COMMENTS AND RESPONSE TO THE U.S. DEPARTMENT OF JUSTICE'S NOTICE OF PROPOSED RULEMAKING TO AMEND 28 CFR PART 36: NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

DEPARTMENT OF JUSTICE, Civil Rights Division,
28 CFR Part 36, CRT Docket No. 106; AG Order No. 2968-200, RIN 1190-AA44
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Submitted by

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The International Association of Amusement Parks and Attractions (IAAPA) appreciates the opportunity to provide public comment to the Notice for Proposed Rule Making (NPRM) on revisions to the Americans with Disabilities Act Title III, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities and hereby submits its comments in response to the Department of Justice's proposal to adopt the recently revised Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines ("2004 ADAAG") issued by the U.S. Access Board on July 23, 2004, as the Department's own Standards for Accessible Design ("Standards"), 28 CFR pt 36 app. Prior to providing a brief introduction on IAAPA and how it functions for its members, we wish to convey the following primary concerns about the NPRM. We will provide detailed discussion of these concerns in the body of this document.

In addition to an organizational repose, IAAPA includes comments submitted to it for transmittal to the Department by several of its members. IAAPA members may be submitting public comment separately from this document.

1. **Sixty (60) Day Public Comment Period**. The NPRM's 60 day period for public comment is too short for our members to provide substantive comment to the issue raised and proposed, especially since such 60-day period has fallen during our members' busiest season of the year.
2. **Six (6) Month Period for Effective Date**. The NPRM's proposed 6 month effective date of the rule is contrary to Options 1 and 3 proposed in the September 30, 2004 Advance Notice of Proposed Rulemaking (ANPRM). IAAPA's primary concern with this effective date is that it is too short for barrier removal on existing amusement rides and attractions, play areas and miniature golf. Additionally, in our comment to the ANPRM, IAAPA requested "first use" as the trigger event for new construction or alterations of amusement rides, and not "start of construction" as is proposed in this NPRM.
3. **Reduced Scoping and Limitations on Barrier Removal for Recreation**. IAAPA agrees with the proposals for "reduced scoping" for public accommodations that operate existing facilities with play or recreation areas, and we request that limitations on barrier removal for amusement ride vehicles, wave action pools and direct access to stages from public seating be included in the Final Rule.
4. **Service and Comfort Animals**. IAAPA supports the Department's and NPRM's proposed definition of "Service Animals" in the NPRM, and supports the exclusion of "Comfort Animals".
5. **EPAMDs, Segways® and "Common Wheelchair".** IAAPA opposes both changing the definition of powered mobility aid as proposed in the regulation and the expansion of the definition to include EPAMDs (i.e., Segway®). IAAPA's concerns are related to safety in intensive pedestrian environments and EPAMDs

on amusement rides and their loading and unloading platforms. The NPRM's language is too broad.

6. **"Element by Element" Barrier Removals and Safe Harbors.** The NPRM's "Element by Element" is a new standard of care for removal of architectural barriers, and clearly appears to exceed the current Title III "Readily achievable" standard, which includes §36.304 (c) Priorities and §36.305 Alternates to Barrier Removal. The NPRM only provides "safe harbor" for new construction and alternation, and not readily achievable barrier removals.
7. **Alternate Means of Accessible Routes to Amusement Ride Vehicles.** In the public comment to the Department's ANPRM, IAAPA requested the Department to acknowledge that wheelchair access through the exit, or an alternate wheelchair access route was a base-line assumption during the development of the 2004 ADAAG amusement ride section. The NPRM makes no comment on this issue.
8. **Miniature Golf.** IAAPA supports many of the proposals for reduced and flexible scoping on miniature golf, but is deeply concerned the economic impact of barrier removal obligations on these facilities is seriously underestimated.
9. **Regulatory Impact Analysis**. The Department's Regulatory Impact Analysis (RIA) of amusement parks does not reflect the cumulative impact of barrier removal, new construction and alteration costs upon the amusement industry. IAAPA further believes the RIA overstates the positive benefits of wheelchair access as an offset to barrier removal, new construction and alteration.
10. **Open Captioning and Narration of Films**. IAAPA does not support the Department's and NPRM's proposal for open captioning and open narration of all motion picture films provided by public accommodations. The NPRM's proposed language is too broad and could be interpreted to apply to amusement ride and attraction motion picture projects. IAAPA believes that it would be inappropriate to require open or closed captioning for all motion pictures. While there are some circumstances where closed captioning would be appropriate, open captioning would destroy the integrity of the attractions experience.

IAAPA's ANPRM Public Comment. The Department of Justice provided an opportunity for public comment through the July 23, 2004 ANPRM. IAAPA provided a lengthy written comment on this document. We included considerable material on issues related to alterations, barrier removal, trigger dates and events. Although some of the items raised in our comment are not referenced in this NPRM, we hope that the Department will consider them in developing its final rule.

We re-summarize many of the issues brought forth in the ANPRM as they may be relevant or duplicative to issues brought forth in the NPRM. We are also resubmitting our comment to the ANPRM, as it represents the voice of many businesses. That document is attached hereto. If necessary, IAAPA requests a meeting with the Department to discuss these concerns.

ORGANIZATION OF THIS DOCUMENT:

A. Introduction to IAAPA and Its Membership

B. Primary Concerns - Detailed Comment

C. IAAPA's Public Comment to NPRM's 59 Questions

D. IAAPA's Commentary on the NPRM's Regulatory Impact Analysis

E. Other Public Comments Submitted by IAAPA Members through IAAPA

F. IAAPA's Resubmission of its Public Comment to the ANPRM (separate attachment)

A. INTRODUCTION TO IAAPA AND ITS MEMBERSHIP

Since 1918, IAAPA has represented the owners and operators of fixed-site amusement parks, family entertainment centers, water parks, and varied attractions worldwide, as well as the companies that supply goods and services to these facilities. Its facility members range from small, family-owned businesses to those operated by large corporations. IAAPA is a central source of information and guidance for the global amusement industry.

IAAPA can trace its roots to the early 20th century and an alliance called the National Association of Amusement Parks. This body began to resemble today's organization in 1920, when it merged with the then two-year-old National Outdoor Showmen's Association. In 1972, IAAPA assumed its current name and steadily evolved into an international organization that now represents more than 4,000 members in over 85 countries.

IAAPA members are as numerous and diverse as the world's many cultures, and are involved in every facet of the industry, including major rides, miniature golf, family entertainment centers, water parks, games and arcades, zoos, aquariums, special effects, design and engineering, family attractions, stage and theatrics, food and beverage, souvenirs, landscaping, and sanitation. Its members range from businesses with less than 16 employees to corporations with more than 100,000 employees. Its membership includes Title III Public Accommodations and Title II State or Local Government Entities, as well as a significant number of companies that are not defined under Title III or Title II.

IAAPA supports the goals of the ADA in providing access to persons with disabilities as both guests at our amusement parks and attractions and as employees. In the nearly 20 years since the ADA was enacted, IAAPA members have been involved in the development of the accessibility guidelines. Early in this period, IAAPA developed an ADA Task Force to address issues of accessibility for its membership and to develop training and technical assistance materials for members' use. Since 1992, IAAPA has also provided accessibility training and outreach to its membership at its yearly convention, through its trade magazine and in other forums.

In 1994 several of IAAPA's members were appointed to the US Access Board's Recreation Access Advisory Board with the task of developing proposals for accessibility design criteria for amusement rides, miniature golf, boating and fishing docks. A core team of volunteers was assembled to assist the Advisory Board and the US Access Board. More than 10,000 hours of IAAPA member volunteer time was provided to this project. Proudly, many of these volunteers received special recognition from the US Access Board for their contributions and commitment to advancing the cause of accessibility in recreation. This group has stayed intact since 1994 to assist the Access Board in the development of the Final Rule for the accessibility guidelines and other technical assistance documentation.

IAAPA members participated as public members in the US Access Board's ADAAG Review Advisory Board. They served on the Building Blocks, Plumbing and Assemblies Committees. The ADAAG Review Advisory Board developed the initial proposal for the new accessibility guidelines for the Americans with Disabilities Act and the Architectural Barriers Act (ADA/ABA).

Concurrent with this activity, IAAPA has directly participated in the development of accessibility standards chaired by the International Code Council. It served as a voting member of the ICC-Bleacher Safety and Accessibility Committee, and the ICC ANSI A117.1 Accessible and Usable Buildings and Facilities Committee, which developed the technical accessibility provisions of the International Building Code and the National Fire Protection Code NFPA 5000. Not only does our membership focus on development of federal standards, but they also actively participate in the development of local and state building code regulations affecting accessibility. IAAPA members are active participants ensuring the harmonization of the accessibility provisions of the ADA/ABA with technical standards for:

Amusement Rides

Aquatic play components,

Foam play equipment,

Inflatable play equipment,

Miniature golf,

Motion picture theater standards, and

Net climb play equipment,

Passenger vessel and cruise ship accessibility

Play equipment for public use,

Soft contained play equipment,

Swimming pools, and

Water parks

On May 31, 2005, IAAPA provided detailed public comment on the U. S. Department of Justice's Advance Notice of Proposed Rulemaking (ANPRM), 28 CFR Parts 35 and 36, Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, CRT Docket No. 2004-DRS01 published September 30, 2004.

Additionally IAAPA provided public testimony at the Department to Justice's July 15, 2008, public hearing on the NPRM.

B. PRIMARY CONCERNS - DETAILED COMMENT.

1. **Sixty (60) Day Public Comment Period**. As IAAPA reported during the Department's July 15, 2008 public hearing, we express deep concern that the comment period on the NPRM is too short. Our members do not have sufficient time to effectively communicate their areas of concern or support on the many issues brought forth in the notice of proposed rulemaking. The Access Board provided its disability rights advocates more than four years to review and revise the approximately three-hundred pages of the revised ADAAG. During this rulemaking, the Access Board concluded:

   > 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.
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   > *Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines,* 69 *Fed. Reg*. 44084, 44150 (July 23, 2004) (emphasis added).

Now, the Department proposes to give the actual regulated entities just 60 days to absorb one of the most far-reaching regulatory actions of this Administration.

In addition, the 60 day notice occurs during the amusement industry's peak business season. In both large and small amusement businesses, there are few staff that are professionally skilled to decipher and understand the complexity of this notice. Those who do have the appropriate background and skill are currently focused on park operations and safety programs.

