulders and between the heads of seated spectators in the first row in front of *wheelchair spaces.*

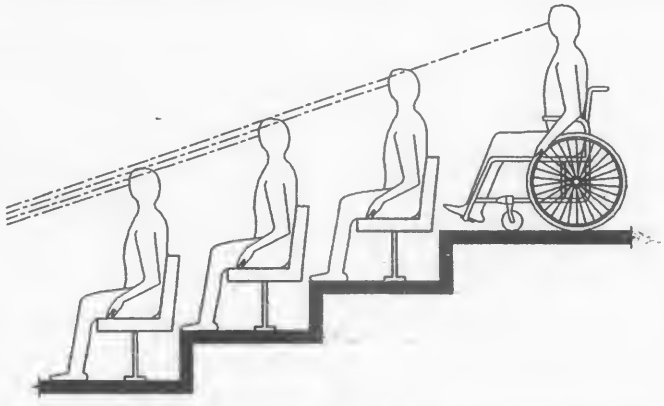


Figure 802.2.1.2
Lines of Sight Between the Heads of Seated Spectators

802.2.2 Lines of Sight Over Standing Spectators. Where spectators are expected to stand during events, spectators in *wheelchair spaces* shall be afforded lines of sight complying with 802.2.2.

802.2.2.1 Lines of Sight Over Heads. Where standing spectators are provided lines of sight over the heads of spectators standing in the first row in front of their seats, spectators seated in

wheelchair spaces shall be afforded lines of sight over the heads of standing spectators in the first row in front of *wheelchair spaces*.

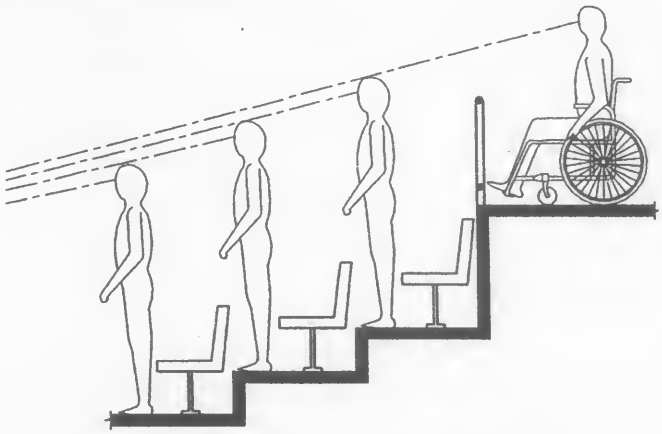


Figure 802.2.2.1
Lines of Sight Over the Heads of Standing Spectators

802.2.2.2 Lines of Sight Between Heads. Where standing spectators are provided lines of sight over the shoulders and between the heads of spectators standing in the first row in front of their seats, spectators seated in *wheelchair spaces* shall be afforded lines of sight over the shoulders and between the heads of standing spectators in the first row in front of *wheelchair spaces*.

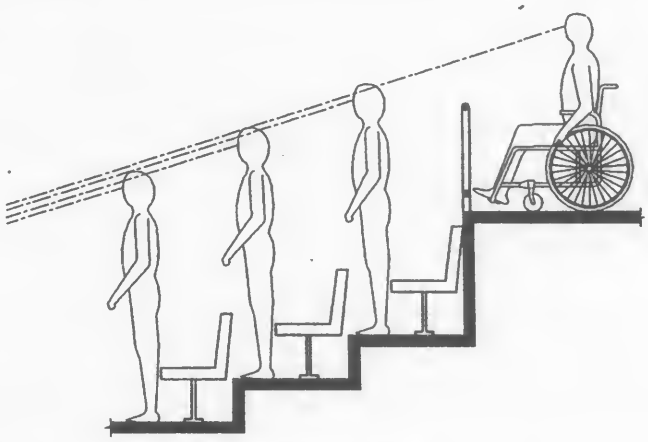


Figure 802.2.2.2
Lines of Sight Between the Heads of Standing Spectators

802.3 Companion Seats. Companion seats shall comply with 802.3.

802.3.1 Alignment. In row seating, companion seats shall be located to provide shoulder alignment with adjacent *wheelchair spaces*. The shoulder alignment point of the *wheelchair space* shall be measured 36 inches (915 mm) from the front of the *wheelchair space*. The floor surface of the companion seat shall be at the same elevation as the floor surface of the *wheelchair space*.

802.3.2 Type. Companion seats shall be equivalent in size, quality, comfort, and amenities to the seating in the immediate area. Companion seats shall be permitted to be movable.

802.4 Designated Aisle Seats. Designated aisle seats shall comply with 802.4.

802.4.1 Armrests. Where armrests are provided on the seating in the immediate area, folding or retractable armrests shall be provided on the aisle side of the seat.

802.4.2 Identification. Each designated aisle seat shall be identified by a sign or marker.

Advisory 802.4.2 Identification. Seats with folding or retractable armrests are intended for use by individuals who have difficulty walking. Consider identifying such seats with signs that contrast (light-on-dark or dark-on-light) and that are also photo luminescent.

803 Dressing, Fitting, and Locker Rooms

803.1 General. Dressing, fitting, and locker rooms shall comply with 803.

Advisory 803.1 General. Partitions and doors should be designed to ensure people using accessible dressing and fitting rooms privacy equivalent to that afforded other users of the facility. Section 903.5 requires dressing room bench seats to be installed so that they are at the same height as a typical wheelchair seat, 17 inches (430 mm) to 19 inches (485 mm). However, wheelchair seats can be lower than dressing room benches for people of short stature or children using wheelchairs.

803.2 Turning Space. Turning *space* complying with 304 shall be provided within the room.

803.3 Door Swing. Doors shall not swing into the room unless a clear floor or ground *space* complying with 305.3 is provided beyond the arc of the door swing.

803.4 Benches. A bench complying with 903 shall be provided within the room.

803.5 Coat Hooks and Shelves. Coat hooks provided within the room shall be located within one of the reach ranges specified in 308. Shelves shall be 40 inches (1015 mm) minimum and 48 inches (1220 mm) maximum above the finish floor or ground.

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.

Advisory 804.2 Clearance. Clearances are measured from the furthest projecting face of all opposing base cabinets, counter tops, appliances, or walls, excluding hardware.

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.

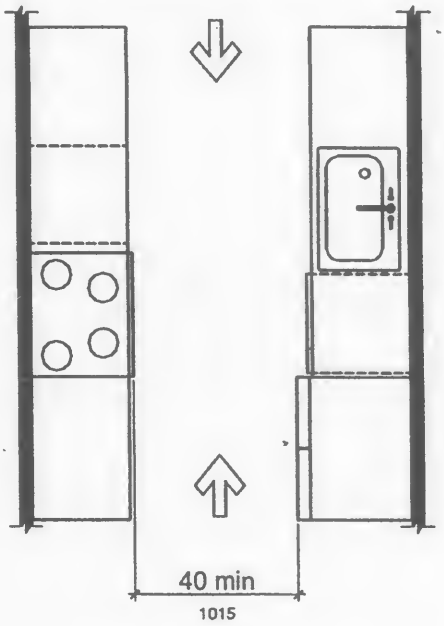


Figure 804.2.1
Pass Through Kitchens

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.

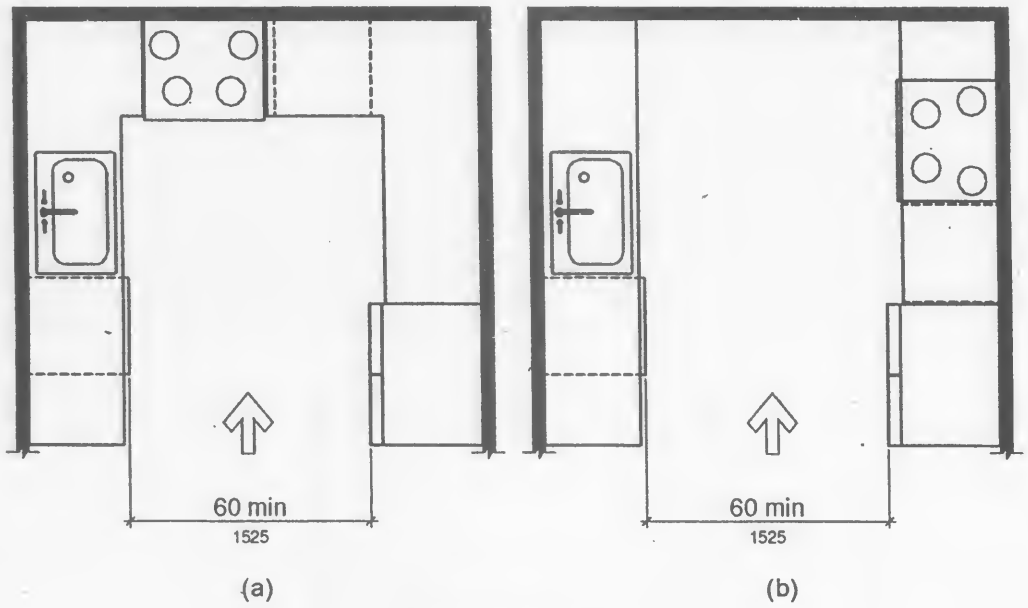


Figure 804.2.2
U-Shaped Kitchens

804.3 Kitchen Work Surface. In *residential dwelling units* required to comply with 809, at least one 30 inches (760 mm) wide minimum section of counter shall provide a kitchen work surface that complies with 804.3.

804.3.1 Clear Floor or Ground Space. A clear floor *space* complying with 305 positioned for a forward approach shall be provided. The clear floor or ground *space* shall be centered on the kitchen work surface and shall provide knee and toe clearance complying with 306.

EXCEPTION: Cabinetry shall be permitted under the kitchen work surface provided that all of the following conditions are met:

(a) the cabinetry can be removed without removal or replacement of the kitchen work surface;
(b) the finish floor extends under the cabinetry; and
(c) the walls behind and surrounding the cabinetry are finished.

804.3.2 Height. The kitchen work surface shall be 34 inches (865 mm) maximum above the finish floor or ground.

EXCEPTION: A counter that is adjustable to provide a kitchen work surface at variable heights, 29 inches (735 mm) minimum and 36 inches (915 mm) maximum, shall be permitted.

804.3.3 Exposed Surfaces. There shall be no sharp or abrasive surfaces under the work surface counters.

804.4 Sinks. Sinks shall comply with 606.

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

804.6 Appliances. Where provided, kitchen appliances shall comply with 804.6.

804.6.1 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided at each kitchen appliance. Clear floor or ground *spaces* shall be permitted to overlap.

804.6.2 Operable Parts. All appliance controls shall comply with 309.

EXCEPTIONS: 1. Appliance doors and door latching devices shall not be required to comply with 309.4.

2. Bottom-hinged appliance doors, when in the open position, shall not be required to comply with 309.3.

804.6.3 Dishwasher. Clear floor or ground *space* shall be positioned adjacent to the dishwasher door. The dishwasher door, in the open position, shall not obstruct the clear floor or ground *space* for the dishwasher or the sink.

804.6.4 Range or Cooktop. Where a forward approach is provided, the clear floor or ground *space* shall provide knee and toe clearance complying with 306. Where knee and toe *space* is provided, the underside of the range or cooktop shall be insulated or otherwise configured to prevent burns, abrasions, or electrical shock. The location of controls shall not require reaching across burners.

804.6.5 Oven. Ovens shall comply with 804.6.5.

804.6.5.1 Side-Hinged Door Ovens. Side-hinged door ovens shall have the work surface required by 804.3 positioned adjacent to the latch side of the oven door.

804.6.5.2 Bottom-Hinged Door Ovens. Bottom-hinged door ovens shall have the work surface required by 804.3 positioned adjacent to one side of the door.

804.6.5.3 Controls. Ovens shall have controls on front panels.

804.6.6 Refrigerator/Freezer. Combination refrigerators and freezers shall have at least 50 percent of the freezer *space* 54 inches (1370 mm) maximum above the finish floor or ground. The clear floor or ground *space* shall be positioned for a parallel approach to the *space* dedicated to a refrigerator/freezer with the centerline of the clear floor or ground *space* offset 24 inches (610 mm) maximum from the centerline of the dedicated *space*.

805 Medical Care and Long-Term Care Facilities

805.1 General. Medical care *facility* and long-term care *facility* patient or resident sleeping rooms required to provide mobility features shall comply with 805.

805.2 Turning Space. Turning *space* complying with 304 shall be provided within the room.

805.3 Clear Floor or Ground Space. A clear floor *space* complying with 305 shall be provided on each side of the bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

805.4 Toilet and Bathing Rooms. Toilet and bathing rooms that are provided as part of a patient or resident sleeping room shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

806 Transient Lodging Guest Rooms

806.1 General. *Transient lodging* guest rooms shall comply with 806. Guest rooms required to provide mobility features shall comply with 806.2. Guest rooms required to provide communication features shall comply with 806.3.

806.2 Guest Rooms with Mobility Features. Guest rooms required to provide mobility features shall comply with 806.2.

> **Advisory 806.2 Guest Rooms.** The requirements in Section 806.2 do not include requirements that are common to all accessible spaces. For example, closets in guest rooms must comply with the applicable provisions for storage specified in scoping.

806.2.1 Living and Dining Areas. Living and dining areas shall be *accessible.*

806.2.2 Exterior Spaces. Exterior *spaces*, including patios, terraces and balconies, that serve the guest room shall be *accessible.*

806.2.3 Sleeping Areas. At least one sleeping area shall provide a clear floor *space* complying with 305 on both sides of a bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

EXCEPTION: Where a single clear floor *space* complying with 305 positioned for parallel approach is provided between two beds, a clear floor or ground space shall not be required on both sides of a bed.

