

May 31, 2005

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

Subject: Comments CRT Docket No. 2004-DRS01RIN 1190-AA46 and 1190-AA44

To whom it may concern:

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

The ICC is a 35,000 + member association dedicated to building safety and fire prevention, whose mission is to provide the highest quality codes, standards, products, and services for all concerned with the safety and performance of the built environment.

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

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

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

The ICC appreciates the opportunity to provide comments. Should additional information be needed please do not hesitate to contact us. My email is [kpaarlberg@iccsafe.org](mailto:kpaarlberg@iccsafe.org) or I can be reached by phone at 888-ICC-SAFE, Ext. 4306. ICC's address is 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795.

Sincerely,

Kimberly Paarlberg  
Senior Staff Architect  
International Code Council

Enclosure

## **I. General Issues**

### **Effective Date:**

### **Trigger Event**

#### **Question 2**

In an existing building the term “first use” would not be a universally understood term when dealing with one type tenant moving out and another in (e.g. a mercantile tenant changing to an restaurant) where issues of public health or safety may need to be addressed. The terms familiar to the construction industry are “alteration”, “addition” or “change of occupancy.” Some of the text in the *International Building Code* (IBC) that deals with this issue is:

**ADDITION.** An extension or increase in floor area or height of a building or structure.

**ALTERATION.** Any construction or renovation to an existing structure other than repair or addition.

**3406.1 Conformance.** No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of this code for such division or group of occupancy. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

**3406.2 Certificate of occupancy.** A certificate of occupancy shall be issued where it has been determined that the requirements for the new occupancy classification have been met.

ICC recommends that the department define ‘trigger event’ for existing buildings as a physical change to the facility that may be an addition, alteration or change of occupancy.

#### **Question 5**

##### **Reduce Scoping of Large Assembly Facilities**

ICC agrees with the department that large assembly facilities should be permitted to have a reduced number of accessible wheelchair spaces based on the required number in the ADA/ABA Guidelines. With the new requirements for wheelchair spaces in luxury box seats, there may not be a reduction in the total number of seats provided within the facility. The IBC specifically states that existing buildings do not need to exceed new construction requirements. The IBC has already incorporated the new wheelchair space numbers as part of their coordination effort with federal requirements.

**3409.5.1 Extent of application.** An alteration of an existing element, space or area of a building or facility shall not impose a requirement for greater accessibility than that which would be required for new construction. Alterations shall not reduce or have the effect of reducing accessibility of a building, portion of a building or facility.

#### **Question 5**

##### **Alteration of Cells in Correctional Facilities**

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The ICC supports Option 2 that allows accessible cells to be located outside of the areas being altered. The unique safety concerns in a correctional facility require special consideration to balance concerns for safety of the staff and inmates with accessibility concerns. Allowing accessible cells to be located in specific areas of the jail allows for that concern. IBC includes this for new construction in Sections 1103.2.13 and 1107.5.5 through 1107.5.5.3. While existing cells are required to be made accessible as they are altered (Section 3409.7.7), the Section 104.11, *Alternative materials, design and methods of construction and equipment*, provides for the code official to evaluate alternatives that address issues of public safety.

**104.11 Alternative materials, design and methods of construction and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

**3409.7.7 Dwelling or sleeping units.** Where I-1, I-2, I-3, R-1, R-2 or R-4 dwelling or sleeping units are being altered or added, the requirements of Section 1107 for Accessible or Type A units and Chapter 9 for accessible alarms apply only to the quantity of spaces being altered or added.

### Question 5

#### **Coverage of Homeless Shelters, Halfway Houses, Transient Group Homes and Other Social Service Establishment**

As stated in the NPRM, DOJ stated “ADAAG’s specifications for the design of residential dwelling units have been coordinated with HUD’s Section 504 requirements to eliminate inconsistencies and potential conflicts. The specifications for transient lodging units have not been similarly coordinated.”

While no specific question was asked in the NPRM, this is an important issue to ICC. The ICC has been attempting to coordinate with the ADA/ABA Guidelines and the Fair Housing Accessibility Guidelines (FHAG). It is not always possible to determine which criteria is considered more restrictive. ICC encourages DOJ to modify the guidelines to allow compliance with the residential dwelling unit requirements for these types of facilities.

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### Question 7, Equipment Issues

The NPRM states the "installation of previously used equipment in a new location (is considered) as an alteration." This could be an enforcement issue for code officials, as this information may not be available at the time the construction permit is issued.

### Question 8, Stadium-Style Seating

The NPRM states that "For example, the American National Standards Institute (ANSI) recently published a standard specifying that wheelchair seating should be located within the rear 70% of the seats provided in a movie theater." The standard ICC/ANSI A117.1, *Accessible and Usable Buildings and Facilities*, is developed using the ANSI preceders, however, ICC is the secretariat and publisher.