Sixty days is insufficient time to analyze the impact of the new "Element by Element" standard of care for removal of architectural barriers, and what will constitute a "safe harbor" of previous barrier removal activities that were conducted in good faith to the Title III's 36.304 "readily achievable" standard.

Finally, IAAPA believes the Regulatory Impact Analysis's economic assessment on places of amusement is flawed, and does not address the cascade of barrier removal impacts on the amusement park industry. The 60 day notice is insufficient for our members to understand and decipher the systems used in this analysis. We will provide more detailed discussion on this issue later in this document.

2. Six (6) Month Period for Effective Date. The NPRM's declaration of intent for a six month effective date of the rule is contrary to Options 1 and 3 proposed in the September 30, 2004 Advance Notice of Proposed Rulemaking (ANPRM). IAAPA's primary issue with the period for effective date is the short period for barrier removals on existing amusement rides and attractions, play areas and miniature golf facilities. In addition, in our public response to the ANPRM, IAAPA requested "first use" as the trigger event for new construction or alterations of amusement rides, and not "start of construction" as is proposed in this NPRM.

The Department's ANPRM proposed three options for effective date:

> **Option I: Eighteen months**. The Department noted that "under this option, the effective date … has the advantage of ample precedent; it was originally used in the context of a new law with which there was little or no familiarity or experience. It may be inappropriately long in the current context."
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> **Option II: Six months**. The Department considered a short period of time under the assumption that "…the changes in scoping and technical specifications to the revised ADA Standards are primarily incremental." The Department acknowledged that larger projects "…may need longer than this proposed six-month period to incorporate the final changes to the revised ADA Standards into the design of those projects."
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> **Option III: Twelve months**. The Department concluded that, "this option shortens the time period envisioned by Option I, while providing more time than Option II in order to allow for the integration of the revised ADA Standards into larger construction projects."

In comment to the options, IAAPA concurred with the need to accommodate the scheduling difficulties for larger projects. The issue is not limited to design and construction, but also capital funding and contracts. A significant majority of amusement ride manufacturers based outside the U.S. and will not accommodate US requirements for accessible ride vehicles. This leaves the burden on local business to engage engineers and biomechanics experts to design, fabricate and install modified vehicles after installation of the system has been completed. IAAPA described in detail, in its comments to the ANPRM, the project scheduling issues and the need to develop and fine tune amusement

ride vehicle access during the "test and adjust" phase of a project. Also, this discussion explained the appropriateness of a "First Use" trigger.

The Department bases much of its rationale for the 6 month period in the "familiarity" of the 2004 ADAAG to harmonization that has occurred with the International Building Code (IBC) and to "primarily incremental" changes within the 2004 ADAAG. This discussion is related to new construction and alterations for conventional facilities, and does not consider new provisions and requirements for barrier removal for recreation elements. Amusement rides, wave pools, aquatic play equipment and miniature golf have not benefited from this assumption of harmonization and incremental change. Only in the last six months has the recreation element been proposed as an addition to the ICC ANSI A1171 Accessible Buildings and Facilities standard. This standard is the IBC's technical reference for accessibility. Recreation will not be scoped in this code for another three to five years. The NPRM is based on the incorrect assumption that because the proposed guidelines for recreation have been discussed and are now in place within the 2004 ADAAG, sufficient advancement on barrier removals has occurred. This NPRM is currently proposing changes to both scoping and barrier removal requirements for recreation. These fluctuations have not encouraged barrier removal activity, as the Department has assumed in making its case for a shorter period for effective date.

First, the recreation elements are not currently scoped by the IBC and there are no clear guidelines on the minimum requirements for alterations of these elements.

Second, these "familiar" documents (IBC, 2004 ADAAG, US Access Board regulatory rule making history) do not address alterations on complex equipment and systems utilized in amusement rides and attractions.

Third, as applicable to both alterations and barrier removal, "technical infeasibility" in amusement ride vehicle shells, and issues of direct threat of ramp handrails added into wave action pools are not vetted.

IAAPA is primarily concerned with implementation of Subpart C Specific Requirements on amusement rides, aquatic play attractions, miniature golf and other non-conventional forms of recreation. IAAPA is less concerned with the implementation of the 2004 ADAAG into conventional building facilities: sites, parking, retail, restaurants, assembly seating etc. Amusement and water parks are complex systems, and it is not reasonable to classify them with toilet and transaction counter barrier removal in a restaurant or retail shop. Determining the feasibility of modifying an amusement ride vehicle is not as "readily achievable, easily accomplished and able to be carried out without much effort or expense", compared to decision making and effort to modify an entry door, transaction counter or toilet room.

IAAPA provided the following requests to the Department's ANPRM proposals:

- **THREE TO FIVE YEARS FOR NEW AMUSEMENT RIDES AND BARRIER REMOVAL ON EXISTING AMUSEMENT RIDES**. IAAPA

provided public comment to the US Access Board's rule making process on the new ADAAG that its members would require three to five years to implement the new accessibility guidelines into both production of new amusement rides and barrier removal on existing amusement rides and their facilities.

- These attraction and facility upgrades require advanced capitalization requests, project scheduling, changes to operational manuals, re-certification of ride systems by the entity having jurisdiction and test and adjust during employee operational training. Extensive discussion of this is provided in IAAPA's public comment to the Department's ANPRM. On procedural grounds, the US Access Board adamantly refused to address alterations and barrier removal in their development of the 2004 ADAAG.
- Amusement rides designed according to the accessibility guidelines and rules published during the summer of 2003 should be exempt from changes that may be incorporated from the current public comment period and resulting rule modifications or additions, even if not manufactured until after such new or modified rules are adopted.

- **18 MONTHS FOR FACILITIES ALREADY SCOPED UNDER THE CURRENT ADA ACCESSIBILITY GUIDELINES**. Because the Department has only proposed a concept to "grandfather" or exempt existing barrier removal efforts, our members cannot be certain that this will come to pass. "Element by Element" standard of care is proving to be a higher standard than the "readily achievable" standard of care in current Title III.
  - An 18-month period after publication of the final notice is necessary to reassess existing facilities for verification of conditions and risk management considerations that may require additional barrier removal effort.
  - Additional discussion of this is provided in section B.6 of this document.

- **24 MONTHS FOR MINATURE GOLF**. Previous comments were primarily associated with barrier removal on sites built upon artificially manipulated terrain to create dramatic site elevations and have highly themed environments.
  - These sites are constrained. They are typically located on highly visible and costly sites along state or federal highways. This vehicular visibility is a primary form of advertisement to the recreational and tourist market.
  - Very few operators have adjacent property on which to build new course holes that would be compliant to the new accessibility guidelines; therefore, significant alteration is required to meet the anticipated barrier removal efforts.
  - The 2004 ADAAG states that at least fifty percent (50 percent) of the holes on miniature golf courses should be accessible and connected to an accessible route. In addition to requesting 24 months for barrier removal,

IAAPA supports the Department's proposal that certain existing miniature golf facilities with limited space or extreme elevation changes be exempted from this requirement (Question 45).

IAAPA is steadfast in these requests for special considerations on existing amusement rides and miniature golf.

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3. Reduced Scoping and Limitations on Barrier Removal for Recreation. IAAPA agrees with the proposals for "reduced scoping" for public accommodations that operate existing facilities with play or recreation areas and requests that amusement ride vehicles, wave action pools and direct access to stages from public seating be included in the Department of Justice's proposal for limitations on barrier removal.

In Section C, IAAPA Public Comment to NPRM's 59 Questions, IAAPA provides specific and detailed public comment on these issues.

Existing amusement ride vehicles. There are limited opportunities for barrier removal on existing ride vehicles. IAAPA has provided extensive public comment and testimony on the complications of re-engineering older rides under barrier removal obligations when the manufacturer is no longer in business; modifying rides of foreign manufacturers where modifications of the ride could result in loss of warranty; circumstances where the modifications would constitute an ASTM F24 Major Modification (triggering numerous requirements for additional engineering and certifications); and the increased burden placed on smaller and medium-sized parks that lack the engineering or manufacturing expertise to modify existing ride vehicles. The US Access Board declines to acknowledge these issues as being outside of the purview of its rule-making authority.

- Extensive requirements for barrier removal on an existing ride that affect structural elements or vehicle weights can trigger an ASTM F-24 Major Modification. A Major Modification can result in a cascade of new requirements to re-engineer and re-certify the entire ride system. The alteration exception or technical infeasibility might then be applicable. This will likely be an exhausting and costly analysis for an amusement park, especially the smaller ones.
- Other than on large train carriages, ferry boats, large carousels and other similar scaled vehicles, there is little opportunity for effective barrier removal on existing ride vehicles. The majority of vehicles are two to three person seated vehicles or sections in a vehicle train. These cannot be made wheelchair-accessible due to their physical scale.
- A common condition is that a vehicle affixed to some form of armature that is structural in nature. Wheelchair space design requires engineering of a 600 pound minimum live load and with a safety factor of at least 3 based on the ultimate strength of the material (based on US Access Board accessible transportation guidelines, as referenced by the 2004 ADAAG). Compared to the original live

weight of 200 pounds for two riders, the increased weight is likely to cause "technical infeasibility" or otherwise require modification of the vehicle's structural frame.

- Similarly, the shells of many ride vehicles are structural in nature and are part of the passenger restraint system (e.g., a teacup ride). These shells cannot be carved open to provide clearance for transfer from a wheelchair or mobility aide to a ride seat.
- A number of types of ride vehicles are exempt from the accessibility requirement in that they are specifically designed for children, the vehicle has no ride seat, or the vehicle requires user operation of controls (e.g., go carts, bumper cars) which cannot be retrofitted with hand or other form of controls. IAAPA requests that the Department clarify the proposed barrier removal obligations on existing facilities that are exempted from all or part of the 2004 ADAAG.

Wave action pools. The 2004 ADAAG section 242.2 requires leisure pools, including wave action pools, to provide a minimum of one accessible means of access via a pool (chair) lift or a sloped (ramped) access. As a means of barrier removal, neither is physically feasible nor feasible from a standpoint of "direct threat to the safety of others".