806.2.4 Toilet and Bathing Facilities. No fewer than one water closet, one lavatory, and one bathtub or shower shall comply with 603. In addition, required roll-in shower compartments shall comply with 608.2.2 or 608.2.3.

806.2.4.1 Vanity Counter Top Space. If vanity counter top *space* is provided in non-*accessible* guest toilet or bathing rooms, comparable vanity counter top *space*, in terms of size and proximity to the lavatory, shall also be provided in *accessible* guest toilet or bathing rooms.

> **Advisory 806.2.4.1 Vanity Counter Top Space.** This provision is intended to ensure that accessible guest rooms are provided with comparable vanity counter top space.

806.2.5 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

806.2.6 Turning Space. Turning *space* complying with 304 shall be provided within the guest room.

806.3 Guest Rooms with Communication Features. Guest rooms required to provide communication features shall comply with 806.3.

> **Advisory 806.3 Guest Rooms with Communication Features.** In guest rooms required to have accessible communication features, consider ensuring compatibility with adaptive equipment used by people with hearing impairments. To ensure communication within the facility, as well as on commercial lines, provide telephone interface jacks that are compatible with both digital and analog signal use. If an audio headphone jack is provided on a speaker phone, a cutoff switch can be included in the jack so that insertion of the jack cuts off the speaker. If a telephone-like handset is used, the external speakers can be turned off when the handset is removed from the cradle. For headset or external amplification system compatibility, a standard subminiature jack installed in the telephone will provide the most flexibility.

806.3.1 Alarms. Where emergency warning systems are provided, alarms complying with 702 shall be provided.

806.3.2 Notification Devices. Visible notification devices shall be provided to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to visible alarm signal appliances. Telephones shall have volume controls compatible with the telephone system and shall comply with 704.3. Telephones shall be served by an electrical outlet complying with 309 located within 48 inches (1220 mm) of the telephone to facilitate the use of a *TTY*.

807 Holding Cells and Housing Cells

807.1 General. Holding cells and housing cells shall comply with 807.

807.2 Cells with Mobility Features. Cells required to provide mobility features shall comply with 807.2.

807.2.1 Turning Space. Turning *space* complying with 304 shall be provided within the cell.

807.2.2 Benches. Where benches are provided, at least one bench shall comply with 903.

807.2.3 Beds. Where beds are provided, clear floor *space* complying with 305 shall be provided on at least one side of the bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

807.2.4 Toilet and Bathing Facilities. Toilet *facilities* or bathing *facilities* that are provided as part of a cell shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

> **Advisory 807.2.4 Toilet and Bathing Facilities.** In holding cells, housing cells, or rooms required to be accessible, these requirements do not require a separate toilet room.

807.3 Cells with Communication Features. Cells required to provide communication features shall comply with 807.3.

807.3.1 Alarms. Where audible emergency alarm systems are provided to serve the occupants of cells, visible alarms complying with 702 shall be provided.

EXCEPTION: Visible alarms shall not be required where inmates or detainees are not allowed independent means of egress.

807.3.2 Telephones. Telephones, where provided within cells, shall have volume controls complying with 704.3.

808 Courtrooms

808.1 General. Courtrooms shall comply with 808.

808.2 Turning Space. Where provided, areas that are raised or depressed and accessed by *ramps* or platform lifts with entry *ramps* shall provide unobstructed turning *space* complying with 304.

808.3 Clear Floor Space. Each jury box and witness stand shall have, within its defined area, clear floor *space* complying with 305.

EXCEPTION: In *alterations*, *wheelchair spaces* are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these *spaces* where *ramp* or platform lift access poses a hazard by restricting or projecting into a means of egress required by the appropriate *administrative authority*.

808.4 Judges' Benches and Courtroom Stations. Judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, court reporters' stations and litigants' and counsel stations shall comply with 902.

809 Residential Dwelling Units

809.1 General. *Residential dwelling units* shall comply with 809. *Residential dwelling units* required to provide mobility features shall comply with 809.2 through 809.4. *Residential dwelling units* required to provide communication features shall comply with 809.5.

809.2 Accessible Routes. *Accessible* routes complying with Chapter 4 shall be provided within *residential dwelling units* in accordance with 809.2.

EXCEPTION: *Accessible* routes shall not be required to or within unfinished attics or unfinished basements.

809.2.1 Location. At least one *accessible* route shall connect all *spaces* and *elements* which are a part of the *residential dwelling unit*. Where only one *accessible* route is provided, it shall not pass through bathrooms, closets, or similar *spaces*.

809.2.2 Turning Space. All rooms served by an *accessible* route shall provide a turning *space* complying with 304.

EXCEPTION: Turning *space* shall not be required in exterior *spaces* 30 inches (760 mm) maximum in depth or width.

Advisory 809.2.2 Turning Space. It is generally acceptable to use required clearances to provide wheelchair turning space. For example, in kitchens, 804.3.1 requires at least one work surface with clear floor space complying with 306 to be centered beneath. If designers elect to provide clear floor space that is at least 36 inches (915 mm) wide, as opposed to the required 30 inches (760 mm) wide, that clearance can be part of a T-turn, thereby maximizing efficient use of the kitchen area. However, the overlap of turning space must be limited to one segment of the T-turn so that back-up maneuvering is not restricted. It would, therefore, be unacceptable to use both the clearances under the work surface and the sink as part of a T-turn. See Section 304.3.2 regarding T-turns.

809.3 Kitchen. Where a kitchen is provided, it shall comply with 804.

809.4 Toilet Facilities and Bathing Facilities. At least one toilet *facility* and bathing *facility* shall comply with 603 through 610. At least one of each type of fixture provided shall comply with applicable requirements of 603 through 610. Toilet and bathing fixtures required to comply with 603 through 610 shall be located in the same toilet and bathing area, such that travel between fixtures does not require travel between other parts of the *residential dwelling unit*.

Advisory 809.4 Toilet Facilities and Bathing Facilities. All toilet rooms and bathing rooms in accessible residential dwelling units must be accessible. In addition, at least one of each type of fixture in accessible toilet rooms and bathing rooms must be accessible.

In an effort to promote space efficiency, vanity counter top space in accessible residential dwelling units is often omitted. This omission does not promote equal access or equal enjoyment of the unit. Where comparable units have vanity counter tops, accessible units should also have vanity counter tops located as close as possible to the lavatory for convenient access to toiletries.

809.5 Residential Dwelling Units with Communication Features. *Residential dwelling units* required to provide communication features shall comply with 809.5.

809.5.1 Building Fire Alarm System. Where a *building* fire alarm system is provided, the system wiring shall be extended to a point within the *residential dwelling unit* in the vicinity of the *residential dwelling unit* smoke detection system.

809.5.1.1 Alarm Appliances. Where alarm appliances are provided within a *residential dwelling unit* as part of the *building* fire alarm system, they shall comply with 702.

809.5.1.2 Activation. All visible alarm appliances provided within the *residential dwelling unit* for *building* fire alarm notification shall be activated upon activation of the *building* fire alarm in the portion of the *building* containing the *residential dwelling unit*.

809.5.2 Residential Dwelling Unit Smoke Detection System. *Residential dwelling unit* smoke detection systems shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

809.5.2.2 Activation. All visible alarm appliances provided within the *residential dwelling unit* for smoke detection notification shall be activated upon smoke detection.

809.5.3 Interconnection. The same visible alarm appliances shall be permitted to provide notification of *residential dwelling unit* smoke detection and *building* fire alarm activation.

809.5.4 Prohibited Use. Visible alarm appliances used to indicate *residential dwelling unit* smoke detection or *building* fire alarm activation shall not be used for any other purpose within the *residential dwelling unit.*

809.5.5 Residential Dwelling Unit Primary Entrance. Communication features shall be provided at the *residential dwelling unit* primary *entrance* complying with 809.5.5.

809.5.5.1 Notification. A hard-wired electric doorbell shall be provided. A button or switch shall be provided outside the *residential dwelling unit* primary *entrance.* Activation of the button or switch shall initiate an audible tone and visible signal within the *residential dwelling unit.* Where visible doorbell signals are located in sleeping areas, they shall have controls to deactivate the signal.

809.5.5.2 Identification. A means for visually identifying a visitor without opening the *residential dwelling unit* entry door shall be provided and shall allow for a minimum 180 degree range of view.

Advisory 809.5.5.2 Identification. In doors, peepholes that include prisms clarify the image and should offer a wide-angle view of the hallway or exterior for both standing persons and wheelchair users. Such peepholes can be placed at a standard height and permit a view from several feet from the door.

809.5.6 Site, Building, or Floor Entrance. Where a system, including a closed-circuit system, permitting voice communication between a visitor and the occupant of the *residential dwelling unit* is provided, the system shall comply with 708.4.

810 Transportation Facilities

810.1 General. Transportation *facilities* shall comply with 810.

810.2 Bus Boarding and Alighting Areas. Bus boarding and alighting areas shall comply with 810.2.

Advisory 810.2 Bus Boarding and Alighting Areas. At bus stops where a shelter is provided, the bus stop pad can be located either within or outside of the shelter.

810.2.1 Surface. Bus stop boarding and alighting areas shall have a firm, stable surface.

810.2.2 Dimensions. Bus stop boarding and alighting areas shall provide a clear length of 96 inches (2440 mm) minimum, measured perpendicular to the curb or vehicle roadway edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the vehicle roadway.

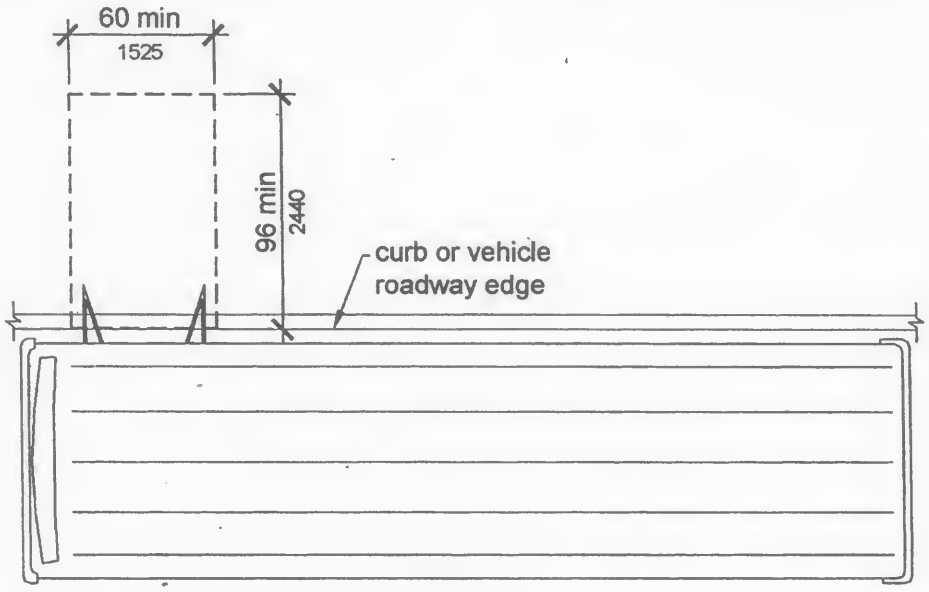


Figure 810.2.2
Dimensions of Bus Boarding and Alighting Areas

810.2.3 Connection. Bus stop boarding and alighting areas shall be connected to streets, sidewalks, or pedestrian paths by an *accessible* route complying with 402.

810.2.4 Slope. Parallel to the roadway, the slope of the bus stop boarding and alighting area shall be the same as the roadway, to the maximum extent practicable. Perpendicular to the roadway, the slope of the bus stop boarding and alighting area shall not be steeper than 1:48.

810.3 Bus Shelters. Bus shelters shall provide a minimum clear floor or ground *space* complying with 305 entirely within the shelter. Bus shelters shall be connected by an *accessible* route complying with 402 to a boarding and alighting area complying with 810.2.

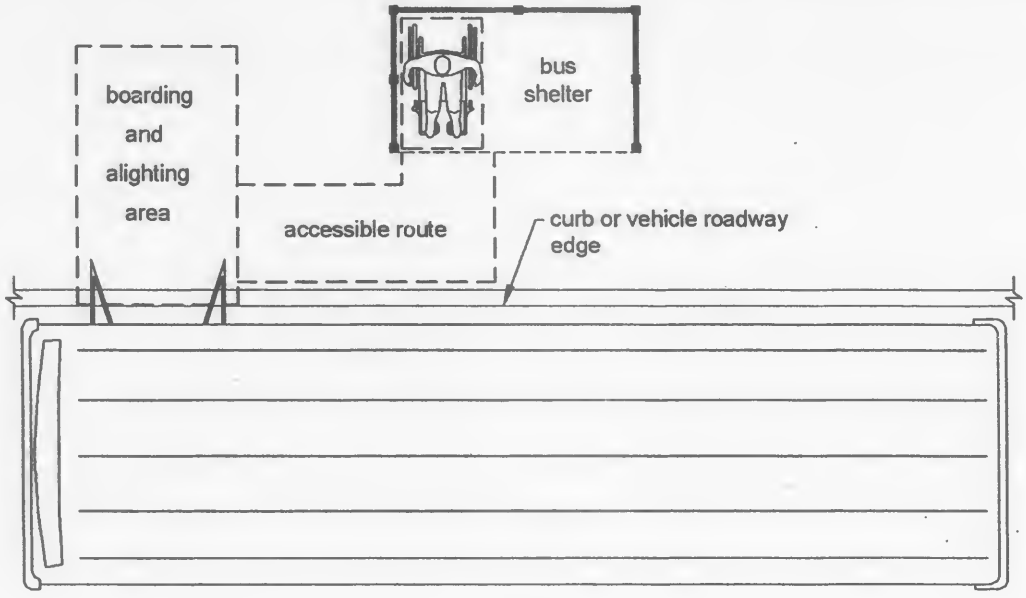


Figure 810.3
Bus Shelters

810.4 Bus Signs. Bus route identification signs shall comply with 703.5.1 through 703.5.4, and 703.5.7 and 703.5.8. In addition, to the maximum extent practicable, bus route identification signs shall comply with 703.5.5.

