

which provides that a minimum of 25% (or at least one of each type) of recreational facilities must be accessible.

Response. The Department decided to retain its more flexible approach to recreational facilities. The final Guidelines specify that where multiple recreational facilities are provided, accessibility is met under § 100.205(c)(1) if sufficient accessible facilities of each type are provided.

Comment. Several commenters suggested that all recreational facilities should be made accessible.

Response. To specify that all recreational facilities should be accessible would exceed the requirements of the Act. Congress stated that the Act did not require every feature and aspect of covered multifamily housing to be made accessible to individuals with handicaps. (See House Report at 26.)

Comment. Several commenters submitted detailed specifications on how various recreational facilities could be made accessible. These comments were submitted in response to the Department's request, in the proposed guidelines, for more specific guidance on making recreational facilities accessible to persons with handicaps (55 FR 24376). The Department specifically requested information about ways to provide access into pools.

Response. The Department appreciates all suggestions on recommended specifications for recreational facilities, and, in particular, for swimming pools. For the present, the Department has decided not to change the specifications for recreational facilities, including swimming pools, as provided by the Option One guidelines, since there are no generally accepted standards covering such facilities. Thus, access to the pool area of a swimming facility is expected, but not specialized features for access into the pool (e.g., hoists, or ramps into the water).

Comment. Several commenters criticized the chart in the Option One guidelines, stating that it was confusing and difficult to follow.

Response. The chart is adapted from ANSI's Table 2 pertaining to basic components for accessible sites, facilities and buildings. The ANSI chart is familiar to persons in the building industry. Accordingly, the Option One chart (and now part of the final Guidelines), which is a more limited version of ANSI's Table 2, is not a novel approach.

Guidelines for Requirement 3

The Guidelines for Requirement 3 present design standards for providing

doors that will be sufficiently wide to allow passage into and within all premises by handicapped persons in wheelchairs (usable doors) as required by § 100.20(c)(2).

The Department has adopted the Option One guidelines for Requirement 3 with minor editorial changes. No changes were made to the design specifications for "usable doors".

The Guidelines provide separate guidance for (1) doors that are part of an accessible route in the public and common use areas of multifamily dwellings, including entry doors to individual dwelling units; and (2) doors within individual dwelling units.

(1) For public and common use areas and entry doors to dwelling units, doors that comply with ANSI 4.13 would meet the requirements of § 100.205(c)(2).

(2) For doors within individual dwelling units, the Department has retained, in the final Guidelines, the design specification that a door with a clear opening of at least 32 inches nominal width when the door is open 90 degrees, as measured between the face of the door and the stop, would meet the requirements of § 100.205(c)(2).

Specific comments on the design specifications presented in the Guidelines for Requirement 3 are as follows:

Minimum Clear Opening

Comment. The issue of minimum clear opening for doors was one of the most widely commented-upon design features of the guidelines. The majority of commenters representing the disability community supported the Option One specification of a minimum clear opening of 32 inches. A few commenters advocated a wider clear opening. U.S. Representatives Edwards, Frank, and Fish expressed their support for the Option One specification on minimum clearance which is consistent with the ANSI Standard.

Commenters from the building industry were almost unanimous in their opposition to a minimum clear opening of 32 inches. Several builders noted that a 32-inch clear opening requires use of 36-inch doors. These commenters stated that a standard 2'10" door (34") provides only a 31 1/4 inch clear opening. The commenters therefore recommended amending the Guidelines to permit a "nominal" 32 inch clear space, allowing the use of a 2'10" door, which provides a 31 1/4 inch clear opening. Other commenters stated that, generally, door width should provide a 32-inch clear opening, but that this width can be reduced if sufficient maneuvering space is provided at the door. These commenters supported Option Two's

approach, which provided for clear width to be determined by the clear floor space available for maneuvering on both sides of the door, with the minimum width set at 29 1/4 inches. (See Option 2 chart and accompanying text at 55 FR 24382.)

Response. The Department considered the recommendations for both wider clear openings, and more narrow clear openings, and decided to maintain the design specification proposed in the Option One guidelines (a clear opening of at least 32 inches nominal width). The clear opening of at least 32 inches nominal width has been the accepted standard for accessibility since the issuance of the original ANSI Standard in 1961. While the Department recognizes that it may be possible to maneuver most wheelchairs through a doorway with a slightly more narrow opening, such doors do not permit ready access on the constant-use basis that is the reality of daily living within a home environment. The Department also recognizes that wider doorways may ensure easier passage for wheelchair users. However, by assuring that the minimum 36-inch hallway and 32-inch clear openings are provided, the Department believes that its recommended opening for doors should accommodate most people with disabilities. In the preamble to the proposed guidelines, the Department stated that the clear width provided by a standard 34-inch door would be acceptable under the Guidelines.

Maneuvering Space at Doors

Comment. Several commenters requested that the final Guidelines incorporate minimum maneuvering clearances at doors, as provided by the ANSI Standard. These commenters stated that maneuvering space on the latch side of the door is as important a feature as minimum door width. Other commenters stated that the maneuvering space was necessary to ensure safe egress in cases of emergency.