- Existing wave pools often have a sloped entry, but are without ramp handrails (33 to 38 inches apart), bottom level landings or edge protection (under the handrails or at drop off from the side of ramps). Adding these to an existing wave pool could result in additional underwater obstructions and safety hazards where none existed prior to attempted compliance with the proposed rule. In addition, if a wheelchair user brings an aquatic wheelchair into the pool, the chair itself could become a direct threat to the heath and safety of others as the wave action either strikes and pushes swimmers into the wheelchair obstruction or the chair is pushed into a patron.
- Existing wave pools often have tall side and rear walls that serve to contain the wave action. These are typically not accessible to any swimmer or guest for safety reasons and fall heights. A pool chair lift is not a safe device when dropping the user into wave action without means for the person to physically compensate the forces placed on such person while in the chair seat. Also, pool chair lifts often do not have the required range of vertical seat displacement. In order to lower a person to the required 18 inches of minimum depth below mean water level, such lift may require 6 to 8 feet of vertical distance.
- IAAPA brought these issues to the US Access Board's attention, but these comments were disregarded on the procedural ground that the Board's efforts to develop the ADAAG recreation rule did not encompass barrier removal or alterations. IAAPA informed the Board that the only safe means of designing access into a wave action pool was to create a second cove that would protect the person from the main pool's wave action. This extent of additional construction to an existing wave pool is not readily achievable.

Direct Access to Stages. IAAPA addresses this in more detail in Section C, IAAPA Public Comment to the NPRM's 59 Questions.

- Amusement park attraction stages should not be classed in the same category as stages in an educational facility's auditorium or a community center. The public does not have ready use of amusement park stages, unless the theatrical venue includes audience participation.
- Not all stage shows include audience participation on the stage. Many amusement park show stages are for performers only. These stages contain means of accessibility from backstage areas. IAAPA requests that an exception be provided for the direct access from audience to stage where the stage is a work area for performers only, and there is no direct audience participation.
- As a means of barrier removal, a ramp is the most obvious solution. In many amusement park theaters and assembly venues, the wheelchair positions have gravitated to the front of the fixed seating sections. This has evolved from 15 years of pressure from the public not to place wheelchair positions in the rear of auditoriums in live production shows. It is at the front of the stage where ramped access would be provided.
- Wheelchair lifts are probably not a viable option. Many wheelchair users are adamant in their dislike of the equipment, as it is cumbersome and slow, especially where a live production is occurring for audience participation, and the device places the user in a precarious state of exhibition.
- IAAPA agrees that access to the stage in audience participation events is an important obligation and good guest service. Guest participation shows already have a means of access to the stage. This may not be directly visible from the audience, but the industry employs ushers to guide guests on stage, sometimes from behind-the-scenes locations.

4. Service and Comfort Animals. IAAPA supports the Department's and NPRM's proposal on new definition of "Service Animals", and supports the exclusion of "Comfort Animals" from this definition. IAAPA supports refining the definition of "Service Animal" to domestic animals (and birds should be specifically excluded from the definition of "Service Animals").

- While "comfort animals" may be appropriate to Fair Housing Act and social service circumstances, IAAPA members have found this claim to be frequently abused by park guests. Many parks have experienced conditions where guests on extended vacation bring their pets with them on vacation, choose not to kennel them and do not want to confine them to their locked vehicle. Then the guest seeks to bring the pet within the amusement or waterpark, either on leash or in a scooter's basket. The guest seeks ADA accommodation, and the operator is not permitted to question the validity of the circumstance. The operator then experiences guest behavioral problems associated with animal relief areas, animal behavior, and the guest leaving the animal unattended while experiencing an attraction, using restrooms etc. Requesting a guest to remove the animal from the park with the caveat that they can return the same day is simply not feasible and results in a confrontation.

- IAAPA supports imposing a size or weight limitation on animals that qualify as "service animals".

5. EPAMDs, Segways® and "Common Wheelchair". IAAPA does not support the Department's proposal to include electronic personal assistive mobility devices (EPAMDs, i.e., Segway®) as a conventional class of mobility device. Additionally, IAAPA requests that the Department acknowledge that the 2004 ADAAG guidelines for wheelchair space design on amusement rides would be exempted from the broader definition proposed.

The NPRM states: "Section 36.311(b) adopts the general requirement in the ADA that public accommodations must make reasonable modifications to their policies, practices, and procedures when necessary to enable an individual with a disability to use a power-driven mobility device to participate in its services, programs, or activities **unless doing so would result in a fundamental alteration of their services, programs, or activities**" (emphasis added).

"If a public accommodation restricts the use of power-driven mobility devices by people without disabilities, then it must develop policies addressing which devices and under what circumstances individuals with disabilities may use power-driven mobility devices for the purpose of mobility. Under the Department's proposed regulation in § 36.311(c), public accommodations must adopt policies and procedures regarding the accommodation of power-driven mobility devices other than wheelchairs and scooters that are designed to assess whether allowing an individual with a disability to use a power-driven mobility device is reasonable and does not result in a fundamental alteration to its programs, services, or activities. Public accommodations may establish policies and procedures that address and distinguish among types of mobility devices."

- IAAPA supports the recommendations that permit a public accommodation to develop and communicate polices on use of EPAMDs within its facilities. In order to administer these polices, the public accommodation requires the latitude to ask the user questions to ascertain if they understand the park's polices, and if necessary, accept an alternative accommodation (i.e. use of a motorized scooter and in the interim the park will safely store the EPAMD).
- IAAPA disagrees with the proposal to include EPAMDs in the same category as a conventional mobility aids such as a wheelchairs or scooters, and thereby permitting EPAMDs to have unfettered access to the physical environment. The NPRM cites the specific reasons the EPAMDs are not an appropriate device in pedestrian-intensive, interior or exterior environments: vehicle speed, operator competency, and the direct threat that EPAMDs pose to the safety of others. The NPRM states: "EPAMDs can travel up to 12½ miles per hour, compared to the average pedestrian walking speed of 3 to 4 miles per hour and the approximate maximum speed for power-operated wheelchairs of 6 miles per hour."

  Segways also utilize a high torque self balancing technology that does not exhibit a safe failure mode. For example, in the event of a power failure, a Segway simply falls over, with or without the rider, as opposed to coming to a safe state of rest.

Further, when the wheels of a Segway come into contact with common obstacles such as curbs, hand rail stanchions, flower pots, luggage, walls, door jams or even the legs of other patrons, the balancing technology will automatically respond by applying more power and torque to the drive wheels in order to overcome the obstacle and maintain its balance. This often results in the Segway's operator being literally thrown from the device. Likewise, if an operator improperly dismounts and releases the hand grips of a Segway, the unit will not remain upright or simply fall in place. The device will seek to maintain balance by accelerating away from the operator for several feet until it shuts down and falls to the ground. Naturally, it would also stop if it crashes into an object or person prior to shutting down.

- The NPRM does not resolve the conflict between EPAMDs and 2004 ADAAG requirement of a minimum of 80 inches clearance for overhead protruding objects. The NPRM states: "A study of trail and other non-motorized transportation users including EPAMDs, the Federal Highway Administration (FHWA) found that the eye height of people using EPAMDs ranged from 68¼ inches to 79½ inches." At the larger range a person's head height exceeds 80 inches.
- Moreover, local and standardized national building codes such as the IBC establish doorway, guardrail and hand rail heights based on widely accepted anthropomorphic data of human beings standing at floor level. Standing on a Segway increases both the height and center of gravity of individuals by at least eight inches. As opposed to individuals in the 99th height percentile who are accustomed to such doorway and guard rail heights relative to their body size, individuals of lower heights may not appreciate the height and mass center differential while riding a Segway and experience head bumping at doorways and architectural features or even catastrophic "flips" over balcony rails.
- The proposed expansion of the spatial and weight requirements for a wheelchair, in lieu of the provisions defined for a "common wheelchair" will exceed the 2004 ADAAG's specific minimum requirements for wheelchairs on amusement ride vehicles, section 1002.4.4.1, and the requirements for bridge plates, ramps and similar devices under section 1002.4.3.

We oppose both changing the definition of powered mobility aid as proposed in the regulation and the expansion of the definition to include EPAMDs.

The amusement ride rule is based on the current DOT definition of standard wheelchair.

> Common wheelchairs and mobility aids means belonging to a class of three or four wheeled devices, usable indoors, designed for and used by persons with mobility impairments which do not exceed 30 inches in width and 48 inches in length, measured 2 inches above the ground, and do not weigh more than 600 pounds when occupied.

Expanding the definition of a common wheelchair could present a safety hazard to the wheelchair user and others both on and off the ride:

- Powered mobility devices incorporate on-board elements, including, but not limited to wet cell batteries, live electrical circuitry, and RFI/EMI generating devices that are individually and aggregately undefined / unknown to the ride designer and can therefore not be reasonably anticipated or accommodated by the ride designer (new rides) and are not accommodated for any existing rides. Each presents safety risks to guests, including the ADA rider.
- The center of gravity (cg) of the guest/wheelchair combination must have a defined limit for guest safety; the mass distribution of powered wheelchairs will cause cg positions outside proven safe envelopes for most ride systems.
- Amusement rider mass limitations exist under ASTM defined standards. This limitation causes all rides designed for use in most jurisdictions in the U.S. to be limited in capacity to accommodate no greater than 300 lb riders. If Rider + Wheelchair weights far exceed this value, completely new structural design for vehicles and track systems is likely to be required. If not undertaken, significant risk of structural failure (yield/fracture and/or accelerated fatigue) exist.
- The structural integrity of powered mobility units under the multi axis accelerations associated with typical ride systems is unknown, and highly questionable as no known powered mobility device on the market is presently designed for such load scenarios. (This is in fact true for conventional wheelchairs as well). The structural failure of supporting elements within a powered mobility device during ride operation presents a significant safety hazard to the wheelchair occupant and other nearby guests.

6. "Element by Element" Barrier Removals and Safe Harbors. The NPRM's "Element by Element" standard is a new standard of care for removal of architectural barriers, and clearly appears to exceed the current Title III "readily achievable" standard, which includes §36.304 (c), Priorities, and §36.305 Alternates to Barrier Removal. The NPRM provides a "safe harbor" for new construction and alternation, but not for readily achievable barrier removals. IAAPA requests that previous measures to conduct barrier removal in good faith reliance upon the "readily achievable" standard be "safe harbored". This should include any structured settlements, as well as barrier removal surveys and plans that were conducted by public accommodations.