The ICC utilized a special assembly task force, including experts on all types of assembly seating, to develop the line of site and dispersion requirements in Section 802 of the ICC/ANSI A117.1. The intent was to provide seating for persons using wheelchairs with viewing angles equivalent to that provided for others. ICC believes that this is consistent with requirements in ADA/ABA Guidelines, Section 221/F221 and Option 1 in the NPRM. Specifically for stadium style seating during the development of Section 802, there was a discussion of preferences for a balance of viewing angle and distance from the screen. None of the experts considered the last row as the best viewing angle as proposed in Option 3 of the NPRM. Historically, the center of the seating arrangement is filled first. A significant percentage of this style of theater is between 100 and 300 occupants, resulting in 5 wheelchair spaces being required. One accessible route is required to these spaces. However, with this number of occupants (i.e. greater than 50 occupants), two accessible means of egress (i.e. emergency exiting) is required. The exits from the room must be dispersed. The intent is that the exits are spaced far enough apart that one fire cannot block both exits. With the 12" to 18" rise between rows, the higher the wheelchair spaces are located in the space, the more difficult it is to provide two accessible ways out. The rear 60% of the seating offered in Option 2 of the NPRM is not readily achievable in many designs. The issue of safe exiting for persons using the wheelchair spaces **must** be part of the consideration in developing the criteria for these spaces. ICC would be happy to offer information on the development of the criteria in ICC/ANSI A117.1, Section 802 if DOJ decides to develop additional criteria for stadium-style seating. The ADA/ABA Guidelines, Section 207/F207 references the IBC for accessible means of egress. ICC would offers technical assistance to DOJ in incorporating the means of egress issues in any development of requirements for the stadium style theaters.

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### Change in Procedural Requirements for Certification of State Laws and Local Building Codes

The NPRM indicated a desire to “considering ways in which these provisions can be streamlined to facilitate the process of seeking certification.” The IBC is the referenced document for minimum construction requirements across the United States. A review of IBC by DOJ would provide the ICC with an identification of areas needing attention to achieve certification. As different jurisdictions come to DOJ for certification, the duplication of effort could be reduced, and hopefully this could speed up the review process. ICC and DOJ would benefit from continued participation by DOJ and the Access Board in ICC's code development process. A continued effort to coordinate requirements will result in benefits to the accessibility community and members of the construction industry. ICC would suggest that a method for review to allow for alternatives or “equivalent facilitation” be allowed. An example would be the Barrier Free Design Board in Michigan which provides for a review of alternatives for unique situations.

#### Question 10

ICC believes that a “reasonable cost threshold” is appropriate to decide on the level of additional accessibility requirements past the areas already being altered. ICC uses a 20% threshold in Section 3409.6 for the accessible route to and the bathrooms and drinking fountains that serve an altered primary function space.

**3409.6 Alterations affecting an area containing a primary function.** Where an alteration affects the accessibility to, or contains an area of primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities or drinking fountains serving the area of primary function.

**Exceptions:**

1. The costs of providing the accessible route are not required to exceed 20 percent of the costs of the alterations affecting the area of primary function.
2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.
3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems and abatement of hazardous materials.
4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of an existing building, facility or element.

#### Question 11

The NPRM states that the department is considering excluding “accessible handrails be added to stairways in buildings with elevators” from barrier removal requirements. The application is not clear to ICC. The requirements for handrails in the guidelines has been extensively coordinated with the requirements that have been in the building code for years. Two handrails are required on stairways with limited exceptions (IBC Section 1009.11). It is unclear as to where a handrail would be added on stairways.

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The area that seems to be more of a conflict/concern is the requirement in Section 403.6 for handrails along walking surfaces. While the advisory exempts handrails within elevator cabs and platform lifts, the difficulty will be in differentiation between a handrail versus a bumper/crash guard or the top rail of a guard. ICC/ANSI A117.1 does have a similar section, 403.6, however, it is important to note that the application is where handrails are **required** along the sides of corridors. This was added to the ICC/ANSI A117.1 to account for handrails that may be required along corridors in hospitals and extended care facilities. However, at this time there are **no** scoping requirements for these handrails in the IBC.

### Question 12

The NPRM requested information on the accessibility of operable windows. The IBC requires one operable window in each room to be accessible within Accessible dwelling or sleeping units in institutional and residential occupancies, since operation of the window is typically performed by occupants. Kitchens are exempt since typically the window is located over the sink. Bathrooms are exempt because typically windows are in elevated locations to ensure privacy.