Response. The Department has carefully considered these comments, and has declined to adopt this approach. The Department believes that, by adhering to the standard 32-inch clear opening, it is possible to forego other accessibility requirements related to doors (e.g. door closing forces, maneuvering clearances, and hardware) without compromising the Congressional directive requiring doors to be "sufficiently wide to allow passage by handicapped persons in wheelchairs." However, as the Department noted in the preamble to the proposed guidelines, approaches to, and

maneuvering spaces at, the exterior side of the entrance door to an individual dwelling unit would be considered part of the public spaces, and therefore would be subject to the appropriate ANSI provisions. (See 55 FR 24380.)

Doors in a Series

Comment. A few commenters expressed concern that the Guidelines did not provide design specification for an entrance that consists of a series of more than one door. The commenters were concerned that, without adequate guidance, a disabled resident or tenant could be trapped between doors.

Response. Doors in a series are not typically part of an individual dwelling unit. Doors in a series generally are used in the entries to buildings, and are therefore part of public spaces. Section 4.13 of the ANSI Standard, which is applicable to doors in public and common use areas, provides design specifications for doors in a series. However, where doors in a series are provided as part of a dwelling unit, the Department notes that the requirements of an accessible route into and through the dwelling unit would apply.

Door Hardware

Comment. A few commenters requested that lever hardware be required on doors throughout dwelling units, not only at the entry door to the dwelling unit.

Response. For doors within individual dwelling units, the Fair Housing Act only requires that the doors be sufficiently wide to allow passage by handicapped persons in wheelchairs. Lever hardware is required for entry doors to the building and to individual dwelling units because these doors are part of the public and common use areas, and are, therefore, subject to the ANSI provisions for public and common use areas, which specify lever hardware. Installing lever hardware on doors is the type of adaptation that individual residents can make easily. The ANSI standard also recognizes this point. Under the ANSI Standard, only the entry door into an accessible dwelling unit is required to comply with the requirements for door hardware. (See ANSI section 4.13.9.)

Multiple Usable Entrances

Comment. Several commenters noted that the Guidelines do not provide more than one accessible entrance/exit, and that without a second means of egress, wheelchair users may find themselves in danger in an emergency situation.

Response. As stated previously, the Department is limited to providing Guidelines that are consistent with the

accessibility requirements of the Act. The Act requires "an accessible entrance", rather than requiring all entrances to be accessible. However, the requirements for usable doors and an accessible route to exterior spaces such as balconies and decks does respond to this concern.

Guidelines for Requirement 4

The Guidelines for Requirement 4 present design specifications for providing an accessible route into and through the covered dwelling unit, as required by § 100.205(c)(3)(i).

The Department has adopted the Option One guidelines for Requirement 4 with the following changes:

First, the Department has eliminated the specification for maneuvering space if a person in a wheelchair must make a T-turn.

Second, the Department has eliminated the specification for a minimum clear headroom of 80 inches.

Third, and most significantly, the Department has revised the design specifications for "changes in level" within a dwelling unit to include separate design specifications for: (a) single-story dwelling units, including single-story dwelling units with design features such as a loft or a sunken living room; and (b) multistory dwelling units in buildings with elevators.

Fourth, the Department has revised the specifications for changes in level at exterior patios, decks or balconies in certain circumstances, to minimize water damage. For the same reason, the final Guidelines also include separate specifications for changes in level at the primary entry doors of dwelling units in certain circumstances.

Specific comments on the Guidelines for Requirement 4, and the rationale for the changes made, are discussed below.

Minimum Clear Corridor Width

A few commenters from the disability community advocated a minimum clear corridor width of 48 inches. However, the majority of commenters on this issue had no objection to the minimum clear corridor width of 36 inches. The 36-inch minimum clear corridor width, which has been retained, is consistent with the ANSI Standard.

T-turn Maneuvering Space

Comment. Several commenters stated that this design specification was unclear in two respects. First, they stated that it was unclear when it is necessary for a designer to provide space for a T-turn. The commenters stated that it was difficult to envision circumstances where a wheelchair could be pulled into a position traveling

forward and then not be capable of backing out. Second, the commenters stated that the two descriptions of the T-turn provided by the Department were contradictory. The commenters stated that the preamble to the proposed guidelines provided one description of the T-turn (55 FR 24380), while Figure 2 of the guideline 4 (55 FR 24392), presented a different description of the T-turn.

Response. The Department has decided to delete the reference to the T-turn dimensions in the Guidelines for Requirement 4. The Guidelines adequately address the accessible route into and through the dwelling unit by the minimum corridor width and door width specifications, given typical apartment layouts. Should a designer find that a unique layout in a particular unit made a T-turn necessary for a wheelchair user, the specifications provided in the ANSI Standard sections referenced for public and common use areas could be used.

Minimum Clear Headroom

Comment. Several commenters from the building industry objected to the specification for a minimum clear headroom of 80 inches. The commenters stated that standard doors provide a height range from 75 to 79 inches, and that an 80-inch specification would considerably increase the cost of each door installed.

Response. The specification for minimum clear headroom of 80 inches was included in the proposed guidelines because it is a specification included in the major accessibility codes. This design specification was not expected to conflict with typical door heights. However, since the principal purpose of the requirement is to restrict obstructions such as overhanging signs in public walkways, the Department has determined that this specification is not needed for accessible routes within individual dwellings units, and has therefore deleted this standard from the final Guidelines for such routes. (The requirement, however, still applies in public and common use spaces.)