- The "Element by Element" standard for barrier removal may be endless and appears to constitute a higher level of standard than the Title III, 36.304 standard. Title III 36.304 requires removal of architectural barriers, and does not require all facilities to be brought up to the 1992 ADAAG standard for new construction and alterations. The current standard provides some level of flexibility, in the form of priorities: 1) Route and entry, 2) access to the place of accommodation or service, 3) restroom facilities, and 4) any other measures *necessary* to provide access to the goods services, facilities, … etc. Deviations are permitted from the specific technical requirements of ADAAG where such deviations do not pose a

significant risk to the health and safety of individuals with disabilities. Section 36.308 provides some minimum flexibility for wheelchair seating in existing assemblies that are not included in 1992 ADAAG. Finally where a barrier removal was not readily achievable, then the public accommodation could provide alternatives to barrier removal under section 36.305.

- Significant portions of the NPRM's discussion, and subsequently the rule making history, are in conflict with the proposed changes on the NPRM's language in sections 36.304, 36.305 and 36.308. The NPRM clearly states that the safe harbor "exists only when the existing facility complies with 1992 ADAAG for new construction and alteration." Essentially, the NPRM states any of these previous measures taken that are not in strict compliance are now new barriers and must be brought up to the newer 2004 ADAAG standard.

IAAPA requests the Department provide comment on the following scenario regarding barrier removal, per the 1992 ADAAG, conducted on a theoretical amusement park:

The amusement park has an entry plaza and four themed areas. Each these areas has two pairs of men and women's toilets and there is one first aid station which also has a toilet.

The park conducted barrier removal and/or path of travel improvements to one pair of toilets in each themed area, as well as the pair of toilets in the entry plaza and the toilet in the first aid station. The park also conducted barrier removal on the drinking fountain and pay telephone at the entry plaza. Thirty-six inch wide alternate toilet compartments were built in a pair of the toilet rooms, and the ambulatory compartment was not built in either. These toilet rooms have more than six toilet compartments. The park provides waitress table service as an alternate to barrier removal in one restaurant that has a narrow aisle, self-service food line.

Based on this scenario, IAAPA poses the following questions:

- Under the final NPRM do the second pair of toilet rooms in each land require barrier removal under Element by Element standard of the final NPRM?
- Do other pay telephones and drinking fountains require barrier removal?
- Does the pair of toilet rooms require barrier removal for the 36" toilet compartment and addition of the 36" ambulatory compartment?
- Does the restaurant require barrier removal on the food service line as a replacement of the previous alternate to barrier removal?
- Will the self-service food dispensers in the restaurant require barrier removal since their controls are 54" in height as a side reach over a tray rail?
- Does Element by Element standard of barrier removal mean every element in the park must be brought into compliance with new construction or alteration standard, even if these are a dispersed selection a minimum of one element already made accessible, and guests can enjoy the goods and services when the park is viewed in its entirety?

The reason amusement facilities are not covered under the proposed safe harbor is because they were not included in the 1991 Standard. The supplemental rules were created to address, among other things, recreational facilities. Although not required, many parks did barrier removal before the 2204 ADAAG, as a good guest service measure. These modifications may not match the 2004 ADAAG exactly, but have been providing functional accessibility to guests for years. Those elements that are providing accessibility should be protected under a safe harbor. Future elements should be a part of the readily achievable barrier removal plan and evaluated on a case-by-case basis as feasible.

There is limited opportunity to do barrier removal in many amusement facilities. As the Department is aware, the ADA expressly limits the barrier removal obligation to those removals which were "readily achievable," which the statute itself and the Department's own regulations define as "easily accomplishable and able to be carried out without much cost or expense."[1] The ADA did not confer authority to the Department to require complete replacement of structures or rides, as in the case with amusement parks. Nor do many parks have the resources to modify ride vehicles in ways that amount to complete replacement of structures.

IAAPA would like to respond to the Department in a reasonable way regarding a potential safe harbor for theme parks. IAAPA is willing to work with the Department to develop a safe harbor that reflects the timing of planning process of ride development and grants an appropriate and readily achievable lead time for ride modifications.

7. Alternate Means of Accessible Routes to Amusement Ride Vehicles. In the public comment to the Department's ANPRM, IAAPA requested the Department to acknowledge that wheelchair access through the exit or other routes, or alternate means of wheelchair access routes, were a base-line assumption during the development of the 2004 ADAAG amusement ride section. The NPRM makes no comment or acknowledgement of this issue.

IAAPA provided extensive discussion of this concept during the US Access Board's development of the recreation rule. The conditions with amusement rides can be complex and unique to each ride. Besides alterations and barrier removals, there are three primary conditions where alternate access may be necessary.

- The first is when the queue line takes the guest up and over a ride track to arrive at the loading platform. Most of these attractions do not have loading and unloading on the same side of the track or at the same location (through-loading). Under strict interpretation of the 2004 ADAAG, two elevators would be required to make this route accessible. The cost of two elevators could range from

[1] 42 U.S.C. §§ 12182((b) (2) (A) (iv) (limiting barrier removal obligation to instances "where such removal is readily achievable"), 12181(9) (defining the term "readily achievable"), 28 C.F.R. 36.104 (defining the term "readily achievable").

$300,000 to $600,000. If one elevator were to be placed out of commission for maintenance, the ride would not be accessible.

- The second is where there are themed experiences in the queue lines. A by-pass or alternate route in the themed area can often be provided that avoids stairs, ramped queues and the like, and that affords easier access to the loading area, but that still permits guests to have the full experience. Under this condition the individual with a wheelchair and his or her guest to experience the pre-show within the queue but obtain more convenient access to the loading area.
- The third is on more complex and aggressive rides (e.g., roller coasters, wild mouse rides, thrill rides) where additional physical and operational conditions are necessary to afford safe and timely access in the transfer process from wheelchair to ride seat. Access through an alternate route or the exit affords the guest and operator with many opportunities that provide equal or greater access for the patron and increased safety. Loading platforms tend to be very confined and crowded. They often lack the space necessary for wheelchair maneuvering, clear floor areas and storage. Additionally the ride operator is often on the unload side of the ride and therefore not available to coach or aid the wheelchair user and his or her group. Alternate access and boarding on the unload side of the ride provides the following benefits:

    a. Space is more readily available for the wheelchair user and his or her companions to approach the ride as a group. Guests are frequently hesitant and hold up the queue while attempting to figure out how the wheelchair user and his or her group is going to access the ride. The unload side provides waiting space and an opportunity to view the loading and unloading timing and procedures.

    b. These types of rides can typically handle only one wheelchair transfer on the ride system at a time. This is due to the operational complexity and timing required to conduct the transfer process without causing an emergency cascade shut down of the ride system. The unload side provides an opportunity to provide queuing for other wheelchair users and their groups.

    c. The unload side typically provides opportunities for larger maneuvering areas and more flexibility for the guest as he or she approaches the ride vehicle and positions himself or herself for transfer. More area is usually provided for companions to assist the person in transfer, if necessary. Space is often provided for the operator to stand behind the wheelchair to maneuver it away after the transfer or guide it back into place for the transfer exit.

    d. Most often, the ride operator and/or safety restraint inspector are on the unload side of the ride because such positioning permits the operator to quickly walk down the length of the ride vehicle to check rider restraints. The operator is then on the unload side to coach and assist the wheelchair user and his or her group in the transfer operation that may be unfamiliar.

e. The exit side can more easily provide space to store the wheelchair outside of the ride safety envelope, and to place it in a convenient location to shorten the staging time for transfer operation.

The 2004 ADAAG acknowledges the concept of the alternate entry for loading on the unload area in section 216.12: "… where accessible unload areas also serve as accessible load areas, signs indicating the location of the accessible load and unload shall be provided at the entries to queue and waiting lines." An equivalent provision to the 2004 ADAAG's requirement for accessible entries and accessible route was not written in the current NPRM.

All provisions for accommodating wheelchair users through the unload areas also apply to guests with service animals, where the person will pass care of the animal to a companion while the guest rides the amusement ride.

8. Miniature Golf. IAAPA supports many of the proposals for reduced and flexible scoping on miniature golf, but is deeply concerned that the economic impact of barrier removal obligations on these facilities is seriously underestimated. IAAPA provided the following public comment in the ANPRM, and the industry will provide additional information. As previously discussed, IAAPA requested an effective date of 24 months after the rule's enactment for the miniature golf industry. The primary reason for this is related to barrier removal and not new construction.

- In order to become competitive, many of these facilities are built upon artificially manipulated terrain to create dramatic site elevations and have highly themed environments. They are often located on highly visible and costly sites along state or federal highways. This vehicular visibility is a primary form of advertisement to the recreational and tourist market.
- These sites are constrained. Very few operators have adjacent property on which to build new course holes that would be compliant to the new accessibility guidelines; therefore, significant alteration is required to meet the anticipated barrier removal efforts.
- These facilities will probably be required to obtain significant construction loan financing to perform this barrier removal work.
- The Department should provide exceptions for existing terrain. The US Access Board refused to consider the economic impacts of barrier removal in its ADAAG revisions, but nonetheless deleted the previous ADAAG exception for "structurally impracticable," claiming it was up to the Department to make its own barrier removal regulation. As a result, IAAPA urges the Department to use its own judgment and give no deference to the Access Board's determinations as to new construction and alterations. IAAPA believes the Department must consider the real-world impacts of its decision on more than a thousand small

business miniature golf courses.[2] Since many of these facilities were not designed with accessible routes through or adjacent to the field of play, a requirement to make accessible 50 percent of the course holes, adjacent landscape and walkways will require demolition and reconstruction to meet the Access Board's new design guidelines.

- The miniature golf industry requests that the Department both expand and clarify the exception for "undue burden" related to barrier removals on existing miniatures golf courses. The common exception for facilities in Section 4.1.6(1)(j), "technically infeasible", does not appear to be applicable to miniature golf facilities because they lack conditions that would other wise not require modification of existing structural conditions that are a "load bearing member which is an essential part of the structural frame." The industry is uncertain as to how to apply the second part of the exception "…or site constraints prohibit the modification of additional elements, spaces or features which are in full and strict compliance…." Would demolition of half of the length of a putting green and the adjacent landscape and installation of retaining walls, new walkways and accessible paths through the field of play meet this test?
- Essentially, the miniature golf industry is held to a different standard for barrier removal than comparable and conventional public accommodation. The industry requests something that is more definitive and empirical – that provides clearer demarcations as to when the undue burden test has been met. Since the majority of the miniature golf industry are small business operators, miniature golf industry members would object to a cost of barrier removal threshold that exceeds 20 percent of the cost of replacement of the existing facility.