EXCEPTION: Bus schedules, timetables and maps that are posted at the bus stop or bus bay shall not be required to comply.

810.5 Rail Platforms. Rail platforms shall comply with 810.5.

810.5.1 Slope. Rail platforms shall not exceed a slope of 1:48 in all directions.

EXCEPTION: Where platforms serve vehicles operating on existing track or track laid in existing roadway, the slope of the platform parallel to the track shall be permitted to be equal to the slope (grade) of the roadway or existing track.

810.5.2 Detectable Warnings. Platform boarding edges not protected by platform screens or guards shall have *detectable warnings* complying with 705 along the full length of the *public use* area of the platform.

810.5.3 Platform and Vehicle Floor Coordination. Station platforms shall be positioned to coordinate with vehicles in accordance with the applicable requirements of 36 CFR Part 1192. Low-level platforms shall be 8 inches (205 mm) minimum above top of rail.

EXCEPTION: Where vehicles are boarded from sidewalks or street-level, low-level platforms shall be permitted to be less than 8 inches (205 mm).

Advisory 810.5.3 Platform and Vehicle Floor Coordination. The height and position of a platform must be coordinated with the floor of the vehicles it serves to minimize the vertical and horizontal gaps, in accordance with the ADA Accessibility Guidelines for Transportation Vehicles (36 CFR Part 1192). The vehicle guidelines, divided by bus, van, light rail, rapid rail, commuter rail, intercity rail, are available at www.access-board.gov. The preferred alignment is a high platform, level with the vehicle floor. In some cases, the vehicle guidelines permit use of a low platform in conjunction with a lift or ramp. Most such low platforms must have a minimum height of eight inches above the top of the rail. Some vehicles are designed to be boarded from a street or the sidewalk along the street and the exception permits such boarding areas to be less than eight inches high.

810.6 Rail Station Signs. Rail station signs shall comply with 810.6.

EXCEPTION. Signs shall not be required to comply with 810.6.1 and 810.6.2 where audible signs are remotely transmitted to hand-held receivers, or are user- or proximity-actuated.

Advisory 810.6 Rail Station Signs Exception. Emerging technologies such as an audible sign systems using infrared transmitters and receivers may provide greater accessibility in the transit environment than traditional Braille and raised letter signs. The transmitters are placed on or next to print signs and transmit their information to an infrared receiver that is held by a person. By scanning an area, the person will hear the sign. This means that signs can be placed well out of reach of Braille readers, even on parapet walls and on walls beyond barriers. Additionally, such signs can be used to provide wayfinding information that cannot be efficiently conveyed on Braille signs.

810.6.1 Entrances. Where signs identify a station or its *entrance*, at least one sign at each *entrance* shall comply with 703.2 and shall be placed in uniform locations to the maximum extent practicable. Where signs identify a station that has no defined *entrance*, at least one sign shall comply with 703.2 and shall be placed in a central location.

810.6.2 Routes and Destinations. Lists of stations, routes and destinations served by the station which are located on boarding areas, platforms, or *mezzanines* shall comply with 703.5. At least one *tactile* sign identifying the specific station and complying with 703.2 shall be provided on each platform or boarding area. Signs covered by this requirement shall, to the maximum extent practicable, be placed in uniform locations within the system.

EXCEPTION: Where sign *space* is limited, *characters* shall not be required to exceed 3 inches (75 mm).

Advisory 810.6.2 Routes and Destinations. Route maps are not required to comply with the informational sign requirements in this document.

810.6.3 Station Names. Stations covered by this section shall have identification signs complying with 703.5. Signs shall be clearly visible and within the sight lines of standing and sitting passengers from within the vehicle on both sides when not obstructed by another vehicle.

> **Advisory 810.6.3 Station Names.** It is also important to place signs at intervals in the station where passengers in the vehicle will be able to see a sign when the vehicle is either stopped at the station or about to come to a stop in the station. The number of signs necessary may be directly related to the size of the lettering displayed on the sign.

810.7 Public Address Systems. Where public address systems convey audible information to the public, the same or equivalent information shall be provided in a visual format.

810.8 Clocks. Where clocks are provided for use by the public, the clock face shall be uncluttered so that its *elements* are clearly visible. Hands, numerals and digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are installed overhead, numerals and digits shall comply with 703.5.

810.9 Escalators. Where provided, escalators shall comply with the sections 6.1.3.5.6 and 6.1.3.6.5 of ASME A17.1 (incorporated by reference, see "Referenced Standards" in Chapter 1) and shall have a clear width of 32 inches (815 mm) minimum.

EXCEPTION: Existing escalators in *key stations* shall not be required to comply with 810.9.

810.10 Track Crossings. Where a *circulation path* serving boarding platforms crosses tracks, it shall comply with 402.

EXCEPTION: Openings for wheel flanges shall be permitted to be 2½ inches (64 mm) maximum.

Figure 810.10 (Exception)
Track Crossings

811 Storage

811.1 General. Storage shall comply with 811.

811.2 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided.

811.3 Height. Storage *elements* shall comply with at least one of the reach ranges specified in 308.

811.4 Operable Parts. *Operable parts* shall comply with 309.

CHAPTER 9: BUILT-IN ELEMENTS

901 General

901.1 Scope. The provisions of Chapter 9 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

902 Dining Surfaces and Work Surfaces

902.1 General. Dining surfaces and work surfaces shall comply with 902.2 and 902.3.

EXCEPTION: Dining surfaces and work surfaces for *children's use* shall be permitted to comply with 902.4.

> **Advisory 902.1 General.** Dining surfaces include, but are not limited to, bars, tables, lunch counters, and booths. Examples of work surfaces include writing surfaces, study carrels, student laboratory stations, baby changing and other tables or fixtures for personal grooming, coupon counters, and where covered by the ABA scoping provisions, employee work stations.

902.2 Clear Floor or Ground Space. A clear floor *space* complying with 305 positioned for a forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided.

902.3 Height. The tops of dining surfaces and work surfaces shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.

902.4 Dining Surfaces and Work Surfaces for Children's Use. *Accessible* dining surfaces and work surfaces for *children's use* shall comply with 902.4.

EXCEPTION: Dining surfaces and work surfaces that are used primarily by children 5 years and younger shall not be required to comply with 902.4 where a clear floor or ground *space* complying with 305 positioned for a parallel approach is provided.

902.4.1 Clear Floor or Ground Space. A clear floor *space* complying with 305 positioned for forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided, except that knee clearance 24 inches (610 mm) minimum above the finish floor or ground shall be permitted.

902.4.2 Height. The tops of tables and counters shall be 26 inches (660 mm) minimum and 30 inches (760 mm) maximum above the finish floor or ground.

903 Benches

903.1 General. Benches shall comply with 903.

903.2 Clear Floor or Ground Space. Clear floor or ground *space* complying with 305 shall be provided and shall be positioned at the end of the bench seat and parallel to the short axis of the bench.

903.3 Size. Benches shall have seats that are 42 inches (1065 mm) long minimum and 20 inches (510 mm) deep minimum and 24 inches (610 mm) deep maximum.

903.4 Back Support. The bench shall provide for back support or shall be affixed to a wall. Back support shall be 42 inches (1065 mm) long minimum and shall extend from a point 2 inches (51 mm) maximum above the seat surface to a point 18 inches (455 mm) minimum above the seat surface. Back support shall be 2½ inches (64 mm) maximum from the rear edge of the seat measured horizontally.

Advisory 903.4 Back Support. To assist in transferring to the bench, consider providing grab bars on a wall adjacent to the bench, but not on the seat back. If provided, grab bars cannot obstruct transfer to the bench.

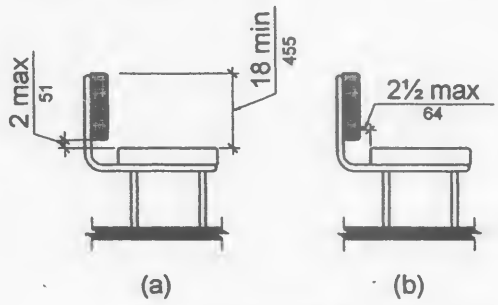


Figure 903.4
Bench Back Support

903.5 Height. The top of the bench seat surface shall be 17 inches (430 mm) minimum and 19 inches (485 mm) maximum above the finish floor or ground.

903.6 Structural Strength. Allowable stresses shall not be exceeded for materials used when a vertical or horizontal force of 250 pounds (1112 N) is applied at any point on the seat, fastener, mounting device, or supporting structure.

903.7 Wet Locations. Where installed in wet locations, the surface of the seat shall be slip resistant and shall not accumulate water.

904 Check-Out Aisles and Sales and Service Counters

904.1 General. Check-out aisles and sales and service counters shall comply with the applicable requirements of 904.

904.2 Approach. All portions of counters required to comply with 904 shall be located adjacent to a walking surface complying with 403.

Advisory 904.2 Approach. If a cash register is provided at the sales or service counter, locate the accessible counter close to the cash register so that a person using a wheelchair is visible to sales or service personnel and to minimize the reach for a person with a disability.

904.3 Check-Out Aisles. Check-out aisles shall comply with 904.3.

904.3.1 Aisle. Aisles shall comply with 403.

904.3.2 Counter. The counter surface height shall be 38 inches (965 mm) maximum above the finish floor or ground. The top of the counter edge protection shall be 2 inches (51 mm) maximum above the top of the counter surface on the aisle side of the check-out counter.

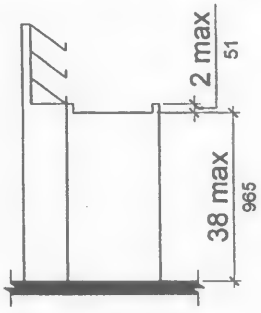


Figure 904.3.2
Check-Out Aisle Counters

904.3.3 Check Writing Surfaces. Where provided, check writing surfaces shall comply with 902.3.

904.4 Sales and Service Counters. Sales counters and service counters shall comply with 904.4.1 or 904.4.2. The *accessible* portion of the counter top shall extend the same depth as the sales or service counter top.

EXCEPTION: In *alterations*, when the provision of a counter complying with 904.4 would result in a reduction of the number of existing counters at work stations or a reduction of the number of existing *mail boxes*, the counter shall be permitted to have a portion which is 24 inches (610 mm) long minimum complying with 904.4.1 provided that the required clear floor or ground *space* is centered on the *accessible* length of the counter.

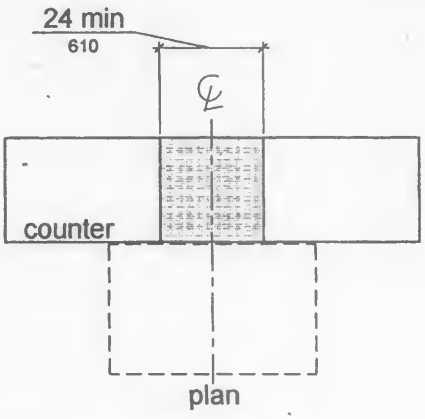


Figure 904.4 (Exception)
Alteration of Sales and Service Counters

904.4.1 Parallel Approach. A portion of the counter surface that is 36 inches (915 mm) long minimum and 36 inches (915 mm) high maximum above the finish floor shall be provided. A clear floor or ground *space* complying with 305 shall be positioned for a parallel approach adjacent to the 36 inch (915 mm) minimum length of counter.

EXCEPTION: Where the provided counter surface is less than 36 inches (915 mm) long, the entire counter surface shall be 36 inches (915 mm) high maximum above the finish floor.

904.4.2 Forward Approach. A portion of the counter surface that is 30 inches (760 mm) long minimum and 36 inches (915 mm) high maximum shall be provided. Knee and toe *space* complying with 306 shall be provided under the counter. A clear floor or ground *space* complying with 305 shall be positioned for a forward approach to the counter.

904.5 Food Service Lines. Counters in food service lines shall comply with 904.5.

904.5.1 Self-Service Shelves and Dispensing Devices. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall comply with 308.

904.5.2 Tray Slides. The tops of tray slides shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.

904.6 Security Glazing. Where counters or teller windows have security glazing to separate personnel from the public, a method to facilitate voice communication shall be provided. Telephone handset devices, if provided, shall comply with 704.3.

Advisory 904.6 Security Glazing. Assistive listening devices complying with 706 can facilitate voice communication at counters or teller windows where there is security glazing which promotes distortion in audible information. Where assistive listening devices are installed, place signs complying with 703.7.2.4 to identify those facilities which are so equipped. Other voice communication methods include, but are not limited to, grilles, slats, talk-through baffles, intercoms, or telephone handset devices.