Changes in Level within a Dwelling Unit

In the preamble to the proposed guidelines, the Department advised that the Act appears to require that dwelling units with design features such as lofts or with more than one floor in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to the upper levels (55 FR 24377). The Department stated that, although it is not clear that Congress intended this result, the Department's preliminary assessment was that the statute appears

to offer little flexibility in this regard. The Department noted that several commenters, including the NAHB and the NCCSCL, suggested that units with more than one floor in elevator buildings should be required to comply with the Act's accessibility requirements only on the floor that is served by the building elevator. (This was the position taken by Option Two.) The Department solicited comments on this issue, and received a number of responses opposing the Department's interpretation.

Comment. The commenters opposing the Department's interpretation stated that the Department's interpretation would place an undue burden on developers and needlessly increase housing costs for everyone; defeat the purpose of having multilevel units, which is to provide additional space at a lower cost; eliminate multilevel designs which may be desirable to disabled residents (e.g., to provide living accommodations for live-in attendants); and "create a backlash" against the Accessibility Guidelines.

Response. Following careful consideration of these comments, and a reexamination of the Act and its legislative history, the Department has determined that its previous interpretation of the Act's application to units with changes in level (whether lofts, or additional stories in elevator buildings), which would have required installation of chair lifts or internal elevators in such units, runs contrary to the purpose and intent of the Fair Housing Act, which is to place "modest accessibility requirements on covered multifamily dwellings." (See House Report at 25.)

In House Report No. 711, the Congress repeatedly emphasized that the accessibility requirements of the Fair Housing Act were minimal basic requirements of accessibility.

These modest requirements will be incorporated into the design of new buildings, resulting in features which do not look unusual and will not add significant additional costs. The bill does not require the installation of elevators or 'hospital-like' features, or the renovation of existing units." (House Report at 18)

Accessibility requirements can vary across a wide range. A standard of total accessibility would require that every entrance, doorway, bathroom, parking space, and portion of buildings and grounds be accessible. Many designers and builders have interpreted the term 'accessible' to mean this type of standard. The committee does not intend to impose such a standard. Rather, the committee intends to use a standard of 'adaptable' design, a standard developed in recent years by the building industry and by advocates for handicapped individuals to

provide usable housing for handicapped persons without necessarily being significantly different from conventional housing." (House Report at 28)

The Department has determined that a requirement that units with lofts or multiple stories in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to lofts or upper stories would make accessible housing under the Fair Housing Act significantly different from conventional housing, and would be inconsistent with the Act's "modest accessibility requirements". (See House Report at 25.)

The Department also has determined that a requirement that dwelling units with design features, such as sunken living rooms, must provide some means of access, such as ramps or lifts, as submitted in the proposed guidelines (55 FR 24380) is inconsistent with the Act's modest accessibility requirements. Sunken living rooms are not an uncommon design feature. To require a ramp or other means of access to such an area, at the time of construction, would reduce, perhaps significantly, the space provided by the area. The reduced space might interfere with the use and enjoyment of this area by a resident who is not disabled, or whose disability does not require access by means of a ramp or lift. The Department believes that had it maintained in the final Guidelines the access specifications for design features, such as sunken living rooms, as set forth in the proposed guidelines, the final Guidelines would have interfered unduly with a developer's choice of design, or would have eliminated a popular design choice. Accordingly, the final Guidelines provide that access is not required to design features, such as a sunken living room, provided that the area does not have the effect of interrupting the accessible route through the remainder of the unit.

The Department believes that the installation of a ramp or deck in order to make a sunken room accessible is the type of later adaptation that easily can be made by a tenant. The Department, however, does require that design features, such as a split-level entry, which is critical to providing an accessible route into and through the unit, must provide a ramp or other means of access to the accessible route.

In order to comply with the Act's requirement of an accessible route into and through covered dwelling units, the Department has revised the Guidelines for Requirement 4 to provide separate technical guidance for two types of dwelling units: (1) Single-story dwelling units, including single-story dwelling units with design features such as a loft

or a sunken living room; and (2) multistory dwelling units in elevator buildings. (Definitions for "single-story dwelling unit," "loft," "multistory dwelling unit" and "story" have been included in section 2 of the final Guidelines.)

"Single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor.

"Loft" is defined as an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" is defined as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it.

"Story" is defined as that portion of a dwelling unit between the upper surface of any floor and the upper surface of the floor next above, or the roof of the unit. Within the context of dwelling units, the terms "story" and "floor" are synonymous.

For single-story dwelling units and multistory dwelling units, the Guidelines for Requirement 4 are as follows:

(1) For single-story dwelling units, the design specifications for changes in level, are the same as proposed in the Option One guidelines. Changes in level within the dwelling unit with heights between $\frac{1}{4}$ inch and $\frac{1}{2}$ inch are beveled with a slope no greater than 1:2. Changes in level greater than $\frac{1}{2}$ inch (excluding changes in level resulting from design features such as a loft or a sunken living room) must be ramped or must provide other means of access. For example, split-level entries must be ramped or use other means of providing an accessible route into and through the dwelling unit.