IAAPA requests that the Department consider some broader latitude for miniature golf operators. We are concerned that, with the 1 percent gross "safe harbor", the obligation will be endless, in that even 1 percent gross profit may not be sufficient to remove the barriers on a golf hole where the site has issues of both physical constraints and terrain steeper than where ramping and landings can be accommodated without extensive construction of concrete retaining walls.

Many family entertainment centers have a small miniature golf attraction as one of several on the property. Many are seasonal, having an operational season that spans from Memorial to Labor Day and re-start of the school year. We are concerned that the "tipping point" of barrier removal costs will cause them to simply shut down the miniature golf courses and will impact their operational viability.

9. Regulatory Impact Analysis. The Department's Regulatory Impact Analysis (RIA) of amusement parks does not reflect the cumulative impact of barrier removal, new construction and alterations costs upon the amusement industry. IAAPA believes the RIA

[2] U.S. Census Bureau, *2002 Economic Census; Arts, Entertainment and Recreations in the U.S.* (available online at www.census.gov).

overstates the positive benefits of wheelchair access as an offset to barrier removal, new construction and alteration economic impact

The analysis approaches these public accommodations as single-use businesses. Amusement and water parks contain restaurants, retail and other uses. The economic impact does not reflect this aggregation of impacts.

The Department's regulatory impact analysis overstates the benefits to theme parks. Most theme parks are generally accessible and comply with the 2004 ADAAG. The incremental accessibility that would be achieved from compliance with the proposed rule would likely result in minimal benefit to either guests or theme parks. The majority of the entertainment experiences within most amusement parks are already accessible to individuals with disabilities and their companions.

Many amusement parks provide better than equivalent facilitation by permitting wheelchair users and a companion access through alternate routes that bypass queue lines including access through the exit of the attraction. This speeds access to the ride. Requiring all wheelchair users and their companions to go through the regular queues will increase their wait times rather than improve efficiency or access. Additionally, access through the exit and through alternate routes is a viable alternative to barrier removal, where modifications to the primary queue path are technically infeasible.

10. Open Captioning and Narration of Films. IAAPA does not support the Department’s proposal for open captioning and open narration of all motion picture films provided by public accommodations

The NPRM’s proposed language is too broad and could be interpreted to apply to amusement ride and attraction motion picture projects. IAAPA believes that it would be inappropriate to require open or closed captioning for all motion pictures. While there are some circumstances where closed captioning would be appropriate, open captioning would destroy the integrity of the attractions experience.

We cannot agree with the Department’s comparison of feature films with visual effects presented in amusement attractions. Special effects found in amusement attractions often do not use the same technology as traditional movie films. The movie screen in an amusement attraction is often designed as a backdrop or to simulate an immersive experience.

Additionally, visual effects used in moving rides as well as “circle-vision” experiences are often designed to sync motion with ride movement. Presentation of captioning that is inconsistent with the perceived motion or on a different visual plane is likely to increase instances of motion sickness and disorientation.

IAAPA does not agree with the Department’s concept or proposed language on descriptive narration. As written it applies to all public accommodations having movies. IAAPA believes that in many cases descriptive narration of the movie could be intrusive

and a fundamental alteration of the entertainment experience or pose a safety concern where narration devices are inconsistent with ride motion or restraint systems. For example, a headset or earphones would be considered a loose item which is not permitted on many amusement rides.

For these reasons IAAPA responds that the initial interpretation of new releases for movie theaters should not be expanded to include visual effects on amusement rides and attractions. We would like the flexibility to be able to use alternative means of communication such as scripts or handheld devices or other creative means provide effective communication.

In addition, IAAPA is concerned that the rationale cited by the NPRM may not be valid because only three respondents to the ANPRM discussed this issue. Since the only discussion on this appeared in these three comments, there has not been sufficient exchange of information to adequately assess the issue. A more comprehensive and engaged dialogue is required.

> "Although captioning was not mentioned in the ANPRM, two commenters requested that captioning be provided and a movie theater owner urged the Department not to require movie theaters to provide captioning or narrative description services."

IAAPA believes the issue of captioning and narration on-demand may become feasible as new electronic devices are developed, but open captioning and open narration should not be imposed on others whom do not want such an intrusion upon their movie going experience.

B. IAAPA'S RESPONSE TO NPRM 59 QUESTIONS

Question 1: The Department believes it would be useful to solicit input from the public to inform us on the anticipated costs or benefits for certain requirements. The Department therefore invites comment as to what the actual costs and benefits would be for these eight existing elements, in particular as applied to alterations, in compliance with the proposed regulations… as well as additional practical benefits from these requirements, which are often difficult to adequately monetize **In a similar vein, consideration of an alternate IBC/ANSI baseline would also likely lower the incremental costs and benefits for five other proposed standards (side reach; water closet clearances in single-user toilet rooms with in-swinging doors; location of accessible routes to stages; accessible attorney areas and witness stands; and assistive listening systems), albeit to a lesser extent. Each of these proposed standards has a counterpart in either Chapter 11 of one or more versions of the IBC, ANSI A117.1, or a functionally equivalent state accessibility code. While IBC Chapter 11 and ANSI A117.1 have yet not been as widely adopted as some other IBC chapters, the RIA nonetheless still estimates that between 15 percent and 35 percent of facilities nationwide are already covered by IBC/A117.1 provisions that mirror these five proposed standards. It is thus expected that the incremental costs and benefits for these proposed standards may also be lower than the costs and benefits relative to the 1991 Standards baseline.** **The Department is proposing to adopt the proposed standards and to establish the effective date and triggering event for the new coverage. Specifically, the Department is proposing to amend Sec. 36.406(a) by dividing it into two**	IAAPA does not agree with the estimates that 15 to 35 percent of existing facilities comply with the current versions of chapter 11 and ANSI A117.1, especially where recreation and amusement park facilities are involved. The RIA overestimates the contemporary impact of the harmonized standard where amusement parks have multiple facilities and the alteration and change out is not as frequent as chain stores and restaurants. IAAPA does agree the baseline change for conventional facilities is lower than the costs and benefits relative to the 1992 Standard baseline, but this is not the case for recreational facilities and amusement rides and attractions. IAAPA requests clarification on how these eight elements will be treated in the context of barrier removal, and how these elements would fit in to 202.4 Alterations Affecting Primary Function Areas and its requirements for path of travel. If these items do become required for path of travel, then IAAPA believes the RIA does not adequately address the economic impact of the additions to the 2004 ADAAG.

sections. Proposed Sec. 36.406(a)(1) specifies that new construction and alterations subject to this part shall comply with the proposed standards if physical construction of the property commences less than six months after the effective date of the proposed rule.	
side reach	Within amusement park food facilities, the side reach range criteria could require replacement of many self-service food and beverage machines, and self-service food bars. Many of the dispensers are located on top of kitchen equipment, where the side reach range is 54". Many amusement parks have multiple restaurants that could be affected. The NPRM is not clear if one of each type or each and every cluster would have to be lowered. The latter could magnify cost impacts greatly. Benefits are difficult to determine, as we have experienced complaints on this matter because we have employees present to assist guests when requested.
water closet clearances in single-user toilet rooms with in-swinging doors	Thirty-six inch and 48" alternate compartments permitted under the current 1992 ADAAG are not permitted under the 2004 ADAAG. Previous barrier removals on multiple compartment toilets that utilized the 36" and 48" compartment width exception and all multiple compartment toilets built under 504 Rehab Act and related standards (48" stalls) will now become new barrier removal obligations for businesses with this condition. The cost to new construction is nominal. The change in requirements is similar to that in California Building Code.
stairs	The cost impact is for barrier removal obligations on existing stairs for facilities that pre-existed the International Building Code. In many building department jurisdictions, stairs would already be required to have appropriate handrail diameters, clearances and handrail extensions. The issue is the increase in barrier removal obligations. Under 1992 ADAAG, if a facility contained an elevator, then accessibility was not

	required for stairs under new construction and as a narrow exception for alterations. (ADAAG 4.1.3(3) and 4.1.6(3)(b)) Barrier removal was not conducted on stairs because under ADAAG 4.1.3(4), it was not needed when it was not part of an accessible route or they may have been exempted from compliance because they occurred in building with elevators. The economic impact does not factor in this additional cost to public accommodations. Nor does the NPRM make this an exception to what may have been in compliance, or "Safe-Harbored". This stair requirement is a new feature to 2004 ADAAG, and therefore a new barrier removal obligation. The economic impact does not factor in this additional cost to public accommodations.
elevators	No Comment.
location of accessible routes to stages	This new requirement of 2004 ADAAG will have significant economic impact to amusement parks and attractions of new construction alterations and barrier removals. Under the NPRM, direct access from the audience area to the stage is a new requirement, and consequently a new barrier removal obligation. Under standard barrier removal obligation, a change out of a show that permits guests to come up on stage would require the addition of ramped or wheelchair access from the audience area. Most medium to large amusement parks can have two or more of these conditions. Many of these theaters are physically constrained, where the front row wheelchair accessible positions will have to be removed to provide space for a ramp. Wheelchair lifts are not feasible due to their slow operation, noise and the way they put the user on exhibition in from of a live studio or attraction audience. The likely alternate for smaller venues is to cease shows that contain audience participation on the stage. IAAPA notes that the 2004 ADAAG requirement for direct access from audience areas to stage has not permeated the versions of the International Building Code used in most jurisdictions. NPRM makes the assumption that many of the 2004 ADAAG requirements have permeated the IBC, and therefore takes the assumption that minor impact to