CHAPTER 10: RECREATION FACILITIES

1001 General

1001.1 Scope. The provisions of Chapter 10 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

> **Advisory 1001.1 Scope.** Unless otherwise modified or specifically addressed in Chapter 10, all other ADAAG provisions apply to the design and construction of recreation facilities and elements. The provisions in Section 1001.1 apply wherever these elements are provided. For example, office buildings may contain a room with exercise equipment to which these sections would apply.

1002 Amusement Rides

1002.1 General. *Amusement rides* shall comply with 1002.

1002.2 Accessible Routes. *Accessible* routes serving *amusement rides* shall comply with Chapter 4.

EXCEPTIONS: 1. In load or unload areas and on *amusement rides*, where compliance with 405.2 is not structurally or operationally feasible, *ramp* slope shall be permitted to be 1:8 maximum.

2. In load or unload areas and on *amusement rides*, handrails provided along walking surfaces complying with 403 and required on *ramps* complying with 405 shall not be required to comply with 505 where compliance is not structurally or operationally feasible.

> **Advisory 1002.2 Accessible Routes Exception 1.** Steeper slopes are permitted on accessible routes connecting the amusement ride in the load and unload position where it is "structurally or operationally infeasible." In most cases, this will be limited to areas where the accessible route leads directly to the amusement ride and where there are space limitations on the ride, not the queue line. Where possible, the least possible slope should be used on the accessible route that serves the amusement ride.

1002.3 Load and Unload Areas. A turning *space* complying with 304.2 and 304.3 shall be provided in load and unload areas.

1002.4 Wheelchair Spaces in Amusement Rides. *Wheelchair spaces* in *amusement rides* shall comply with 1002.4.

1002.4.1 Floor or Ground Surface. The floor or ground surface of *wheelchair spaces* shall be stable and firm.

1002.4.2 Slope. The floor or ground surface of *wheelchair spaces* shall have a slope not steeper than 1:48 when in the load and unload position.

1002.4.3 Gaps. Floors of *amusement rides* with *wheelchair spaces* and floors of load and unload areas shall be coordinated so that, when *amusement rides* are at rest in the load and unload

position, the vertical difference between the floors shall be within plus or minus 5/8 inches (16 mm) and the horizontal gap shall be 3 inches (75 mm) maximum under normal passenger load conditions.

EXCEPTION: Where compliance is not operationally or structurally feasible, *ramps*, bridge plates, or similar devices complying with the applicable requirements of 36 CFR 1192.83(c) shall be provided.

Advisory 1002.4.3 Gaps Exception. 36 CFR 1192.83(c) ADA Accessibility Guidelines for Transportation Vehicles - Light Rail Vehicles and Systems - Mobility Aid Accessibility is available at www.access-board.gov. It includes provisions for bridge plates and ramps that can be used at gaps between wheelchair spaces and floors of load and unload areas.

1002.4.4 Clearances. Clearances for *wheelchair spaces* shall comply with 1002.4.4.

EXCEPTIONS: 1. Where provided, securement devices shall be permitted to overlap required clearances.

2. *Wheelchair spaces* shall be permitted to be mechanically or manually repositioned.
3. *Wheelchair spaces* shall not be required to comply with 307.4.

Advisory 1002.4.4 Clearances Exception 3. This exception for protruding objects applies to the ride devices, not to circulation areas or accessible routes in the queue lines or the load and unload areas.

1002.4.4.1 Width and Length. *Wheelchair spaces* shall provide a clear width of 30 inches (760 mm) minimum and a clear length of 48 inches (1220 mm) minimum measured to 9 inches (230 mm) minimum above the floor surface.

1002.4.4.2 Side Entry. Where *wheelchair spaces* are entered only from the side, *amusement rides* shall be designed to permit sufficient maneuvering clearance for individuals using a wheelchair or mobility aid to enter and exit the ride.

Advisory 1002.4.4.2 Side Entry. The amount of clear space needed within the ride, and the size and position of the opening are interrelated. A 32 inch (815 mm) clear opening will not provide sufficient width when entered through a turn into an amusement ride. Additional space for maneuvering and a wider door will be needed where a side opening is centered on the ride. For example, where a 42 inch (1065 mm) opening is provided, a minimum clear space of 60 inches (1525 mm) in length and 36 inches (915mm) in depth is needed to ensure adequate space for maneuvering.

1002.4.4.3 Permitted Protrusions in Wheelchair Spaces. Objects are permitted to protrude a distance of 6 inches (150 mm) maximum along the front of the *wheelchair space*, where located 9 inches (230 mm) minimum and 27 inches (685 mm) maximum above the floor or ground surface of the *wheelchair space*. Objects are permitted to protrude a distance of 25 inches (635 mm) maximum along the front of the *wheelchair space*, where located more than 27 inches (685 mm) above the floor or ground surface of the *wheelchair space*.

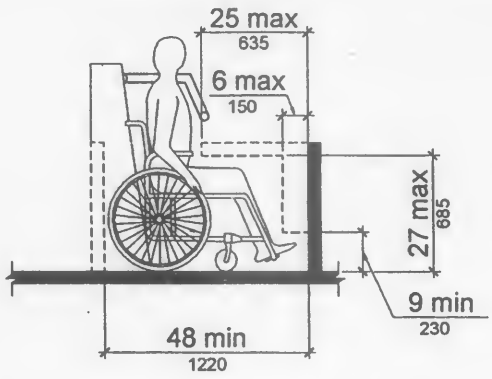


Figure 1002.4.4.3
Protrusions in Wheelchair Spaces in Amusement Rides

1002.4.5 Ride Entry. Openings providing entry to *wheelchair spaces* on *amusement rides* shall be 32 inches (815 mm) minimum clear.

1002.4.6 Approach. One side of the *wheelchair space* shall adjoin an *accessible* route when in the load and unload position.

1002.4.7 Companion Seats. Where the interior width of the *amusement ride* is greater than 53 inches (1345 mm), seating is provided for more than one rider, and the wheelchair is not required to be centered within the *amusement ride*, a companion seat shall be provided for each *wheelchair space*.

1002.4.7.1 Shoulder-to-Shoulder Seating. Where an *amusement ride* provides shoulder-to-shoulder seating, companion seats shall be shoulder-to-shoulder with the adjacent *wheelchair space*.

EXCEPTION: Where shoulder-to-shoulder companion seating is not operationally or structurally feasible, compliance with this requirement shall be required to the maximum extent practicable.

1002.5 Amusement Ride Seats Designed for Transfer. *Amusement ride seats* designed for transfer shall comply with 1002.5 when positioned for loading and unloading.

Advisory 1002.5 Amusement Ride Seats Designed for Transfer. The proximity of the clear floor or ground space next to an element and the height of the element one is transferring to are both critical for a safe and independent transfer. Providing additional clear floor or ground space both in front of and diagonal to the element will provide flexibility and will increase usability for a more diverse population of individuals with disabilities. Ride seats designed for transfer should involve only one transfer. Where possible, designers are encouraged to locate the ride seat no higher than 17 to 19 inches (430 to 485 mm) above the load and unload surface. Where greater distances are required for transfers, providing gripping surfaces, seat padding, and avoiding sharp objects in the path of transfer will facilitate the transfer.

1002.5.1 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided in the load and unload area adjacent to the *amusement ride seats* designed for transfer.

1002.5.2 Transfer Height. The height of *amusement ride seats* designed for transfer shall be 14 inches (355 mm) minimum and 24 inches (610 mm) maximum measured from the surface of the load and unload area.

1002.5.3 Transfer Entry. Where openings are provided for transfer to *amusement ride seats*, the openings shall provide clearance for transfer from a wheelchair or mobility aid to the *amusement ride seat*.

1002.5.4 Wheelchair Storage Space. Wheelchair storage *spaces* complying with 305 shall be provided in or adjacent to unload areas for each required *amusement ride seat* designed for transfer and shall not overlap any required means of egress or *accessible* route.

1002.6 Transfer Devices for Use with Amusement Rides. *Transfer devices* for use with *amusement rides* shall comply with 1002.6 when positioned for loading and unloading.

Advisory 1002.6 Transfer Devices for Use with Amusement Rides. Transfer devices for use with amusement rides should permit individuals to make independent transfers to and from their wheelchairs or mobility devices. There are a variety of transfer devices available that could be adapted to provide access onto an amusement ride. Examples of devices that may provide for transfers include, but are not limited to, transfer systems, lifts, mechanized seats, and custom designed systems. Operators and designers have flexibility in developing designs that will facilitate individuals to transfer onto amusement rides. These systems or devices should be designed to be reliable and sturdy.

Designs that limit the number of transfers required from a wheelchair or mobility device to the ride seat are encouraged. When using a transfer device to access an amusement ride, the least number of transfers and the shortest distance is most usable. Where possible, designers are encouraged to locate the transfer device seat no higher than 17 to 19 inches (430 to 485 mm) above the load and unload surface. Where greater distances are required for transfers, providing gripping surfaces, seat padding, and avoiding sharp objects in the path of transfer will facilitate the transfer. Where a series of transfers are required to reach the amusement ride seat, each vertical transfer should not exceed 8 inches (205 mm).

1002.6.1 Clear Floor or Ground Space. A clear floor or ground *space* complying with 305 shall be provided in the load and unload area adjacent to the *transfer device*.

1002.6.2 Transfer Height. The height of *transfer device* seats shall be 14 inches (355 mm) minimum and 24 inches (610 mm) maximum measured from the load and unload surface.

1002.6.3 Wheelchair Storage Space. Wheelchair storage *spaces* complying with 305 shall be provided in or adjacent to unload areas for each required *transfer device* and shall not overlap any required means of egress or *accessible* route.

1003 Recreational Boating Facilities

1003.1 General. Recreational boating *facilities* shall comply with 1003.

1003.2 Accessible Routes. *Accessible* routes serving recreational boating *facilities*, including *gangways* and floating piers, shall comply with Chapter 4 except as modified by the exceptions in 1003.2.

1003.2.1 Boat Slips. *Accessible* routes serving *boat slips* shall be permitted to use the exceptions in 1003.2.1.

EXCEPTIONS: 1. Where an existing *gangway* or series of *gangways* is replaced or *altered*, an increase in the length of the *gangway* shall not be required to comply with 1003.2 unless required by 202.4.

2. *Gangways* shall not be required to comply with the maximum rise specified in 405.6.

3. Where the total length of a *gangway* or series of *gangways* serving as part of a required *accessible* route is 80 feet (24 m) minimum, *gangways* shall not be required to comply with 405.2.

4. Where *facilities* contain fewer than 25 *boat slips* and the total length of the *gangway* or series of *gangways* serving as part of a required *accessible* route is 30 feet (9145 mm) minimum, *gangways* shall not be required to comply with 405.2.

5. Where *gangways* connect to *transition plates*, landings specified by 405.7 shall not be required.

6. Where *gangways* and *transition plates* connect and are required to have handrails, handrail extensions shall not be required. Where handrail extensions are provided on *gangways* or *transition plates*, the handrail extensions shall not be required to be parallel with the ground or floor surface.

7. The *cross slope* specified in 403.3 and 405.3 for *gangways*, *transition plates*, and floating piers that are part of *accessible* routes shall be measured in the static position.

8. Changes in level complying with 303.3 and 303.4 shall be permitted on the surfaces of *gangways* and *boat launch ramps*.

Advisory 1003.2.1 Boat Slips Exception 3. The following example shows how exception 3 would be applied: A gangway is provided to a floating pier which is required to be on an accessible route. The vertical distance is 10 feet (3050 mm) between the elevation where the gangway departs the landside connection and the elevation of the pier surface at the lowest water level. Exception 3 permits the gangway to be 80 feet (24 m) long. Another design solution would be to have two 40 foot (12 m) plus continuous gangways joined together at a float, where the float (as the water level falls) will stop dropping at an elevation five feet below the landside connection. The length of transition plates would not be included in determining if the gangway(s) meet the requirements of the exception.

1003.2.2 Boarding Piers at Boat Launch Ramps. *Accessible* routes serving *boarding piers* at *boat launch ramps* shall be permitted to use the exceptions in 1003.2.2.

EXCEPTIONS: 1. *Accessible* routes serving floating *boarding piers* shall be permitted to use Exceptions 1, 2, 5, 6, 7 and 8 in 1003.2.1.

2. Where the total length of the *gangway* or series of *gangways* serving as part of a required *accessible* route is 30 feet (9145 mm) minimum, *gangways* shall not be required to comply with 405.2.

3. Where the *accessible* route serving a floating *boarding pier* or skid pier is located within a *boat launch ramp*, the portion of the *accessible* route located within the *boat launch ramp* shall not be required to comply with 405.

1003.3 Clearances. Clearances at *boat slips* and on *boarding piers* at *boat launch ramps* shall comply with 1003.3.

Advisory 1003.3 Clearances. Although the minimum width of the clear pier space is 60 inches (1525 mm), it is recommended that piers be wider than 60 inches (1525 mm) to improve the safety for persons with disabilities, particularly on floating piers.

1003.3.1 Boat Slip Clearance. *Boat slips* shall provide clear pier *space* 60 inches (1525 mm) wide minimum and at least as long as the *boat slips*. Each 10 feet (3050 mm) maximum of linear pier edge serving *boat slips* shall contain at least one continuous clear opening 60 inches (1525 mm) wide minimum.

EXCEPTIONS: 1. Clear pier *space* shall be permitted to be 36 inches (915 mm) wide minimum for a length of 24 inches (610 mm) maximum, provided that multiple 36 inch (915 mm) wide segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

2. Edge protection shall be permitted at the continuous clear openings, provided that it is 4 inches (100 mm) high maximum and 2 inches (51 mm) wide maximum.