For single-story dwelling units with design features such as a loft or a raised or sunken functional area, such as a sunken living room, the Guidelines specify that: (a) access to lofts is not required, provided that all spaces other than the loft are on an accessible route; and (b) design features such as a sunken living room are also exempt from the access specifications, provided that the sunken area does not interrupt the accessible route through the remainder of the unit.

(2) In multistory dwelling units in buildings with elevators, access to the additional story, or stories, is not required, provided that the story of the unit that is served by the building elevator (a) is the primary entry to the unit; (b) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement

7. (As previously noted, multistory units in buildings without elevators are not considered ground floor units, and therefore are exempt.)

The Department believes that the foregoing revisions to the Guidelines for Requirement 4 will provide individuals with handicaps the degree of accessibility intended by the Fair Housing Act, without increasing significantly the cost of multifamily housing.

Comment. Two commenters suggested that the same adaptability requirement that is applied to bathrooms should be applied to dwelling units with more than one story, or with lofts, i.e. that stairs, and the wall along the stairs, contain the appropriate reinforcement to provide for later installation of a wheelchair lift by a disabled resident, if so desired.

Response. The only blocking or wall reinforcement required by the Fair Housing Act is the reinforcement in bathroom walls for later installation of grab bars. As noted earlier in this preamble, the Fair Housing Act does not actually require that features in covered units be "adaptable", except for bathrooms. The adaptable feature is the reinforcement in bathroom walls which allows later installation of grab bars. Accordingly, the Department believes that a specification for reinforcement of the walls along stairs would exceed the Act's requirements, because the necessary reinforcement could vary by type of lift chosen, and more appropriately would be specified and installed as part of the installation of the lift.

Thresholds at Exterior Doors/ Thresholds to Balconies or Decks

Comment. A number of commenters from the building industry objected to the provision of the Option One guidelines that specified that an exterior deck, balcony, patio, or similar surface may be no more than $\frac{3}{4}$ inch below the adjacent threshold. Several commenters stated that, in many situations, this height is unworkable for balconies and decks because of waterproofing and safety concerns. This was a particular concern among commenters from the South Florida building industry, who stated that the $\frac{3}{4}$ inch height is ineffective for upper floors of high rise buildings in a coastal environment and invites water control problems. Others noted that the suggestion of a wooden decking insert, or the specification of a $\frac{3}{4}$ inch maximum change in level, in general, might conflict with fire codes.

Response. In response to these concerns, and mindful that Congress did not intend the accessibility requirements of the Act to override the need to protect

the physical integrity of multifamily housing, the Department has included two additional provisions for changes in level at thresholds leading to certain exterior surfaces, as a protective measure against possible water damage. The final Guidelines provide that exterior deck, patio or balcony surfaces should be no more than $\frac{1}{2}$ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface should be no more than 4 inches below the floor level of the interior dwelling unit, unless the local code requires a lower drop. Additionally, the final Guidelines provide that at the primary entry doors to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than $\frac{1}{2}$ inch below the floor level of the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than $\frac{1}{4}$ inch per foot.

In response to commenters' concern that the Guidelines for an accessible route to balconies and decks may conflict with certain building codes that require higher thresholds, or balconies or decks lower than the $\frac{3}{4}$ inch specified by the Guidelines, the Department notes that the Guidelines are "recommended" design specifications, not building code "requirements". Accordingly, the Guidelines cannot preempt State or local law. However, the builder confronted with local requirements that thwart the particular means of providing accessibility suggested by the Guidelines is under a duty to take reasonable steps to provide for accessibility by other means consistent with local law constraints and considerations of cost-effectiveness, in order to provide dwelling units that meet the specific accessibility requirements of the Fair Housing Act.

Guidelines for Requirement 5

The Guidelines for Requirement 5 present design specifications for providing dwelling units that contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, as required by § 100.205(c)(2)(ii).

The Department has adopted the Option One guidelines for Requirement 5 with minor technical changes. The final Guidelines clarify that to be in an accessible location within the meaning of the Act, the maximum height for an

environmental control, for which reach is over an obstruction, is 44 inches for forward approach (as was proposed in the Option One guidelines), or 46 inches for side approach, provided that the obstruction is no more than 24 inches in depth. The inclusion of this additional specification for side approach is consistent with the comparable provisions in the ANSI standard.

Specific comments on the Guidelines for Requirement 5 are as follows:

Comments. Three comments stated that lowered thermostats could pose a safety hazard for children. However, the majority of comments requested clarification as to what is meant by "other environmental controls". Several commenters from the disability community requested that circuit breakers be categorized as environmental controls. Other commenters asked whether light and fan switches on range hoods fall within the category of light switches and environmental controls.

Response. With regard to concerns about lowered thermostats, the Act specifically identifies "thermostats" as one of the controls that must be in accessible locations, and the mounting heights specified in the Guidelines are necessary for an accessible location. The only other environmental controls covered by the Guidelines for Requirement 5 would be heating, air conditioning or ventilation controls (e.g., ceiling fan controls). The Department interprets the Act's requirement of placing environmental controls in accessible locations as referring to those environmental controls that are used by residents or tenants on a daily or regular basis. Circuit breakers do not fall into this category, and therefore are not subject to accessible location specifications. Light and fan switches on range hoods are appliance controls and therefore are not covered by the Act.