	barrier removal obligations. This assumes the requirement has been in the marketplace long enough to have replaced most previous conditions. Therefore, the Department concludes, a 6-month in lieu of an 18 month period for effective date and barrier removal is rationalized. Direct access from audience to stage is one of the many examples where this has not occurred. The economic assessment does not take into account the impact on amusement parks and attractions that have multiple stages with this condition.
accessible attorney areas and witness stands	No comment.
assistive listening systems	Neck loops have nominal cost, and can be added to most existing ALS systems. Neck loops are a standard accessory to new ALS system purchases.
accessible teeing grounds	No comment, assuming questions relate to conventional, and not to miniature golf.
putting greens	No comment, assuming questions relate to conventional, and not to miniature golf.
weather shelters at golf courses	No comment, assuming questions relate to conventional, and not to miniature golf.
Question 2: The Department would welcome comment on whether any of the proposed standards for these eight areas … should be raised with the Access Board for further consideration, in particular as applied to alterations.	
side reach	IAAPA supports this as an exception for reach ranges to self service dispensers, self service food lines, self service merchandise and condiment counters. Side reach range to pay telephones is becoming a non-issue as pay telephones are gradually disappearing from the market place. Side reach ranges to light switches and other environmental controls should be exempted from office area and work area alterations.
water closet clearances in single-user toilet rooms with in-swinging doors	See previous comment.
elevators	No comment.
location of accessible routes to stages	IAAPA would strongly support Access Board's further consideration of this requirement for

	alterations. Many of the amusement industry's stages that incorporate audience participation have access for audience members, in such a fashion as to not inhibit participation. IAAPA is sympathetic on the exeunt of impact this would have on educational facilities and community centers.
accessible attorney areas and witness stands	No comment.
assistive listening systems	See previous comment.
accessible teeing grounds	No comment, assuming questions relate to conventional, and not to miniature golf.
putting greens	No comment, assuming questions relate to conventional, and not to miniature golf.
weather shelters at golf courses	No comment, assuming questions relate to conventional, and not to miniature golf.
Question 3: The Department would welcome information from operators of auditoriums on the likelihood that their auditoriums will be altered in the next fifteen years, and, if so, whether such alterations are likely to include accessible and direct access to stages. In addition, the Department would like specific information on whether, because of local law or policy, auditorium operators are already providing a direct accessible route to their stages. (The Department is also interested in whether having to provide a direct access to the stage would encourage operators of auditoriums to postpone or cancel the alteration of their facilities.) The Department also seeks information on possible means of quantifying the benefits that accrue to persons with disabilities from this proposed requirement or on its importance to them. To the extent that such information cannot be quantified, the Department welcomes examples of personal or anecdotal experience that illustrate the value of this requirement.	Auditorium alterations within the next 15 years are not likely for amusement parks and attractions. However, alterations affecting only the performance area (backdrops, scenery, lighting, etc) of stage shows are likely. The primary issue here is a new Path of Travel obligation and new requirement for ramped access direct from the audience to stage for a stage show or theatrical change out, where there is no alteration of the auditorium or assembly seating. IAAPA feels this may be technically infeasible or pose an undue burden to many of our members that provide stage shows, particularly those without audience participation, as part of their amusement park offerings.

Question 4: The Department welcomes comment on how to measure or quantify the intangible benefits that would accrue from accessible witness stands. We particularly invite anecdotal accounts of the courtroom experiences of individuals with disabilities who have encountered inaccessible witness stands, as well as the experiences of state and local governments in making witness stands accessible, either in the new construction or alteration context.	No comment.
Question 5: The Department seeks information from arena and assembly area administrators on their experiences in managing ALS. In order to evaluate the accuracy of the assumptions in the RIA relating to ALS costs, the Department welcomes particular information on the life expectancy of ALS equipment and the cost of ongoing maintenance.	No comment. The short time period of the NPRM does not permit IAAPA to canvas its membership on this issue.
Question 6: The Department seeks information from the owners and operators of golf courses, both public and private, on the extent to which their courses already have golf car passages to teeing grounds, putting greens, and weather shelters, and, if so, whether they intend to avail themselves of the proposed exception.	No comment
Question 7: Should the Department exempt owners and operators of public accommodations from specific compliance with the supplemental requirements for play areas and recreation facilities, and instead continue to determine accessibility in these facilities on a case-by-case basis under existing law? Please provide information on the effect of such a proposal on people with disabilities and places of public accommodation.	IAAPA requests a specific exemption for barrier removal on existing amusement rides and miniature golf sites. IAAPA provides detailed document on the issue in our public comment letter under item **3. Reduced Scoping and Limitations on Barrier Removal for Recreation**
Question 8: Please comment on the proposed definition of other power-driven mobility devices. Is the definition overly inclusive of power-driven mobility devices that may be used by individuals with disabilities?	IAAPA believes the expanded and open ended definition for mobility devices is overly inclusive. The amusement ride accessibility guidelines are based on DOT ”common wheelchair” dimensions, clearances and weights. The accessibility standard is not compatible with extremely large, wide or reclined wheelchairs, non conventional mobility

	aids or EPAMDs.
In the Department's ADA Business Brief on Service Animals, which was published in 2002, the Department interpreted the minimal protection language within the context of a seizure (i.e., alerting and protecting a person who is having a seizure). Despite the Department's best efforts, the minimal protection language appears to have been misinterpreted. Nonetheless, the Department continues to believe that it should retain the ``providing minimal protection'' language and interpret the language to exclude so-called ``attack dogs'' that pose a direct threat to others. Question 9: Should the Department clarify the phrase ``providing minimal protection'' in the definition or remove it?	IAAPA concurs with the proposal to clarify the phrase “providing minimum protection” and keeping it in the definition.
Question 10: Should the Department eliminate certain species from the definition of ``service animal''?  If so, please provide comment on the Department's use of the phrase ``common domestic animal'' and on its choice of which types of animals to exclude.	IAAPA concurs with the use of the phrase ``common domestic animal'' and on its choice of which types of animals to exclude.
Question 11: Should the Department impose a size or weight limitation for common domestic animals, even if the animal satisfies the ``common domestic animal'' prong of the proposed definition?	IAAPA supports imposing a size and weight limitation for service animals. One of the necessities to accommodate service animals on amusement rides is the ability that it be safely contained within the ride vehicle. Further discussions should be had to determine the appropriate parameters for including or excluding certain shapes and sizes of service animals.
Question 12: …, the definition of ``wheelchair'' is intended to be tailored so that it includes many styles of traditional wheeled mobility devices (e.g., wheelchairs and mobility scooters). Does the definition appear to exclude some types of wheelchairs, mobility scooters, or other traditional wheeled mobility devices? Please cite specific examples if possible.	See comments under Questions 14 and 15.

Question 13: Should the Department expand its definition of ``wheelchair'' to include Segways®?	IAAPA does not support the expansion of the definition of "wheelchair" to include Segways. First, a Segway device should not be classified as a wheelchair for the simple reason that it is not a wheelchair any more than is a lawn mower, golf cart, or All Terrain Vehicle. Unlike common wheelchairs and three or four wheeled scooters, Segways, by their very nature, pose a unique risk to both users and other patrons in crowded theme parks. Segways require powered operation to maintain stability. For example, if a scooter or powered wheelchair loses power due to a drained battery or other reason, it simply stops moving. In contrast, upon loss of power, a Segway will fall over, potentially taking the rider with it. This is true for any failure mode that results in power loss or malfunction of the operational logic. Moreover, despite the obvious reasons for not classifying as something it is not, there are clear operational inconsistencies that would arise from such a misclassification. The amusement industry, along with nearly every other type of public accommodation, has spent hundreds of millions of dollars designing, installing and retrofitting facilities to accommodate wheelchairs as defined by the ADA. Such modifications were based on the Access Board's specifications and dimensions for wheelchairs. Suddenly forcing a device that bears no resemblance to a wheelchair, in dimension, purpose or operation, into the definition of a wheelchair would cause each such public accommodation to begin anew with efforts to accommodate Segways. For example, public accommodations have provided lowered countertops and repositioned service apparatuses to accommodate wheelchair users. Would the Department now require those same facilities to raise countertops and reposition service apparatuses to accommodate persons standing eight or more inches off the ground while riding a Segway? Additionally, Segways could pose a direct threat to both users and other patrons within the crowded environment of amusement parks. First, amusement park owners have no means of verifying proper maintenance of privately owned Segway devices, including means to verify that the owners have complied with recall requests. Perhaps more importantly, owners and operators would have no means to verify the skill level of persons presenting

	on Segways. This concern is exacerbated by the Department's proposed rule forbidding inquiry into an individual's disability or need for the device. An amusement operator would have no way of differentiating an experienced Segway owner and user from a day tourist who rented the device minutes earlier and willing to feign disability to experience the fun of this recreational device. Even if an owner could inquire as to skill level, would not the proposed rule still require access to the self professed novice who claims an ADA qualified need? Most importantly, the balancing technology employed by Segways poses a unique risk to both the user and other patrons within crowded amusement parks. When a typical electric scooter hits a solid object, such as a queue line stanchion, it will stop and remain upright. A Segway, in contrast, will apply increasing power to the wheels causing the platform and control column to rapidly and forcefully rotate about the wheel axis. This often results in the operator literally being thrown from the Segway. The Segway will then either slam itself to the ground with all of its available force or accelerate away until it hits an object or person or shuts down after several seconds. The balancing technology is further unfit for crowded or confined areas due to the nature of its control system. A Segway moves forward in response to the operator shifting his or her body weight forward. Shifting backward commands the Segway to move in reverse. While this technology is truly remarkable, the device cannot discriminate between deliberate shifts in body weight from unintentional shifts. Thus, in a crowded area, such as a ride queue or food line, if a child or other patron bumps into a person on a Segway or bumps the Segway itself, the device will interpret the resultant rider movement as a command to move. By way of example, if a child bumps a Segway rider in line causing the rider to lean slightly forward, the Segway will accelerate into the person standing in front of the Segway. Once the unguarded wheels of the Segway contact the legs or feet of the next person in line, the Segway will deploy maximum power to try to overcome the "obstacle." Again, all of the power and the forces required to keep a 250 pound adult upright will be directed to the wheels which will either ride up or