**1109.13.1 Operable windows.** Where operable windows are provided in rooms that are required to be accessible in accordance with Sections 1107.5.1.1, 1107.5.2.1, 1107.5.3.1, 1107.5.4, 1107.6.1.1, 1107.6.2.2.1 and 1107.6.4.1, (Group I-1, I-2, R-1, R-2 and R-4) at least one window in each room shall be accessible and each required operable window shall be accessible.

**Exception:** Accessible windows are not required in bathrooms or kitchens.

For questions about operation and equipment, ICC recommends DOJ contact representatives of the door and window manufacturers.

### Question 13

The NPRM requested information on two-way communication systems being equipped with visible and audible signals. The IBC requires two-way communication systems within areas of refuge. Since this is an issue of life safety, ICC agrees that this would be a system that should provide both means of communication. However, cost considerations to modify these systems would depend on guidance from DOJ as to what was acceptable for visible communication (e.g. red light indicating information received versus text messaging).

**1007.6.3 Two-way communication.** Areas of refuge shall be provided with a two-way communication system between the area of refuge and a central control point. If the central control point is not constantly attended, the area of refuge shall also have controlled access to a public telephone system. Location of the central control point shall be approved by the fire department. The two-way communication system shall include both audible and visible signals.

### Question 14

The NPRM requested information on ambulatory stalls in existing buildings. The ICC does not

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understand the reference to the "fire code requirements" in this context. ICC would request additional clarification from DOJ.

Standard plumbing stalls are required to be 30" wide and 60" deep (International Plumbing Code (IPC) Section 405.3.1). A combination of maximum travel distance requirements of 500 feet and one story (IPC Sections 403.5 and 403.6) and the number of occupants per water closet (IPC Table 403.1) do not result in a typical office building requiring ambulatory stalls.

### **Question 19**

The NPRM requested information on "comparable vanity space" in hotel guestrooms required to be accessible. ICC/ANSI A117.1 has a similar requirement in Section 1002.11. The committee felt that the guidance "in terms of size and proximity to the lavatory" was sufficient.

### **Question 23-25**

The NPRM requested information about existing stadiums and arenas. ICC's assembly task force, mentioned in our response in Question 8, included representatives familiar with the different assembly facility designs. This group could be a valid resource for the historical information the DOJ is looking for.

### **Question 26**

The NPRM requested information about accessible shower compartments and an "on-off switch." The correct term used by the plumbing industry and also in ICC/ANSI A117.1, Section 607.6 is "The handshower shall have a control with a nonpositive shut-off feature." Representatives on the ICC/ANSI A117.1 development committee from the plumbing industry would be a good resource for additional information.

The NPRM specifically mentioned hospitals and long term care facilities. While IBC Section 1107.5 requires a percentage of hospital and long-term care sleeping rooms to be Accessible units, IBC Section 1109.2, Exception 6 exempts critical-care and intensive care sleeping rooms from accessible bathroom requirements.

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### Question 30

The NPRM requested information on the impact in existing facilities of the 60 inch (rather than 40 inch) clearance in galley kitchens with only one entry point. ICC/ANSI A117.1 has added the same requirement in Section 804.2.2 as part of its coordination efforts with ADA/ABA Guidelines. A clarification from DOJ as to if a 60" T-style turning space provided under a work surface or sink would be an acceptable alternative would assist in determining the impact of this section.

### Questions 46 and 47

The NPRM requested information on compliance of recreational areas, such as boating facilities, fishing piers, walking paths, etc. The IBC generally requires access to all facilities be provided on a site (Section 1104.2). Issues relative to the environmental impact of providing accessible routes through areas such as those protected as animal habitats or flood plain areas are typically addressed through the zoning and permitting process and alternative approval. Guidance from DOJ to local authorities for addressing such areas would be beneficial.

### Question 49

The NPRM requested information on the benefits provided by the ADA/ABA Guidelines for persons with disabilities. ICC believes that the new rules are an improvement over the current guidelines. The adoption of the 'building code' style of formatting and the coordination efforts with the ICC codes will result in making the regulations more understandable by the building industry as well as eliminating conflicts.

The 'advisories' assist in providing further clarification. However, some of the advisories appear to add requirements (e.g. 505.4 gives requirements for height for handrails used primarily by children that are below the range for standard handrails). A statement from DOJ that identifies the scope and application of the advisories is needed. It is assumed that such advisories are not enforceable regulations.

There also seems to be a conflict between Section 104.1, 104.1.1 and 104.2 regarding the dimensions being "absolute" and then allowing for construction tolerances. The ICC/ANSI A117.1 addressed this issue by including the allowance for tolerances within the section of the standard on dimensions (Section 104.2).