3. In existing piers, clear pier *space* shall be permitted to be located perpendicular to the *boat slip* and shall extend the width of the *boat slip*, where the *facility* has at least one *boat slip* complying with 1003.3, and further compliance with 1003.3 would result in a reduction in the number of *boat slips* available or result in a reduction of the widths of existing slips.

Advisory 1003.3.1 Boat Slip Clearance Exception 3. Where the conditions in exception 3 are satisfied, existing facilities are only required to have one accessible boat slip with a pier clearance which runs the length of the slip. All other accessible slips are allowed to have the required pier clearance at the head of the slip. Under this exception, at piers with perpendicular boat slips, the width of most "finger piers" will remain unchanged. However, where mooring systems for floating piers are replaced as part of pier alteration projects, an opportunity may exist for increasing accessibility. Piers may be reconfigured to allow an increase in the number of wider finger piers, and serve as accessible boat slips.

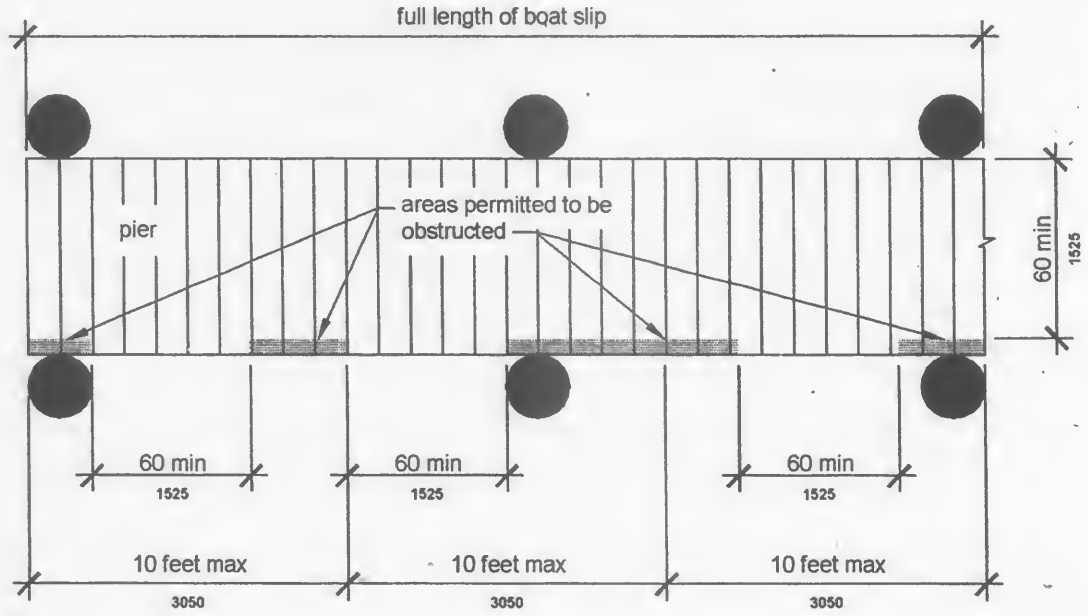


Figure 1003.3.1
Boat Slip Clearance

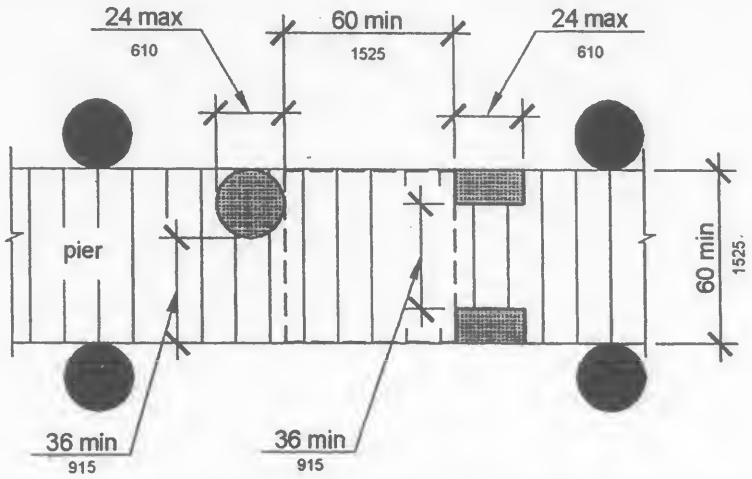


Figure 1003.3.1 (Exception 1)
Clear Pier Space Reduction at Boat Slips

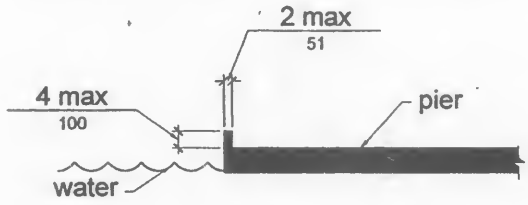


Figure 1003.3.1 (Exception 2)
Edge Protection at Boat Slips

1003.3.2 Boarding Pier Clearances. *Boarding piers* at *boat launch ramps* shall provide clear pier *space* 60 inches (1525 mm) wide minimum and shall extend the full length of the *boarding pier.* Every 10 feet (3050 mm) maximum of linear pier edge shall contain at least one continuous clear opening 60 inches (1525 mm) wide minimum.

EXCEPTIONS: 1. The clear pier *space* shall be permitted to be 36 inches (915 mm) wide minimum for a length of 24 inches (610 mm) maximum provided that multiple 36 inch (915 mm) wide segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

2. Edge protection shall be permitted at the continuous clear openings provided that it is 4 inches (100 mm) high maximum and 2 inches (51 mm) wide maximum.

Advisory 1003.3.2 Boarding Pier Clearances. These requirements do not establish a minimum length for accessible boarding piers at boat launch ramps. The accessible boarding pier should have a length at least equal to that of other boarding piers provided at the facility. If no other boarding pier is provided, the pier would have a length equal to what would have been provided if no access requirements applied. The entire length of accessible boarding piers would be required to comply with the same technical provisions that apply to accessible boat slips. For example, at a launch ramp, if a 20 foot (6100 mm) long accessible boarding pier is provided, the entire 20 feet (6100 mm) must comply with the pier clearance requirements in 1003.3. Likewise, if a 60 foot (18 m) long accessible boarding pier is provided, the pier clearance requirements in 1003.3 would apply to the entire 60 feet (18 m).

The following example applies to a boat launch ramp boarding pier: A chain of floats is provided on a launch ramp to be used as a boarding pier which is required to be accessible by 1003.3.2. At high water, the entire chain is floating and a transition plate connects the first float to the surface of the launch ramp. As the water level decreases, segments of the chain end up resting on the launch ramp surface, matching the slope of the launch ramp.

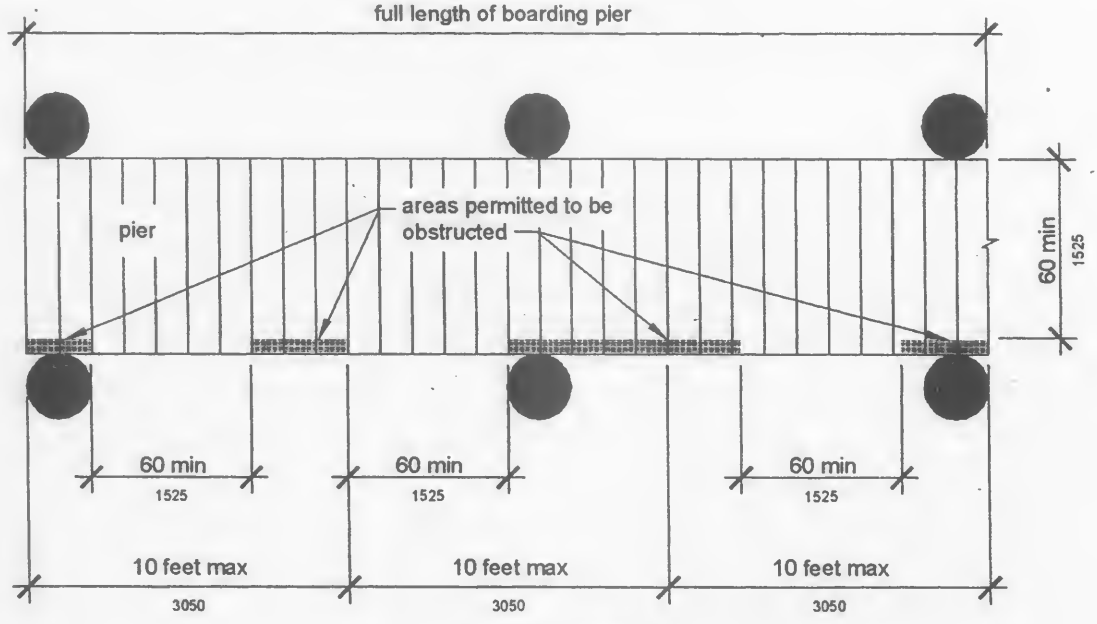


Figure 1003.3.2
Boarding Pier Clearance

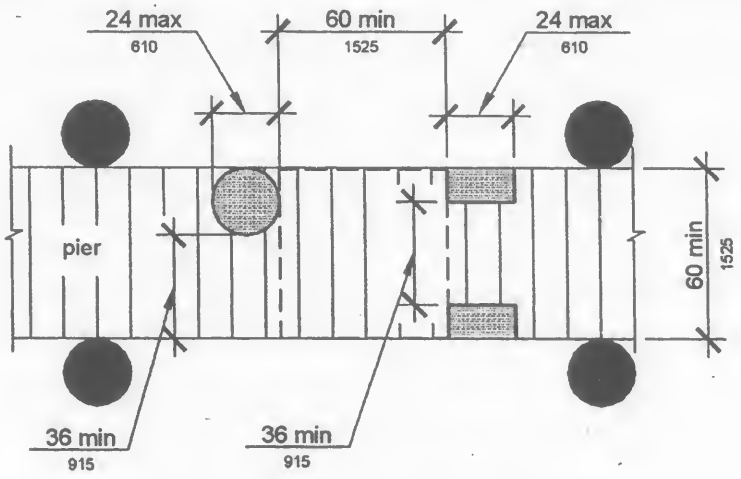


Figure 1003.3.2 (Exception 1)
Clear Pier Space Reduction at Boarding Piers

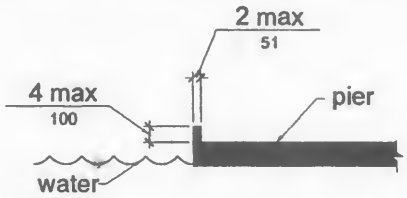


Figure 1003.3.2 (Exception 2)
Edge Protection at Boarding Piers

1004 Exercise Machines and Equipment

1004.1 Clear Floor Space. Exercise machines and equipment shall have a clear floor *space* complying with 305 positioned for transfer or for use by an individual seated in a wheelchair. Clear floor or ground *spaces* required at exercise machines and equipment shall be permitted to overlap.

Advisory 1004.1 Clear Floor Space. One clear floor or ground space is permitted to be shared between two pieces of exercise equipment. To optimize space use, designers should carefully consider layout options such as connecting ends of the row and center aisle spaces. The position of the clear floor space may vary greatly depending on the use of the equipment or machine. For example, to provide access to a shoulder press machine, clear floor space next to the seat would be appropriate to allow for transfer. Clear floor space for a bench press machine designed for use by an individual seated in a wheelchair, however, will most likely be centered on the operating mechanisms.

1005 Fishing Piers and Platforms

1005.1 Accessible Routes. *Accessible* routes serving fishing piers and platforms, including *gangways* and floating piers, shall comply with Chapter 4.

EXCEPTIONS: 1. *Accessible* routes serving floating fishing piers and platforms shall be permitted to use Exceptions 1, 2, 5, 6, 7 and 8 in 1003.2.1.

2. Where the total length of the *gangway* or series of *gangways* serving as part of a required *accessible* route is 30 feet (9145 mm) minimum, *gangways* shall not be required to comply with 405.2.

1005.2 Railings. Where provided, railings, guards, or handrails shall comply with 1005.2.

1005.2.1 Height. At least 25 percent of the railings, guards, or handrails shall be 34 inches (865 mm) maximum above the ground or deck surface.

EXCEPTION: Where a guard complying with sections 1003.2.12.1 and 1003.2.12.2 of the International Building Code (2000 edition) or sections 1012.2 and 1012.3 of the International Building Code (2003 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1) is provided, the guard shall not be required to comply with 1005.2.1.

1005.2.1.1 Dispersion. Railings, guards, or handrails required to comply with 1005.2.1 shall be dispersed throughout the fishing pier or platform.

Advisory 1005.2.1.1 Dispersion. Portions of the railings that are lowered to provide fishing opportunities for persons with disabilities must be located in a variety of locations on the fishing pier or platform to give people a variety of locations to fish. Different fishing locations may provide varying water depths, shade (at certain times of the day), vegetation, and proximity to the shoreline or bank.

1005.3 Edge Protection. Where railings, guards, or handrails complying with 1005.2 are provided, edge protection complying with 1005.3.1 or 1005.3.2 shall be provided.

Advisory 1005.3 Edge Protection. Edge protection is required only where railings, guards, or handrails are provided on a fishing pier or platform. Edge protection will prevent wheelchairs or other mobility devices from slipping off the fishing pier or platform. Extending the deck of the fishing pier or platform 12 inches (305 mm) where the 34 inch (865 mm) high railing is provided is an alternative design, permitting individuals using wheelchairs or other mobility devices to pull into a clear space and move beyond the face of the railing. In such a design, curbs or barriers are not required.