	spin against the other person's leg. The Department also appears to ignore the practical implications of its own proposed rules. While the Department repeatedly references speed as a determining factor in classifying EPAMDs, it declines to recognize that the top speed of a Segway device is upwards of 12 m.p.h. It is not persuasive that a Segway can be speed-governed by its operator. There is simply no practical way to enforce such self governance for all potential operators. The Segway's lack of stability in the absence of powered operation also creates practical stowage safety concerns. When at rest, and not powered, a Segway cannot stand upright and may create an attractive nuisance for passersby and children who may try to stand on the powered-down device, only to fall to the ground or into other patrons. Defining a class of products that includes Segways and other devices allows the inclusion of yet-to-be-developed devices, such as the recently-announced Toyota Winglet, whose unique safety risks are not yet known.
Question 14: Are there better ways to define different classes of mobility devices, such as the weight and size of the device that is used by the Department of Transportation in the definition of ``common wheelchair''?	Yes. IAAPA supports a definition that prescribes different classes of mobility devices based on factors such as weight and size criteria used by the Department of Transportation. As noted above, the size and weight criteria heretofore assigned to the common wheelchair forms the basis for many architectural accommodations. These criteria also serve as the basis for accessible amusement ride design. Classification by other means poses the real danger that all prior efforts to provide access to the greatest population would be rendered meaningless. For example, classifying devices by means other than objective, measurable statistics would provide no guidance to designers and architects seeking to accommodate such devices and result in claims that all devices be accommodated.
Question 15: Should the Department maintain the non-exhaustive list of examples as the definitional approach to the term ``manually powered mobility aids''? If so, please indicate whether there are any	No. As discussed in 14 above, the best means of identifying any mobility aid is by way of performance characteristics and design specifications. Lists would prove of little value in an area that is in constant evolution with new products available each month. The inherent ambiguities that will arise each time a new device

other non-powered or manually powered mobility devices that should be considered for specific inclusion in the definition, a description of those devices, and an explanation of the reasons they should be included.	comes to market will likely result unnecessary and costly litigation.
Question 16: Should the Department adopt a definition of the term ``manually powered mobility aids''? If so, please provide suggested language and an explanation of the reasons such a definition would better serve the public.	The short period of the NPRM does not permit IAAPA to adequately canvas its members on this issue, or to suggest language and explanation of reasons for adoption of a definition. Examples of what patrons use manually-powered mobility devices come in a broad spectrum of forms, including wheelchairs, canes, crutches, walkers, braces, prosthetic limbs and the like. It is foreseeable that individuals could claim common recreation and transportation devices such as two wheeled scooters, bicycles, skate boards, and roller skates are manually powered mobility devices as well. IAAPA seeks to focus this discussion back to amusement ride safety and operational procedures. There are a variety of amusement rides where many of these devices would create a direct safety hazard to others on and off the ride, and cannot be physically accommodated within dynamic rides and their restraint systems therefore, IAAPA recommends the Department not include these devices under the term manually powered mobility devices so that the park can determine which devices can be safely accommodated.
Question 17: What are the current practices of hotels and third party reservations services with respect to ``guaranteed'' hotel reservations? What are the practical effects of requiring a public accommodation to guarantee accessible guest rooms to the same extent that it guarantees other rooms?	No comment.
Question 18: What are the current practices of hotels and third-party reservations services with respect to (1) holding accessible rooms for individuals with disabilities and (2) releasing accessible rooms to individuals without disabilities? What factors are considered in making these determinations?	No comment.

Should public accommodations be required to hold one or more accessible rooms until all other rooms are rented, so that the accessible rooms would be the last rooms rented?	
Question 19: Should a public accommodation that does not itself own, lease (or lease to), or operate a place of lodging but nevertheless provides reservations services, including reservations for places of lodging, be subject to the requirements of proposed Sec. 36.302(e)(2) and (e)(3)?	No comment.
Question 20: If an individual resells a ticket for accessible seating to someone who does not need accessible seating, should the secondary purchaser be required to move if the space is needed for someone with a disability?	No comment.
Question 21: Are there particular concerns about the obligation imposed by the proposed rule, in which a public accommodation must provide accessible seating, including a wheelchair space where needed, to an individual with a disability who purchases an ``inaccessible'' seat through the secondary market?	No comment.
Question 22: Although not included in the proposed regulation, the Department is soliciting comment on whether additional regulatory guidance is required or appropriate in terms of a more detailed or set schedule for the release of tickets in conjunction with the three approaches described above. For example, does the proposed regulation address the variable needs of assembly areas covered by the ADA? Is additional regulatory guidance required to eliminate discriminatory policies, practices, and procedures related to the sale, hold, and release of accessible seating? What considerations should appropriately inform the determination of when unsold accessible seating can be released to the	No comment.

general public?	
Question 23: Is the proposed rule regarding the number of tickets that a public accommodation must permit individuals who use wheelchairs to purchase sufficient to effectuate the integration of wheelchair users with others? If not, please provide suggestions for achieving the same result with regard to individual and group ticket sales.	No comment
Question 24: Should the Department require that, one year after the effective date of this regulation, public accommodations exhibit all new movies in captioned format at every showing? Is it more appropriate to require captioning less frequently? Should the requirement for captioning be tied to the conversion of movies from film to the use of a digital format? Please include specifics regarding how frequently captioning should be provided.	IAAPA does not agree with the Department's concept or proposed language. As written it applies to all public accommodations having movies. IAAPA believes open captioning of all movies is intrusive and a fundamental alteration of the entertainment experience. IAAPA believes that conventional, first release captioning can be provided through other means and other electronic devices that can be potentially provided on demand, if the technology and software is therefore designed. IAAPA does not support the Department's rationale that equated the Walt Disney Company settlement as a rationale for open captioning in motion picture films. IAAPA does not believe open captioning of movies is effective in motion based simulator or amusement ride attractions. It is not operationally or biometrically functional.
Question 25: Should the Department require that, one year after the effective date of this revised regulation, a public accommodation will exhibit all new movies with narrative description? Would it be more appropriate to require narrative description less frequently? Should the requirement for narrative description of movies be tied to the use of a digital format? If so, why? Please include	IAAPA does not agree with the Department's concept or proposed language. As written it applies to all public accommodations having movies. IAAPA believes in many cases descriptive narration of the movie would be intrusive and a fundamental alteration of the entertainment experience or pose a safety concern where such devices are inconsistent with ride motion or restraint systems. Additionally some visual effects are in rides where devices are not permitted for safety reasons. For

specifics regarding how frequently narrative description should be provided.	example, a headset or earphones would be considered a loose item which is not permitted on many amusement rides. We would like the flexibility to be able to use alternative means to provide effective communication.
Question 26: The Department believes that requiring captioning of safety and emergency information made over the public address system in stadiums seating fewer than 25,000 has the potential of creating an undue burden for smaller entities. However, the Department requests public comment about the effect of requiring captioning of emergency announcements in all stadiums, regardless of size. Would such a requirement be feasible for small stadiums?	No comment.
Question 27: The Department is considering requiring captioning of safety and emergency information in sports stadiums with a capacity of 25,000 or more within a year of the effective date of the regulation. Would a larger threshold, such as sports stadiums with a capacity of 50,000 or more, be more appropriate or would a lower threshold, such as stadiums with a capacity of 15,000 or more, be more appropriate?	No comment.
Question 28: If the Department adopted a requirement for captioning at sports stadiums, should there be a specific means required? That is, should it be provided through any effective means scoreboards, line boards, handheld devices, or other means), or are there problems with some means, such as handheld devices, that should eliminate them as options?	No comment.

Question 29: The Department is aware that several major stadiums that host sporting events, including National Football League football games at Fed Ex Field in Prince Georges County, Maryland, currently provide open captioning of all public address announcements, and do not limit captioning to safety and emergency information. What would be the effect of a requirement to provide captioning for patrons who are deaf or hard of hearing for game-related information (e.g., play-by-play information), safety and emergency information, and any other relevant announcements?	No comment.
Question 30: The Department would welcome comment on whether there are state and local standards specifically regarding play and recreation area accessibility. To the extent that there are such standards, we would welcome comment on whether facilities currently governed by, and in compliance with, such state and local standards or codes should be subject to a safe harbor from compliance with applicable requirements in the 2004 ADAAG. We would also welcome comment on whether it would be appropriate for the Access Board to consider implementation of guidelines that would permit such a safe harbor with respect to play and recreation areas undertaking alterations.	The short time period for public comment on this NPRM does not permit IAAPA sufficient time to canvases its members on the existence of state and local standards for play area and recreational accessibility. IAAPA is aware that California has regulations governing play equipment in school and public facility settings. Additionally it has limited accessibility guidelines for trails and other similar outdoor settings. These regulations do not address barrier removal.
Question 31: The Department requests public comment with respect to the application of these requirements to existing play areas. What is the ``tipping point'' at which the costs of compliance with the supplemental requirements for existing play areas would be so burdensome that the entity would simply shut down the playground?	IAAPA believes the tipping point is not cost but scope. Barrier removal requirement on existing older play area will require addition of ground level components, transfer tiers, potentially ramped access if the quantity of play elements exceeds thresholds, and addition of accessible route and accessible surfacing under the play equipment. The scope of this requirement is the tipping point that requires wholesale replacement or will result in discontinuance of the play area.