Comment. Other commenters asked whether light switches and electrical outlets in the inside corners of kitchen counter areas, and floor outlets are permissible.

Response. Light switches and electrical outlets in the inside corners of kitchen counters, and floor outlets, are permissible, if they are not the only light switches and electrical outlets provided for the area.

Comment. Another commenter pointed out that some electrical outlets that are installed specifically to serve individual appliances, such as refrigerators or microwave ovens, cannot realistically be mounted in an accessible location.

Response. Electrical outlets installed to serve individual appliances, such as refrigerators or built-in microwave ovens, may be mounted in non-accessible locations. These are not the type of electrical outlets which a disabled resident or tenant would need access to on a regular or frequent basis.

Comment. One commenter stated that Figure 3 in the proposed guidelines (Figure 2 in the final Guidelines) specifies a reach requirement more stringent than the ANSI Standard.

Response. The ANSI Standard presents reach ranges for both forward and side approaches for two situations: (1) unobstructed; and (2) over an obstruction. The proposed guidelines specified only the heights for forward reach, because those heights also are usable in side approach. The diagram in Figure 2 (formerly Figure 3) showing forward reach is identical to that of Figure 5 in the ANSI Standard. The ANSI Standard also includes a figure (Figure 6) for side reach that permits higher placement. The reach range for forward approach was the only one referenced in the proposed guidelines for use in the dwelling unit, because it was considered simpler and easier to use a single specification that would work in all situations. The reach range for forward approach has been retained in the final Guidelines for situations where there is no built-in obstruction in order to assure usability when the unit was furnished. However, the final Guidelines have added the specification for side reach over a built-in obstruction that is consistent with the ANSI requirement, and that permits placement two inches higher than forward reach.

Guidelines for Requirement 6

The Guidelines for Requirement 6 present design standards for installation of reinforcement in bathroom walls to allow for later installation of grab bars around the toilet, tub, shower stall and shower seat where such facilities are provided, as required by § 100.205(c)(3)(iii).

The Department adopted the Option One guidelines for Requirement 6 with two modifications. First, the final Guidelines provide that a powder room is subject to the requirement for reinforced walls for grab bars when the powder room is the only toilet facility located on the accessible level of a covered multistory dwelling unit. Second, the final Guidelines further clarify that reinforced bathroom walls will meet the accessibility requirement of § 100.205(c)(3)(iii), if reinforced areas are provided at least at those points where grab bars will be mounted.

Specific comments on this guideline were as follows:

Comment. A number of commenters requested that the Department specify the dimensions for grab bar reinforcement, and suggested that grab bar reinforcing material run horizontally throughout the entire length of the space given for grab bars, as provided by the ANSI Standard. These commenters stated that if this type of reinforcement was required, residents could locate more easily the studs for future grab bar installation, and have flexibility in the placement of grab bars for optimal use, and safety in bathrooms. One commenter noted that many grab bars are of such a length that they require an intermediate fastener, but the proposed standard does not permit intermediate fastening. Two commenters recommended that the final Guidelines follow ANSI and UFAS Standards for requirements for mounting grab bars. One commenter recommended the installation of panels of plywood behind bathroom walls because this would provide greater flexibility in the installation of grab bars.

Response. The illustrations of grab bar wall reinforcement accompanying the Guidelines for Requirement 6 are intended only to show where reinforcement for grab bars is needed. The illustrations are not intended to prescribe how the reinforcing should be provided, or that the bathtub or shower is required to be surrounded by three walls of reinforcement. The additional language added to the Guidelines is to clarify that the Act's accessibility requirement for grab bar reinforcement is met if reinforced areas are provided, at a minimum, at those points where grab bars will be mounted. The Department recognizes that reinforcing for grab bars may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated, or by installing vertical reinforcement (in the form of double studs, for example) at the points noted on the figures accompanying the Guidelines.

Comment. Several commenters stated that the final Guidelines should incorporate Option Two's specification of reinforcement for shower seats when shower stalls are provided.

Response. The Fair Housing Act only requires reinforcement for later installation of grab bars. The Act does not cover reinforcement for shower seats; rather, it mentions shower seats (if provided) as an area where grab bar reinforcement would be needed. However, as will be discussed more fully in the following section concerning the Guidelines for Requirement 7

(Usable Bathrooms), reinforcement for shower seats would provide adaptability to increase usability of shower stalls, and is a design option available to builders and developers in designing "usable" bathrooms.

Comment. One commenter recommended that the final Guidelines incorporate Option Two's specification that prefabricated tub/shower enclosures would have to be fabricated with reinforcement for grab bar enclosures.

Response. The Department did not incorporate this specification in the final Guidelines. The Department believes that it is inappropriate to specify product design. A builder should have the flexibility to choose how reinforcement for grab bars will be provided.

Comment. Two commenters stated that half-baths should also contain grab-bar reinforcements.

Response. Half-baths are not considered "bathrooms", as this term is commonly used, and, therefore are not subject to the bathroom wall reinforcement requirement, unless a half-bath facility is the only restroom facility on the accessible level of a covered multistory dwelling unit.

Comment. One commenter requested that the final Guidelines incorporate language clearly to specify that the builder's responsibility is limited solely to wall reinforcement, and later installation is the responsibility of the resident or tenant.