1005.3.1 Curb or Barrier. Curbs or barriers shall extend 2 inches (51 mm) minimum above the surface of the fishing pier or platform.

1005.3.2 Extended Ground or Deck Surface. The ground or deck surface shall extend 12 inches (305 mm) minimum beyond the inside face of the railing. Toe clearance shall be provided and shall

be 30 inches (760 mm) wide minimum and 9 inches (230 mm) minimum above the ground or deck surface beyond the railing.

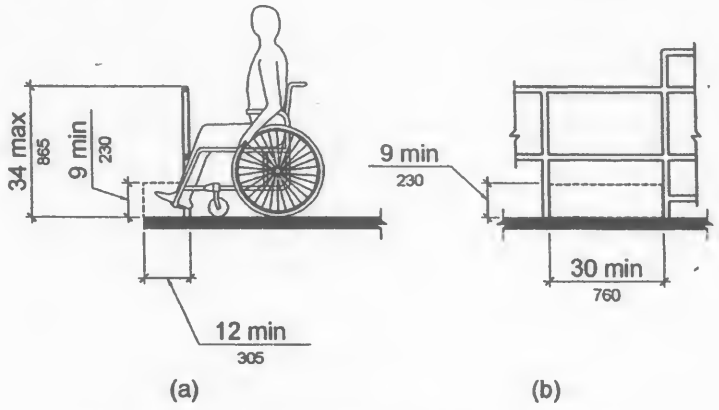


Figure 1005.3.2
Extended Ground or Deck Surface at Fishing Piers and Platforms

1005.4 Clear Floor or Ground Space. At each location where there are railings, guards, or handrails complying with 1005.2.1, a clear floor or ground *space* complying with 305 shall be provided. Where there are no railings, guards, or handrails, at least one clear floor or ground *space* complying with 305 shall be provided on the fishing pier or platform.

1005.5 Turning Space. At least one turning *space* complying with 304.3 shall be provided on fishing piers and platforms.

1006 Golf Facilities

1006.1 General. Golf *facilities* shall comply with 1006.

1006.2 Accessible Routes. *Accessible* routes serving *teeing grounds*, practice *teeing grounds*, putting greens, practice putting greens, teeing stations at driving ranges, course weather shelters, golf car rental areas, bag drop areas, and course toilet rooms shall comply with Chapter 4 and shall be 48 inches (1220 mm) wide minimum. Where handrails are provided, *accessible* routes shall be 60 inches (1525 mm) wide minimum.

EXCEPTION: Handrails shall not be required on golf courses. Where handrails are provided on golf courses, the handrails shall not be required to comply with 505.

Advisory 1006.2 Accessible Routes. The 48 inch (1220 mm) minimum width for the accessible route is necessary to ensure passage of a golf car on either the accessible route or the golf car passage. This is important where the accessible route is used to connect the golf car rental area, bag drop areas, practice putting greens, practice teeing grounds, course toilet rooms, and course weather shelters. These are areas outside the boundary of the golf course, but are areas where an individual using an adapted golf car may travel. A golf car passage may not be substituted for other accessible routes to be located outside the boundary of the course. For example, an accessible route connecting an accessible parking space to the entrance of a golf course clubhouse is not covered by this provision.

Providing a golf car passage will permit a person that uses a golf car to practice driving a golf ball from the same position and stance used when playing the game. Additionally, the space required for a person using a golf car to enter and maneuver within the teeing stations required to be accessible should be considered.

1006.3 Golf Car Passages. *Golf car passages* shall comply with 1006.3.

1006.3.1 Clear Width. The clear width of *golf car passages* shall be 48 inches (1220 mm) minimum.

1006.3.2 Barriers. Where curbs or other constructed barriers prevent golf cars from entering a fairway, openings 60 inches (1525 mm) wide minimum shall be provided at intervals not to exceed 75 yards (69 m).

1006.4 Weather Shelters. A clear floor or ground *space* 60 inches (1525 mm) minimum by 96 inches (2440 mm) minimum shall be provided within weather shelters.

1007 Miniature Golf Facilities

1007.1 General. Miniature golf *facilities* shall comply with 1007.

1007.2 Accessible Routes. *Accessible* routes serving holes on miniature golf courses shall comply with Chapter 4. *Accessible* routes located on playing surfaces of miniature golf holes shall be permitted to use the exceptions in 1007.2.

EXCEPTIONS: 1. Playing surfaces shall not be required to comply with 302.2.

2. Where *accessible* routes intersect playing surfaces of holes, a 1 inch (25 mm) maximum curb shall be permitted for a width of 32 inches (815 mm) minimum.

3. A slope not steeper than 1:4 for a 4 inch (100 mm) maximum rise shall be permitted.

4. *Ramp* landing slopes specified by 405.7.1 shall be permitted to be 1:20 maximum.

5. *Ramp* landing length specified by 405.7.3 shall be permitted to be 48 inches (1220 mm) long minimum.

6. *Ramp* landing size specified by 405.7.4 shall be permitted to be 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum.

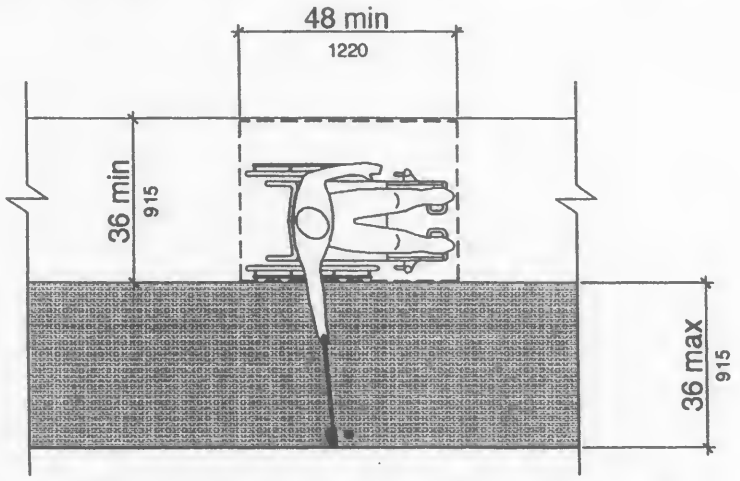
7. Handrails shall not be required on holes. Where handrails are provided on holes, the handrails shall not be required to comply with 505.

1007.3 Miniature Golf Holes. Miniature golf holes shall comply with 1007.3.

1007.3.1 Start of Play. A clear floor or ground *space* 48 inches (1220 mm) minimum by 60 inches (1525 mm) minimum with slopes not steeper than 1:48 shall be provided at the start of play.

1007.3.2 Golf Club Reach Range Area. All areas within holes where golf balls rest shall be within 36 inches (915 mm) maximum of a clear floor or ground *space* 36 inches (915 mm) wide minimum and 48 inches (1220 mm) long minimum having a *running slope* not steeper than 1:20. The clear floor or ground *space* shall be served by an *accessible* route.

Advisory 1007.3.2 Golf Club Reach Range Area. The golf club reach range applies to all holes required to be accessible. This includes accessible routes provided adjacent to or, where provided, on the playing surface of the hole.



Note: Running Slope of Clear Floor or Ground Space Not Steeper Than 1:20

Figure 1007.3.2
Golf Club Reach Range Area

1008 Play Areas

1008.1 General. *Play areas* shall comply with 1008.

1008.2 Accessible Routes. *Accessible* routes serving *play areas* shall comply with Chapter 4 and 1008.2 and shall be permitted to use the exceptions in 1008.2.1 through 1008.2.3. Where *accessible* routes serve *ground level play components*, the vertical clearance shall be 80 inches high (2030 mm) minimum.

1008.2.1 Ground Level and Elevated Play Components. *Accessible* routes serving *ground level play components* and *elevated play components* shall be permitted to use the exceptions in 1008.2.1.

EXCEPTIONS: 1. Transfer systems complying with 1008.3 shall be permitted to connect *elevated play components* except where 20 or more *elevated play components* are provided no more than 25 percent of the *elevated play components* shall be permitted to be connected by transfer systems.

2. Where transfer systems are provided, an *elevated play component* shall be permitted to connect to another *elevated play component* as part of an *accessible* route.

1008.2.2 Soft Contained Play Structures. *Accessible* routes serving *soft contained play structures* shall be permitted to use the exception in 1008.2.2.

EXCEPTION: Transfer systems complying with 1008.3 shall be permitted to be used as part of an *accessible* route.

1008.2.3 Water Play Components. *Accessible* routes serving water *play components* shall be permitted to use the exceptions in 1008.2.3.

EXCEPTIONS: 1. Where the surface of the *accessible* route, clear floor or ground *spaces*, or turning *spaces* serving water *play components* is submerged, compliance with 302, 403.3, 405.2, 405.3, and 1008.2.6 shall not be required.

2. Transfer systems complying with 1008.3 shall be permitted to connect *elevated play components* in water.

Advisory 1008.2.3 Water Play Components. Personal wheelchairs and mobility devices may not be appropriate for submerging in water when using play components in water. Some may have batteries, motors, and electrical systems that when submerged in water may cause damage to the personal mobility device or wheelchair or may contaminate the water. Providing an aquatic wheelchair made of non-corrosive materials and designed for access into the water will protect the water from contamination and avoid damage to personal wheelchairs.

1008.2.4 Clear Width. *Accessible* routes connecting *play components* shall provide a clear width complying with 1008.2.4.

1008.2.4.1 Ground Level. At ground level, the clear width of *accessible* routes shall be 60 inches (1525 mm) minimum.

EXCEPTIONS: 1. In *play areas* less than 1000 square feet (93 m^2), the clear width of *accessible* routes shall be permitted to be 44 inches (1120 mm) minimum, if at least one turning *space* complying with 304.3 is provided where the restricted *accessible* route exceeds 30 feet (9145 mm) in length.

2. The clear width of *accessible* routes shall be permitted to be 36 inches (915 mm) minimum for a distance of 60 inches (1525 mm) maximum provided that multiple reduced width segments are separated by segments that are 60 inches (1525 mm) wide minimum and 60 inches (1525 mm) long minimum.

1008.2.4.2 Elevated. The clear width of *accessible* routes connecting *elevated play components* shall be 36 inches (915 mm) minimum.

EXCEPTIONS: 1. The clear width of *accessible* routes connecting *elevated play components* shall be permitted to be reduced to 32 inches (815 mm) minimum for a distance of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

2. The clear width of transfer systems connecting *elevated play components* shall be permitted to be 24 inches (610 mm) minimum.

1008.2.5 Ramps. Within *play areas*, *ramps* connecting *ground level play components* and *ramps* connecting *elevated play components* shall comply with 1008.2.5.

1008.2.5.1 Ground Level. *Ramp* runs connecting *ground level play components* shall have a *running slope* not steeper than 1:16.

1008.2.5.2 Elevated. The rise for any *ramp* run connecting *elevated play components* shall be 12 inches (305 mm) maximum.

1008.2.5.3 Handrails. Where required on *ramps* serving *play components*, the handrails shall comply with 505 except as modified by 1008.2.5.3.

EXCEPTIONS: 1. Handrails shall not be required on *ramps* located within ground level *use zones*.

2. Handrail extensions shall not be required.

1008.2.5.3.1 Handrail Gripping Surfaces. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 0.95 inch (24 mm) minimum and 1.55 inches (39 mm) maximum. Where the shape of the gripping surface is non-circular, the handrail shall provide an equivalent gripping surface.

1008.2.5.3.2 Handrail Height. The top of handrail gripping surfaces shall be 20 inches (510 mm) minimum and 28 inches (710 mm) maximum above the *ramp* surface.

1008.2.6 Ground Surfaces. Ground surfaces on *accessible* routes, clear floor or ground *spaces*, and turning *spaces* shall comply with 1008.2.6.

Advisory 1008.2.6 Ground Surfaces. Ground surfaces must be inspected and maintained regularly to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

1008.2.6.1 Accessibility. Ground surfaces shall comply with ASTM F 1951 (incorporated by reference, see "Referenced Standards" in Chapter 1). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

1008.2.6.2 Use Zones. Ground surfaces located within *use zones* shall comply with ASTM F 1292 (1999 edition or 2004 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

1008.3 Transfer Systems. Where transfer systems are provided to connect to *elevated play components*, transfer systems shall comply with 1008.3.

> **Advisory 1008.3 Transfer Systems.** Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component instead of an accessible route, careful consideration should be used in the selection of the play components used for this purpose.

1008.3.1 Transfer Platforms. Transfer platforms shall be provided where transfer is intended from wheelchairs or other mobility aids. Transfer platforms shall comply with 1008.3.1.

1008.3.1.1 Size. Transfer platforms shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.1.2 Height. The height of transfer platforms shall be 11 inches (280 mm) minimum and 18 inches (455 mm) maximum measured to the top of the surface from the ground or floor surface.

1008.3.1.3 Transfer Space. A transfer *space* complying with 305.2 and 305.3 shall be provided adjacent to the transfer platform. The 48 inch (1220 mm) long minimum dimension of the transfer *space* shall be centered on and parallel to the 24 inch (610 mm) long minimum side of the transfer platform. The side of the transfer platform serving the transfer *space* shall be unobstructed.

1008.3.1.4 Transfer Supports. At least one means of support for transferring shall be provided.

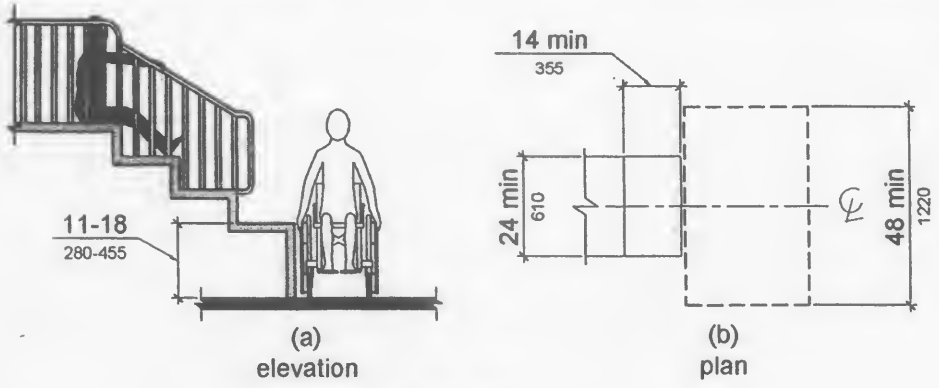


Figure 1008.3.1
Transfer Platforms

1008.3.2 Transfer Steps. Transfer steps shall be provided where movement is intended from transfer platforms to levels with *elevated play components* required to be on *accessible* routes. Transfer steps shall comply with 1008.3.2.

1008.3.2.1 Size. Transfer steps shall have level surfaces 14 inches (355 mm) deep minimum and 24 inches (610 mm) wide minimum.

1008.3.2.2 Height. Each transfer step shall be 8 inches (205 mm) high maximum.

1008.3.2.3 Transfer Supports. At least one means of support for transferring shall be provided.

Advisory 1008.3.2.3 Transfer Supports. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

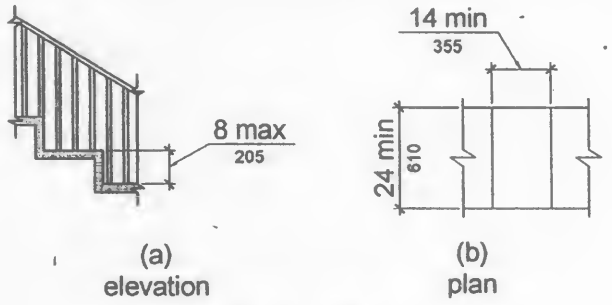


Figure 1008.3.2
Transfer Steps

1008.4 Play Components. *Ground level play components* on *accessible* routes and *elevated play components* connected by *ramps* shall comply with 1008.4.

1008.4.1 Turning Space. At least one turning *space* complying with 304 shall be provided on the same level as *play components*. Where swings are provided, the turning *space* shall be located immediately adjacent to the swing.

1008.4.2 Clear Floor or Ground Space. Clear floor or ground *space* complying with 305.2 and 305.3 shall be provided at *play components*.

Advisory 1008.4.2 Clear Floor or Ground Space. Clear floor or ground spaces, turning spaces, and accessible routes are permitted to overlap within play areas. A specific location has not been designated for the clear floor or ground spaces or turning spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Children's Reach Ranges

Forward or Side Reach	Ages 3 and 4	Ages 5 through 8	Ages 9 through 12
High (maximum)	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
Low (minimum)	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

1008.4.3 Play Tables. Where play tables are provided, knee clearance 24 inches (610 mm) high minimum, 17 inches deep (430 mm) minimum, and 30 inches (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 inches (785 mm) high maximum.

EXCEPTION: Play tables designed and constructed primarily for children 5 years and younger shall not be required to provide knee clearance where the clear floor or ground *space* required by 1008.4.2 is arranged for a parallel approach.

1008.4.4 Entry Points and Seats. Where *play components* require transfer to entry points or seats, the entry points or seats shall be 11 inches (280 mm) minimum and 24 inches (610 mm) maximum from the clear floor or ground *space*.

EXCEPTION: Entry points of slides shall not be required to comply with 1008.4.4.

1008.4.5 Transfer Supports. Where *play components* require transfer to entry points or seats, at least one means of support for transferring shall be provided.

1009 Swimming Pools, Wading Pools, and Spas

1009.1 General. Where provided, pool lifts, sloped entries, transfer walls, transfer systems, and pool stairs shall comply with 1009.

1009.2 Pool Lifts. Pool lifts shall comply with 1009.2.

Advisory 1009.2 Pool Lifts. There are a variety of seats available on pool lifts ranging from sling seats to those that are preformed or molded. Pool lift seats with backs will enable a larger population of persons with disabilities to use the lift. Pool lift seats that consist of materials that resist corrosion and provide a firm base to transfer will be usable by a wider range of people with disabilities. Additional options such as armrests, head rests, seat belts, and leg support will enhance accessibility and better accommodate people with a wide range of disabilities.

1009.2.1 Pool Lift Location. Pool lifts shall be located where the water level does not exceed 48 inches (1220 mm).

EXCEPTIONS: 1. Where the entire pool depth is greater than 48 inches (1220 mm), compliance with 1009.2.1 shall not be required.

2. Where multiple pool lift locations are provided, no more than one pool lift shall be required to be located in an area where the water level is 48 inches (1220 mm) maximum.

1009.2.2 Seat Location. In the raised position, the centerline of the seat shall be located over the deck and 16 inches (405 mm) minimum from the edge of the pool. The deck surface between the centerline of the seat and the pool edge shall have a slope not steeper than 1:48.

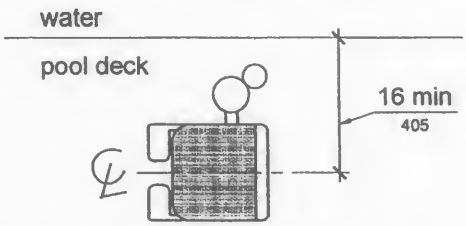


Figure 1009.2.2
Pool Lift Seat Location

1009.2.3 Clear Deck Space. On the side of the seat opposite the water, a clear deck *space* shall be provided parallel with the seat. The *space* shall be 36 inches (915 mm) wide minimum and shall extend forward 48 inches (1220 mm) minimum from a line located 12 inches (305 mm) behind the rear edge of the seat. The clear deck *space* shall have a slope not steeper than 1:48.

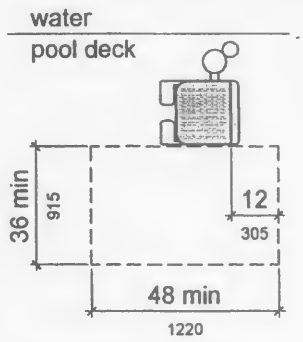


Figure 1009.2.3
Clear Deck Space at Pool Lifts

1009.2.4 Seat Height. The height of the lift seat shall be designed to allow a stop at 16 inches (405 mm) minimum to 19 inches (485 mm) maximum measured from the deck to the top of the seat surface when in the raised (load) position.

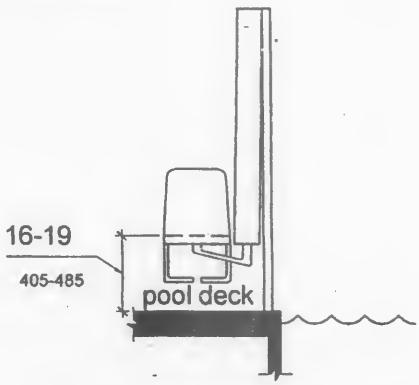


Figure 1009.2.4
Pool Lift Seat Height

1009.2.5 Seat Width. The seat shall be 16 inches (405 mm) wide minimum.

1009.2.6 Footrests and Armrests. Footrests shall be provided and shall move with the seat. If provided, the armrest positioned opposite the water shall be removable or shall fold clear of the seat when the seat is in the raised (load) position.

EXCEPTION: Footrests shall not be required on pool lifts provided in spas.

1009.2.7 Operation. The lift shall be capable of unassisted operation from both the deck and water levels. Controls and operating mechanisms shall be unobstructed when the lift is in use and shall comply with 309.4.

Advisory 1009.2.7 Operation. Pool lifts must be capable of unassisted operation from both the deck and water levels. This will permit a person to call the pool lift when the pool lift is in the opposite position. It is extremely important for a person who is swimming alone to be able to call the pool lift when it is in the up position so he or she will not be stranded in the water for extended periods of time awaiting assistance. The requirement for a pool lift to be independently operable does not preclude assistance from being provided.

1009.2.8 Submerged Depth. The lift shall be designed so that the seat will submerge to a water depth of 18 inches (455 mm) minimum below the stationary water level.

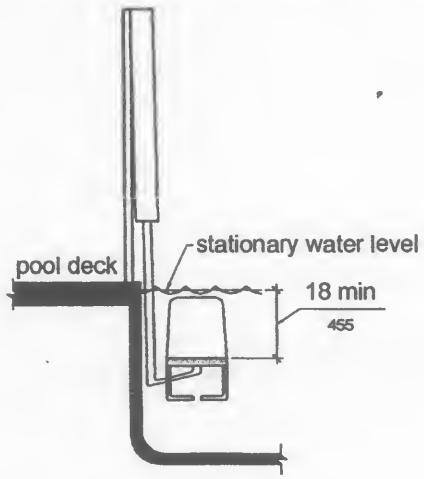


Figure 1009.2.8
Pool Lift Submerged Depth

1009.2.9 Lifting Capacity. Single person pool lifts shall have a weight capacity of 300 pounds. (136 kg) minimum and be capable of sustaining a static load of at least one and a half times the rated load.

Advisory 1009.2.9 Lifting Capacity. Single person pool lifts must be capable of supporting a minimum weight of 300 pounds (136 kg) and sustaining a static load of at least one and a half times the rated load. Pool lifts should be provided that meet the needs of the population they serve. Providing a pool lift with a weight capacity greater than 300 pounds (136 kg) may be advisable.

1009.3 Sloped Entries. Sloped entries shall comply with 1009.3.

> **Advisory 1009.3 Sloped Entries.** Personal wheelchairs and mobility devices may not be appropriate for submerging in water. Some may have batteries, motors, and electrical systems that when submerged in water may cause damage to the personal mobility device or wheelchair or may contaminate the pool water. Providing an aquatic wheelchair made of non-corrosive materials and designed for access into the water will protect the water from contamination and avoid damage to personal wheelchairs or other mobility aids.

1009.3.1 Sloped Entries. Sloped entries shall comply with Chapter 4 except as modified in 1109.3.1 through 1109.3.3.

EXCEPTION: Where sloped entries are provided, the surfaces shall not be required to be slip resistant.

1009.3.2 Submerged Depth. Sloped entries shall extend to a depth of 24 inches (610 mm) minimum and 30 inches (760 mm) maximum below the stationary water level. Where landings are required by 405.7, at least one landing shall be located 24 inches (610 mm) minimum and 30 inches (760 mm) maximum below the stationary water level.

EXCEPTION: In wading pools, the sloped entry and landings, if provided, shall extend to the deepest part of the wading pool.

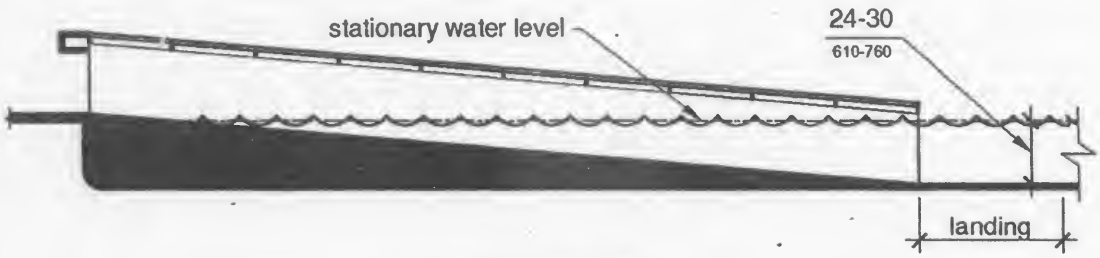


Figure 1009.3.2
Sloped Entry Submerged Depth

1009.3.3 Handrails. At least two handrails complying with 505 shall be provided on the sloped entry. The clear width between required handrails shall be 33 inches (840 mm) minimum and 38 inches (965 mm) maximum.

EXCEPTIONS: 1. Handrail extensions specified by 505.10.1 shall not be required at the bottom landing serving a sloped entry.

2. Where a sloped entry is provided for wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area, the handrails shall not be required to comply with the clear width requirements of 1009.3.3.

3. Sloped entries in wading pools shall not be required to provide handrails complying with 1009.3.3. If provided, handrails on sloped entries in wading pools shall not be required to comply with 505.

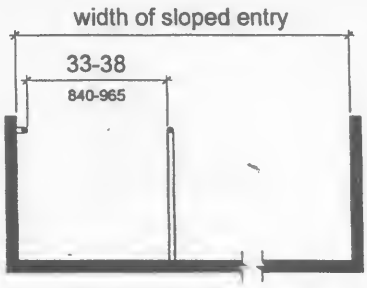


Figure 1009.3.3
Handrails for Sloped Entry

1009.4 Transfer Walls. Transfer walls shall comply with 1009.4.

1009.4.1 Clear Deck Space. A clear deck *space* of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer wall. Where one grab bar is provided, the clear deck *space* shall be centered on the grab bar. Where two grab bars are provided, the clear deck *space* shall be centered on the clearance between the grab bars.