Response. It is unnecessary to incorporate the suggested language in the final Guidelines. The Guidelines for Requirement 6 are solely directed to reinforcement. No guidelines are provided for the actual installation of grab bars. Accordingly, there should be no confusion on this issue.

Guidelines for Requirement 7

The Guidelines for Requirement 7 present design specifications for providing usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, as required by § 100.205(c)(3)(iv).

For usable kitchens, the Department adopted the Option One guidelines with one change. The Department has eliminated the specification that controls for ranges and cooktops be placed so that reaching across burners is not required.

For usable bathrooms, the final Guidelines provide two alternative sets of design specifications. The Fair Housing Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an

individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be accomplished. The first set of specifications also includes size dimensions for shower stalls, but only when a shower stall is the only bathing facility provided in a dwelling unit. Additionally, either set of specifications is applicable to powder rooms, when a powder room is the only restroom facility on the accessible level of a covered multistory dwelling unit.

With the exception of the inclusion of shower stall dimensions, the first set of "usable bathroom" specifications remain the same as the Option One guidelines for usable bathrooms. The second set of "usable bathroom" specifications provide somewhat greater accessibility than the first set, but would be applicable only to one bathroom in a dwelling unit that has two or more bathrooms. The second set of specifications include clear space specifications for bathrooms with in-swinging doors and for bathrooms with outswinging doors. This second set of specifications also provides that toilets must be located in a manner that permits a grab bar to be installed on one side of the fixture, and provides specifications on the installation of vanities and lavatories.

To meet the Act's requirements for usable bathrooms, the final Guidelines provide that (1) in a dwelling unit with a single bathroom, either set of specifications may be used; and (2) in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or, alternatively, at least one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. However, in multistory dwelling units, only those bathrooms on the accessible level are subject to the Act's requirements for usable bathrooms. Where a powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit, the powder room must meet either the first set of specifications or the second set of specifications. All bathrooms and powder rooms that are subject to Requirement 7, must have reinforcements for grab bars as provided in the Guideline for Requirement 6.

In developing the final Guidelines for the usable bathroom requirement, the Department recognized that the Option One guidelines for usable bathrooms

presented the minimum specifications necessary to meet the Act's requirements. Accordingly, the Department believes that it is appropriate to provide a second set of specifications which provide somewhat different accessibility accommodations than the Option One guidelines. The Department believes that by offering two sets of specifications for usable bathrooms, the Department is providing builders and developers with more development choices in designing dwelling units that contain more than one bathroom; and it is providing individuals and families with more housing options. Builders and developers may design all bathrooms to meet the minimal specifications of the first set of specifications, or they may design only one bathroom to meet the somewhat greater accessibility specifications of the second set. Regardless of which set of usable bathroom specifications is selected by a builder or developer, all doors to bathrooms and powder rooms must meet the minimum door width specifications of Requirement 3.

The following presents a discussion of the specific comments received on usable kitchens and usable bathrooms.

Controls for Ranges and Cooktops

Comment. A few commenters stated that the Department lacks authority under the Fair Housing Act to impose design standards on appliances. The commenter stated that standards that specify certain design features for appliances in individual dwelling units exceed the scope of the Department's statutory authority. Other commenters objected to front range controls as a safety hazard for children. Commenters from the disability community were strongly supportive of this design specification.

Response. With respect to usable kitchens, the Act solely requires that kitchens have sufficient space such that an individual in a wheelchair can maneuver about. Accordingly, a specification that controls for ranges and cooktops be placed so that they can be used without reaching across burners is not consistent with the Act's requirement for usable kitchens.

In the proposed guidelines, the Option One guidelines for usable kitchens specified that controls should be located so as to be usable without reaching across burners. As the preamble to the proposed guidelines noted, many standard styles of ranges and cooktops meeting this specification (other than those with front controls) are available on the market. However, in reviewing the entire rulemaking history on the

design and construction requirements, the Department has concluded that the requirements of the Fair Housing Act did not cover any appliance controls. Accordingly, this specification was not included in the final Guidelines.

Maneuvering Space, Adjustable Cabinetry, Fixtures and Plumbing

Comment. A number of commenters from the disability community stated that it was important that the Guidelines for both kitchens and bathrooms specify a five-foot turning radius; adjustable cabinetry, fixtures and plumbing; and fixture controls that comply with the appropriate provisions of the ANSI Standard.

Response. The legislative history of the Fair Housing Act clearly indicates that Congress did not envision usable kitchens and bathrooms to be designed in accordance with the specifications suggested by the commenters. In House Report No. 711, the Congress stated as follows:

The fourth feature is that kitchens and bathrooms be usable such that an individual in a wheelchair can maneuver about the space. This provision is carefully worded to provide a living environment usable by all. Design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with disabilities without necessarily increasing the size of space. The Committee intends that such space be usable by handicapped persons, but this does not necessarily require that a turning radius be provided in every situation. This provision also does not require that fixtures, cabinetry or plumbing be of such design as to be adjustable. (House Report at 27)

Accordingly, the Department is unable to adopt any of the proposals suggested by the commenters. The Act's requirement for usable kitchens and bathrooms only specifies maneuverability for wheelchair users, and this maneuverability does not require the specification advocated by the commenters. (See previous discussion of this issue in the preamble to the proposed Fair Housing regulations at 53 FR 45005.)

Comment. Two commenters requested clarification concerning what is meant by "sufficient maneuvering space". One of the commenters recommended that this term be defined to include "such space as shall permit a person in a wheelchair to use the features and appliances of a room without having to leave the room to obtain an approach to an appliance, work surface, or cabinet".

Response. The Guidelines for Requirement 7 (usable kitchens and bathrooms) describe what constitutes sufficient maneuvering space in the

kitchen and the bathroom. Additionally, the preamble to the proposed guidelines explicitly states that sufficient maneuvering space for kitchens does not require a wheelchair turning radius (55 FR 24381). As noted in response to the preceding comment, a wheelchair turning radius also is not required for either usable kitchens or usable bathrooms. The Guidelines for usable bathroom state that sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other assistive device to enter and close the door, use the fixtures, reopen the door and exit. This specification was not changed in the final Guidelines.

Kitchen Work Surfaces

Comment. One commenter stated that "Element 12" in the chart accompanying the Guidelines for Requirement 2 (public and common use areas) seems to require a portion of the kitchen counters to be accessible since they are work surfaces. This commenter stated that if this interpretation is correct then it should be made clear in the Guidelines.

Response. The commenter's interpretation is not correct. The chart accompanying the Guidelines for Requirement 2 is only applicable to the public and common use areas, not to individual dwelling units.

Showers

Comments. Several commenters requested that the final Guidelines provide dimensions on the appropriate width and height of showers and shower doors. Another commenter asked whether showers were required to comply with dimensions specified by the ANSI Standard.

Response. The final Guidelines for usable bathrooms (the first set of specifications) specify size dimensions for shower stalls in only one situation—when the shower stall is the only bathing facility provided in a covered dwelling unit. The Department believes that, where a shower stall is the only bathing facility provided, size specification for the shower stall is consistent with the Act's requirement for usable bathrooms. However, if a shower stall is not the only bathing facility provided in the dwelling unit, then the only specification for showers, appropriate under the Act, concerns reinforced walls in showers. (The titles under the illustrations (figures) related to showers in the final Guidelines for Requirement 6 have been revised to make it clear that the figures are specifying only the different areas required to be reinforced in showers of

different sizes, not the required sizes of the shower stalls.)

In-swinging Bathroom Doors

Comment. One commenter stated that in-swinging bathroom doors generally are problematic, unless the bathroom is unusually large. The commenter noted that an in-swinging door makes it extremely difficult to enter and exit. The commenter recommended that in-swinging doors be prohibited unless there is sufficient internal bathroom space, exclusive of the swing of the door, which allows either a five foot turning radius or two mutually exclusive 30" x 48" wheelchair spaces. Another commenter stated that in-swinging bathroom doors create a serious obstacle for the wheelchair user.

Response. The Department declines to prohibit in-swinging bathroom doors. Adjusting an in-swinging door to swing out is the type of later adaptation that can be made fairly easily by a resident or tenant. Once a minimum door width is provided, a tenant who finds a bathroom not readily usable can have the door rehung as an outswinging door. Note, however, that the second set of guidelines for usable bathrooms specifies clear space for bathrooms with in-swinging doors.

Bathroom Design Illustrations

Comment. A number of commenters from the disability community stated that two of the six bathroom drawings in the preamble to the proposed guidelines (numbers 4 and 6 at 55 FR 24374-24375) did not allow for a parallel approach to the tub. These commenters requested that these drawings be removed from the final Guidelines. Other commenters stated that the Department's bathroom design illustrations at 55 FR 24374-24375 are not consistent with the Figure 8 bathroom design illustrations at 55 FR 24401.

Response. While a parallel approach to the tub would provide somewhat greater accessibility, the Department believes that to indicate, through the Guidelines, that a parallel approach to the tub is necessary to meet the Act's requirements, exceeds the Fair Housing Act's minimal design expectations for bathrooms. Accordingly, the first set of specifications for usable bathrooms does not specify a parallel approach to the tub. However, the second set of specifications provides for a clear access aisle adjacent to the tub that would permit a parallel approach to the tub. Either method would meet the Act's requirements. With respect to the comments on the bathroom design illustrations, these illustrations have been revised to make the clear floor

space requirements more readily understood. The illustrations are adapted from ANSI A117.1.

Number of Accessible Bathrooms

Comment. A number of comments were received on how many bathrooms in a dwelling unit should be subject to the Act's "usable" bathroom requirement. Many commenters recommended that all full bathrooms be made accessible. Other commenters recommended that only one full bathroom be required to be made accessible. A few commenters recommended that half-baths/powder rooms also be subject to the Act's requirement.

Response. In House Report No. 711, the Congress distinguished between "total accessibility" and the level of accessibility required by the Fair Housing Act. The report referred to standards requiring every aspect or portion of buildings to be totally accessible, and pointed out that this was not the level of accessibility required by the Act. The final Guidelines for bathrooms are consistent with the Act's usable bathroom requirement, and provide the level of accessibility intended by Congress. As discussed previously in this preamble, the final Guidelines for usable bathrooms provide two sets of specifications. The second set of specifications provides somewhat greater accessibility than the first set of specifications. In view of this fact, the final Guidelines provide that in a dwelling unit with a single bathroom, the bathroom may be designed in accordance with either set of specifications—the first set or the second set. However, in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or a minimum of one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. Additionally, the final Guidelines provide that a powder room must comply with the Act's usable bathroom requirements when the powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit.