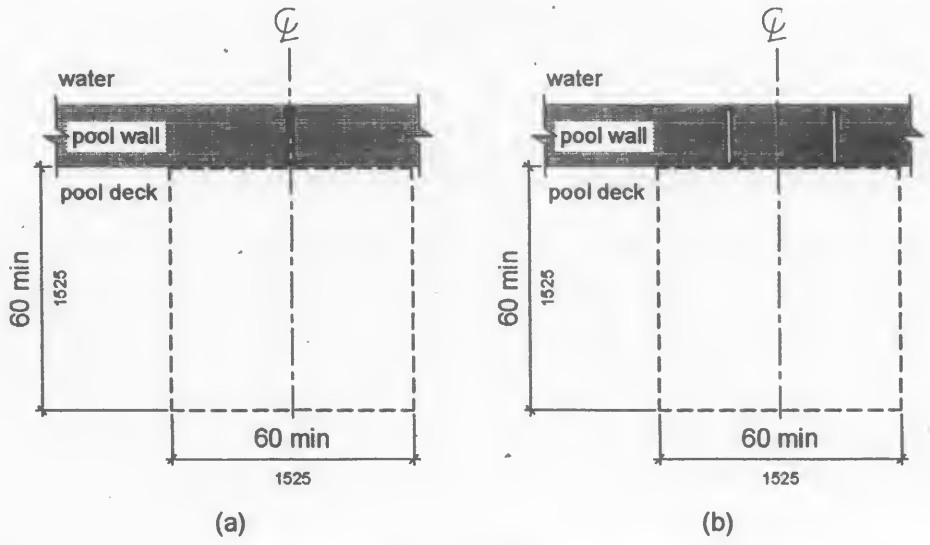


Figure 1009.4.1
Clear Deck Space at Transfer Walls

1009.4.2 Height. The height of the transfer wall shall be 16 inches (405 mm) minimum and 19 inches (485 mm) maximum measured from the deck.

Figure 1009.4.2
Transfer Wall Height

1009.4.3 Wall Depth and Length. The depth of the transfer wall shall be 12 inches (305 mm) minimum and 16 inches (405 mm) maximum. The length of the transfer wall shall be 60 inches (1525 mm) minimum and shall be centered on the clear deck *space*.

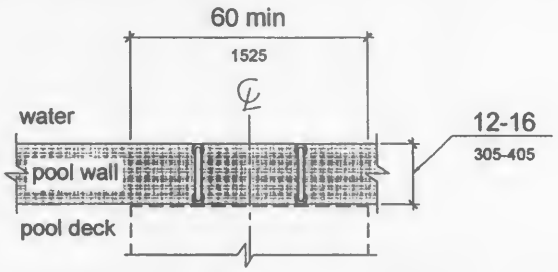


Figure 1009.4.3
Depth and Length of Transfer Walls

1009.4.4 Surface. Surfaces of transfer walls shall not be sharp and shall have rounded edges.

1009.4.5 Grab Bars. At least one grab bar complying with 609 shall be provided on the transfer wall. Grab bars shall be perpendicular to the pool wall and shall extend the full depth of the transfer wall. The top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above transfer walls. Where one grab bar is provided, clearance shall be 24 inches (610 mm) minimum on both sides of the grab bar. Where two grab bars are provided, clearance between grab bars shall be 24 inches (610 mm) minimum.

EXCEPTION: Grab bars on transfer walls shall not be required to comply with 609.4.

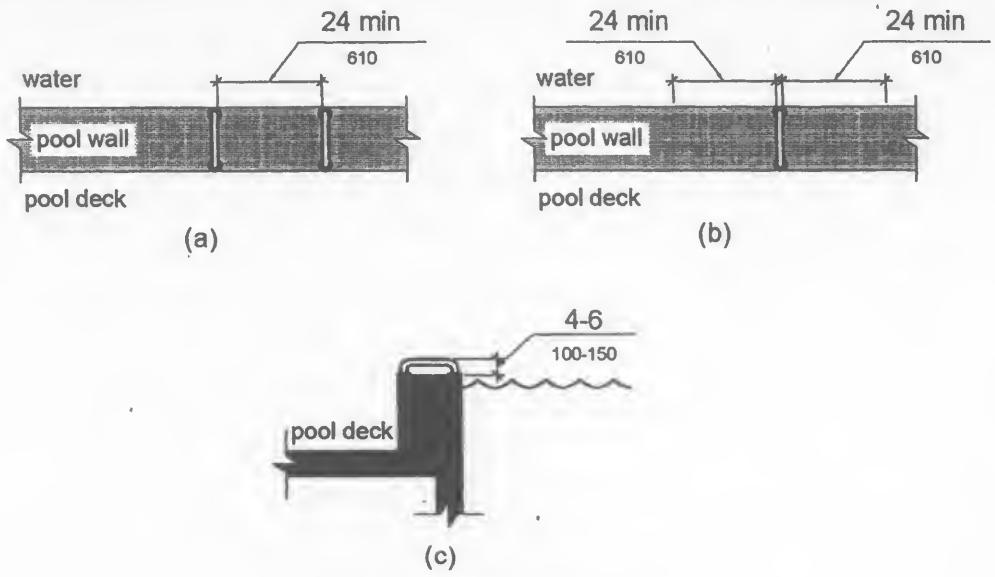


Figure 1009.4.5
Grab Bars for Transfer Walls

1009.5 Transfer Systems. Transfer systems shall comply with 1009.5.

1009.5.1 Transfer Platform. A transfer platform shall be provided at the head of each transfer system. Transfer platforms shall provide 19 inches (485 mm) minimum clear depth and 24 inches (610 mm) minimum clear width.

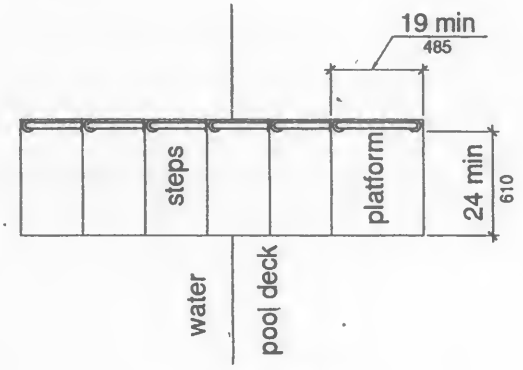


Figure 1009.5.1
Size of Transfer Platform

1009.5.2 Transfer Space. A transfer *space* of 60 inches (1525 mm) minimum by 60 inches (1525 mm) minimum with a slope not steeper than 1:48 shall be provided at the base of the transfer platform surface and shall be centered along a 24 inch (610 mm) minimum side of the transfer platform. The side of the transfer platform serving the transfer *space* shall be unobstructed.

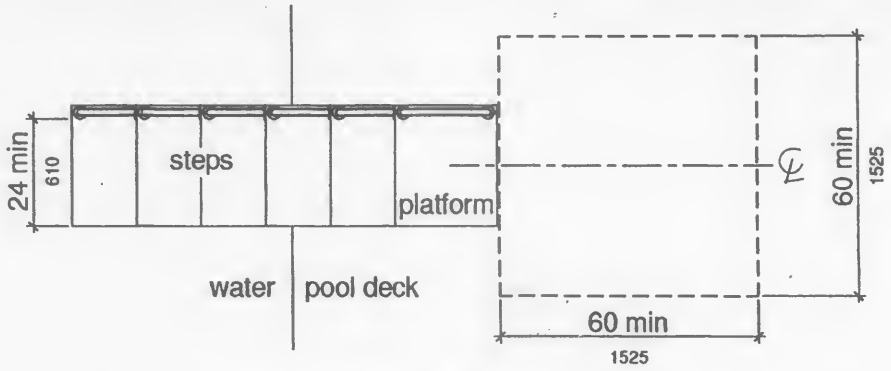


Figure 1009.5.2
Clear Deck Space at Transfer Platform

1009.5.3 Height. The height of the transfer platform shall comply with 1009.4.2.

1009.5.4 Transfer Steps. Transfer step height shall be 8 inches (205 mm) maximum. The surface of the bottom tread shall extend to a water depth of 18 inches (455 mm) minimum below the stationary water level.

Advisory 1009.5.4 Transfer Steps. Where possible, the height of the transfer step should be minimized to decrease the distance an individual is required to lift up or move down to reach the next step to gain access.

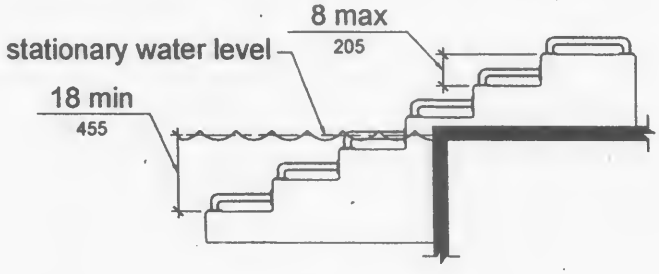


Figure 1009.5.4
Transfer Steps

1009.5.5 Surface. The surface of the transfer system shall not be sharp and shall have rounded edges.

1009.5.6 Size. Each transfer step shall have a tread clear depth of 14 inches (355 mm) minimum and 17 inches (430 mm) maximum and shall have a tread clear width of 24 inches (610 mm) minimum.

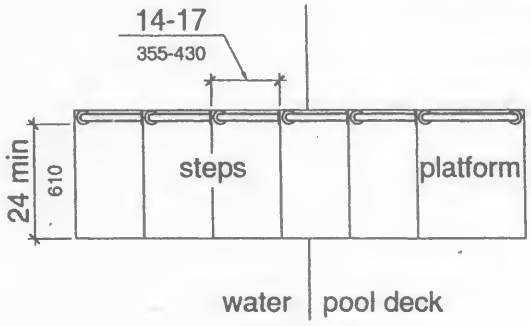
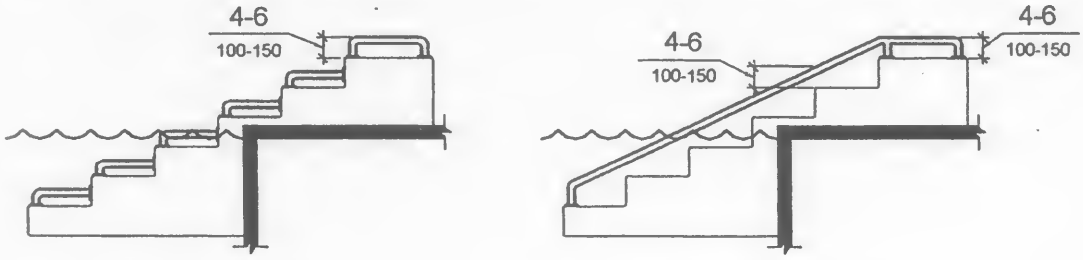


Figure 1009.5.6
Size of Transfer Steps

1009.5.7 Grab Bars. At least one grab bar on each transfer step and the transfer platform or a continuous grab bar serving each transfer step and the transfer platform shall be provided. Where a grab bar is provided on each step, the tops of gripping surfaces shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above each step and transfer platform. Where a continuous grab bar is provided, the top of the gripping surface shall be 4 inches (100 mm) minimum and 6 inches (150 mm) maximum above the step nosing and transfer platform. Grab bars shall comply with 609 and be located on at least one side of the transfer system. The grab bar located at the transfer platform shall not obstruct transfer.

EXCEPTION: Grab bars on transfer systems shall not be required to comply with 609.4.



(a)
individual grab bars

(b)
continuous grab bars

Figure 1009.5.7
Grab Bars

1009.6 Pool Stairs. Pool stairs shall comply with 1009.6.

1009.6.1 Pool Stairs. Pool stairs shall comply with 504.

EXCEPTION: Pool step riser heights shall not be required to be 4 inches (100 mm) high minimum and 7 inches (180 mm) high maximum provided that riser heights are uniform.

1009.6.2 Handrails. The width between handrails shall be 20 inches (510 mm) minimum and 24 inches (610 mm) maximum. Handrail extensions required by 505.10.3 shall not be required on pool stairs.

1010 Shooting Facilities with Firing Positions

1010.1 Turning Space. A circular turning *space* 60 inches (1525 mm) diameter minimum with slopes not steeper than 1:48 shall be provided at shooting facilities with firing positions.

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S. 15/P.L. 108–276
Project BioShield Act of 2004 (July 21, 2004; 118 Stat. 835)
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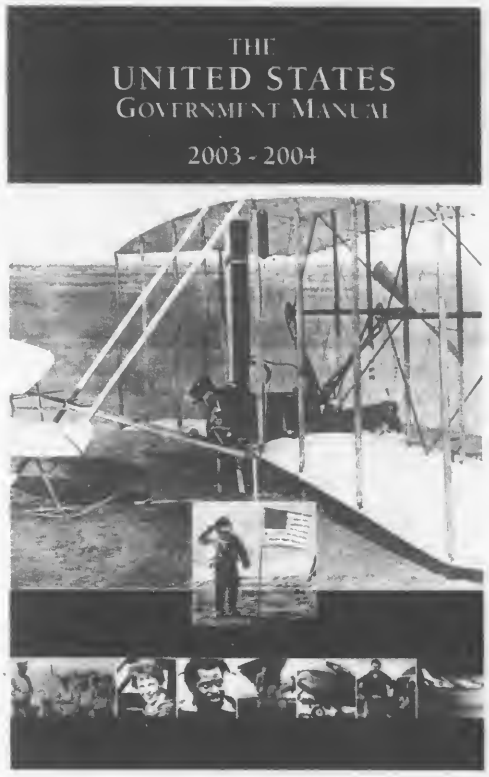

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