3. Discussion of Comments on Related Fair Housing Issues Compliance Deadline

Section 100.205 of the Fair Housing regulations incorporates the Act's design and construction requirements, including the requirement that

multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. Section 100.205(a) provides that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and, therefore, exempt from Act's accessibility requirements), if they are occupied by that date, or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County, or local government on or before January 13, 1990.

Comment. The Department received a number of comments on the March 13, 1991 compliance deadline, and on methods of achieving compliance. Many commenters objected to the March 13, 1991 compliance deadline on the basis that this deadline was unreasonable. Several commenters from the building industry stated that, in many cases, design plans for buildings now under construction were submitted over two years ago, and it would be very expensive to make changes to buildings near completion. Other commenters stated that it is unreasonable to impose additional requirements on a substantially completed project that unexpectedly has been delayed for occupancy beyond the March 13, 1991 effective date.

Response. Section 804(f)(3)(C) of the Fair Housing Act states that the design and construction standards will be applied to covered multifamily dwelling units for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act. The Fair Housing Act was enacted on September 13, 1988. The date that is 30 months from that date is March 13, 1991. Accordingly, the inclusion of a March 13, 1991 compliance date in § 100.205 is a codification of the Act's compliance deadline. The Department has no authority to change that date. Only Congress may extend the March 13, 1991 deadline.

The Department, however, has been attentive to the concerns of the building industry, and has addressed these concerns, to the extent that it could, in prior published documents. In the preamble to the final Fair Housing rule, the Department addressed the objections of the building industry to the Department's reliance on "actual occupancy" as the sole basis for determining "first occupancy". (See 54 FR 3251; 24 CFR Ch. I, Subch. A, App. I at 585 (1990)). Commenters to the

proposed Fair Housing rule, like the commenters to the proposed guidelines, argued that coverage of the design and construction requirements must be determinable at the beginning of planning and development, and that projects delayed by unplanned and uncontrollable events (labor strikes, Acts of God, etc.) should not be subject to the Act.

In order to accommodate the "legitimate concerns on the part of the building industry" the Department expanded § 100.205 of the final rule to provide that covered multifamily dwellings would be deemed to be for first occupancy if the last building permit or renewal thereof was issued on or before January 13, 1990. A date of fourteen months before the March 13, 1991 deadline was selected because the median construction time for multifamily housing projects of all sizes was determined to be fourteen months, based on data provided by the Marshall Valuation Service.

More recently, the Department addressed similar concerns of the building industry in the preamble to the proposed accessibility guidelines. In the June 15, 1990 publication, the Department recognized that projects designed in advance of the publication of the final Guidelines, may not become available for first occupancy until after March 13, 1991. To provide some guidance, the Department stated in the June 15, 1990 notice that compliance with the Option One guidelines would be considered as evidence of compliance with the Act, in projects designed before the issuance of the final Guidelines. The Department restated its position on this issue in a supplementary notice published in the Federal Register on August 1, 1990 (55 FR 31131). The specific circumstances under which the Department would consider compliance with the Option One guidelines as compliance with the accessibility requirements of the Act were more fully addressed in the August 1, 1990 notice.

Comment. A number of commenters requested extending the date of issuance of the last building permit from January 13, 1990 to some other date, such as June 15, 1990, the date of publication of the proposed guidelines; August 1, 1990, the date of publication of the supplementary notice; or today's date, the date of publication of the final Guidelines.

Response. The date of January 13, 1990 was not randomly selected by the Department. This date was selected because it was fourteen months before the compliance deadline of March 13, 1991. As previously noted in this

preamble, fourteen months was found to represent a reasonable median construction time for multifamily housing projects of all sizes, based on data contained in the Marshall Valuation Service. Builders have been on notice since January 23, 1989—the publication date of the final Fair Housing rule, that undertaking construction after January 13, 1990 without adequate attention to accessibility considerations would be at the builder's risk.

Comment. One commenter requested that the applicable building permit be the "primary" building permit for a particular building. Other commenters inquired about the status of building permits that are issued in stages, or about small modifications to building plans during construction which necessitate a reissued building permit.

Response. Following publication of the proposed Fair Housing regulation, and the many comments received at that time from the building industry expressing concern that "actual occupancy" was the only standard for determining "first occupancy", the Department gave careful consideration to the steps and stages involved in the building process. On the basis of this study, the Department determined that an appropriate standard to determine "first occupancy", other than actual occupancy, would be issuance of the last building permit on or before January 13, 1990. This additional standard was added to the final Fair Housing Act regulation. The Department believes that, aside from actual occupancy, issuance of the last building permit remains the appropriate standard.

Compliance Determinations by State and Local Jurisdictions

Comment. A few commenters questioned the role of States and units of local government in determining compliance with the Act's accessibility requirements. The commenters noted that (1) § 100.205(g) encourages States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the Act's accessibility requirements; but (2) § 100.205(h) provides that determinations of compliance or noncompliance by a State or a unit of general local government are not conclusive in enforcement proceedings under the Fair Housing Act. These commenters stated that, unless determinations of compliance or