Question 32: The Department would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing play areas less than 1,000 square feet be exempt from the requirements applicable to play areas?	IAAPA supports this concept. The Department should be aware that the more expensive element to barrier removal on existing play equipment is the accessible route and material; under the play equipment. See our public comment in our cover letter.
Question 33: The Department would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing play areas be permitted to substitute additional ground level play components for the elevated play components it would otherwise have been required to make accessible?	IAAPA supports this concept. The Department should be aware that the more expensive element to barrier removal on existing play equipment is the accessible route and material; under the play equipment. See our public comment in our cover letter.
Question 34: The Department would welcome comment on whether it would be appropriate for the Access Board to consider implementation of guidelines for play and recreational facilities undertaking alterations that would permit reduced scoping of requirements or substitution of ground level play components in lieu of elevated play components, as the Department is proposing with respect to barrier removal obligations for certain play or recreational facilities.	IAAPA supports this concept. See our public comment for question 35.
Question 35: Should the Department require only one play area of each type to comply in existing sites with multiple play areas? Are there other select requirements applicable to play areas in the 2004 ADAAG for which the Department should consider exemptions or reduced scoping?	IAAPA agrees with the NPRM's proposal. Essentially there are two types of children's play equipment – toddlers' and children's. In amusement parks there are toddler and family play attractions. The US Access Board's play area guidelines are intended for children and related to the age groups scoped by the ASTM 1487 standards. Alterations of play equipment in amusement and water parks are infrequent. IAAPA members do not have issue with the 2004 ADAAG requirements for new construction of play areas. The play equipment industry has adjusted to the US Access Board's guidelines. What is at issue is barrier removal on existing play equipment. As noted elsewhere in IAAPA's public comment, we recommend some flexibility in the barrier removal requirements on play equipment, because augmentation of the existing equipment

	and installation of accessible play surfacing equates to wholesale replacement of the play equipment. IAAPA requests the Department add an exception to Title III barrier removal requirements that would permit an entity to add a new set of accessible play equipment on a site, as an option to conducting barrier removal on an existing set of play equipment.
Question 36: The Department would like to hear from public accommodations and individuals with disabilities about this exemption. Should the Department allow existing public accommodations to provide only one accessible means of access to swimming pools more than 300 linear feet long?	IAAPA agrees with the concept to limit water park and family fun center barrier removal on pools to one means. Water parks and family entertainment centers may have multiple quantities and types of pools and the economic impact for barrier removal would be magnified as opposed to facilities with a single pool site such as a public recreation center, school or motel/hotel. In many water park and family entertainment center pools, items such as pool chair lifts, transfer tiers and transfer walls are infeasible options. This is due to the configuration of the pool and conditions around the pool walls that are not accessed by patrons. For example the only means of access into a wave pool is the end that is a sloped entry. Lazy rivers tend to have one to two points of entry where users obtain and transfer onto inner tubes or other floating devices into the moving water.
Question 37: The Department would like to hear from public accommodations and individuals with disabilities about the potential effect of this approach. Should existing swimming pools with less than 300 linear feet of pool wall be exempt from the requirements applicable to swimming pools?	IAAPA notes that the NPRM's proposed exemption of 300 lineal feet of pool wall covers short course, US style Olympic pools or smaller. The majority of wave pools and lazy rivers will exceed this. The primary IAAPA member affected by this would be small business, family fun centers. The primary beneficiary of this exemption is municipal pools, recreation centers, and motels/hotels.
Question 38: What types of facilities provide more than one swimming pool on a site? In such facilities, do the pools tend to be identical or do they differ in type (e.g., in size, configuration, function, or use)?	Water parks and family fun centers may have multiple types of pools. The pools tend to be different from one another and not necessarily duplicative: • Wave pools • Wading pools • Lazy rivers • General swimming pools • Spas

	• Plunge or catch pools from a water slide. • Leisure pools (sand bottom etc) Waterpark sites do not tend to duplicate pool types due to lack of benefit versus the cost of construction. The goal is to have a variety of aquatic experiences. Because of this tendency for variety and the 2004 ADAAG's limitations on the first type of access (pool (chair) lifts or sloped (ramped) access), barrier removal costs will be significant. Ramped access may be the only option for access, since pool chair lifts work for only limited pool types (standard configured swimming type pools). The proposed 6 month period for effective date and barrier removal may not coincide with the off-season, operational period of most water parks or fun centers. These facilities do not operate from Labor Day to Memorial Day, which reflects school periods and summer vacation times. IAAPA notes that the barrier removal effort will have to occur "off-season" or the cost of the construction will be amplified by the loss of revenue if multiple attractions have to be closed for barrier removal construction. This lost revenue should be factored into the proposed 1 percent cap of gross for small businesses.
Question 39: What site constraints exist in existing facilities that could make it difficult or infeasible to install a sloped entry in an existing wading pool? Should existing wading pools that are not being altered be exempt from the requirement to provide a sloped entry? What types of facilities provide more than one wading pool on a site? In such facilities, do the pools tend to be identical or do they differ in type (e.g., in size, configuration, function or use)?	IAAPA requests the exemption for wading pools. These tend to be small pools. A 12- to 24-inch deep wading pool will require major modification to add 12 to 24 feet of ramping, and additional 72-inch level landing at the bottom of the wading pool. Additionally handrails and edge protection are 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.* The extent of this barrier removal effort is a tipping point that most water park members would eliminate the wading pool due to lack of benefit when weighed against the cost of the barrier removal. Most water parks do not have more than one

	wading pool. Primarily these are for small children. It is unlikely that a small child will be capable of using an aquatic wheelchair to have access into and out of a pool without adult assistance.
Question 40: Will existing facilities have to reduce the number of available exercise equipment and machines in order to comply? What types of space limitations would affect compliance?	No comment.
Question 42: Should the Department interpret the barrier removal requirement to require only a reasonable number but at least one of each type of playing field to be served by an accessible route? Should the Department create an exception to this requirement for existing courts (e.g., tennis courts) that have been constructed back-to-back without any space in between them?	IAAPA concurs with this recommendation for barrier removals. IAAPA members may have sports courts on family fun center sites, and picnic sites at amusement parks. Where sites and courts are being altered or added, the 2004 has adequate safeguards for design and exceptions of "technical infeasibility". Accommodations can be made for sports league teams that schedule and reserve a game at a facility with multiple playfield fields of the same type. The primary issue here is to provide common-sense exceptions to mitigate serial litigation on sports courts and fields of play. With regards to adjacent tennis courts, players are civil enough to permit a wheelchair user to pass through one court to gain access to the second court.
Question 43: The Department is interested in collecting data regarding the impact of these requirements in existing boating facilities. Are there issues (e.g., space limitations) that would make it difficult to provide an accessible route to existing boat slips and boarding piers at boat launch ramps? To what extent do the exceptions for existing facilities (i.e., with respect to boat slips and gangways) mitigate the burden on existing facilities?	No comment.
Question 44: The Department is interested in collecting data regarding the impact of this requirement on existing	An IAAPA member provides the following information on an accessible gangway and float built on the San Francisco Bay. The accessible

facilities. Are there issues (e.g., space limitations) that would make it difficult to provide an accessible route to existing fishing piers and platforms?	gangway that complies with US Access Board accessibility guidelines (90 feet gangway section with hinged bridge plates), built of aluminum and with floating bottom platform, costs approximately $250,000. This cost includes land based and aquatic civil engineering.
Question 45: The Department is considering creating an exception for existing miniature golf facilities that are of a limited total square footage, have a limited amount of available space within the course, or were designed with extreme elevation changes. If the Department were to create such an exception, what parameters should the Department use to determine whether a miniature golf course should be exempt?	IAAPA agrees that this concept is required, since the determination of "technical infeasibility" of a site and the terrain are going to be unique to each miniature golf facility. The challenge of this proposal is that each miniature golf facility that contains limited sites and has steep ramps or steps to miniature golf holes, must undertake extraordinary measures to prove 2004 ADAAG's conditions of "technical infeasibility" for conditions where the existing site constrains prohibit modification and/or "structural impracticality" of the site for conditions of unique terrain. In order to develop the proof, a miniature golf operator would have to: • Hire a civil engineer to completely survey his or her site, including all changes to terrain, then • Hire an architectural, civil and landscape analysis to analyze the site survey conducted to determine if required ramping, landings and walkways can be fit into the site, and determine which holes could be made compliant, • The operator would then have to determine if the redesign of holes or the addition of new accessible holes could encroach on other areas of the property, such as parking. The operator would have to contract with the architect or landscape architect to investigate if the miniature golf operation could legally enlarge or add accessible holes in parking areas, and that the jurisdiction would permit the parking reduction. This may require extraordinary administrative burdens and time. The proposal should exempt the investigation or procurement of additional adjacent property for expansion and encroachment of modifications to the miniature golf course. This form of analysis for defense of "technical infeasibility" will require more than the 6 months the Department proposes as an effective date for

	the Rule, which is also the effective date for commencement of litigation against public accommodation for barrier removal compliance. Additionally IAAPA notes that the US Access Board removed "structural impracticality" of conditions of unique terrain as found in the 1992 ADAAG 4.1.1 (5) General Exceptions paragraph (a). IAAPA does not find an administrative link in the US Access Board's work to revise ADAAG to demonstrate that this exception is now included under "technical infeasibility". IAAP requests a clarification from the department on this issue.
Question 46: Should the Department adopt a presumption whereby qualifying small businesses are presumed to have done what is readily achievable for a given year if, during the previous tax year, the entity spent at least one percent (1 %) of its gross revenues on barrier removal? Why or why not? Is one percent (1 %) an appropriate amount? Are gross revenues the appropriate measure? Why or why not?	This is a new concept that deserves more discussion than this short NPRM period permits. IAAPA does not have sufficient time to request its small business members to analyze and respond to these questions. IAAPA notes that the language used in the NPRM proposes to make this requirement "endless". The NPRM does not state that the obligation to spend 1 percent of gross "in the previous year" does not end if the facility has been brought up to barrier removal, alteration or new construction standard. The concept does not take into account that a particular barrier removal may require more than 1 percent gross, and the business would have to "bank" the two or three years to accumulate sufficient funds to conduct the alteration. A good example is the replacement of small to medium sized play structure and accessible impact attenuation surface, which will cost more than $60,000 (1 percent of gross revenue maximum of a $6,000,000). The value of this "Safe Harbor" can only be brought forth as a defense. The Department does not take into account that a business will be sued first, and then only be able to defend its actions in court (spending 1 percent maximum in the previous year as good faith effort). The cost of defense in litigation is not factored into this proposal. The proposal does not take into account that the Department proposes a 6 month period for "effective date". A business would need at least one fiscal year to analyze its conditions for barrier removal, plan for capital improvement, hire the appropriate architects or contractors, and then proceed with procurement or contract for construction. This process may take two years, before the proof of 1 percent expenditure during the

	"previous year" accomplished a readily achievable barrier removal. Additionally the NPRM does not effectively tie this concept to Title III §36.305 Alternatives to Barrier Removal, where a public accommodation can demonstrate that a barrier removal is not readily achievable, and the public accommodation makes its goods and services available through alternative methods. Construction "hard" costs only represent a portion of the total cost for barrier removals. There are 'soft" costs associated with the operational personnel time to analyze and manage the barrier removal project, contracting architectural services, building permit fees, and lost revenue when the attraction or facility is shut down for construction that barrier removal efforts require The proposed 6 month period for effective date and barrier removal may not coincide with the off-season, operational period of most water parks or fun centers. These facilities do not operate from Labor Day to Memorial Day, which reflects school periods and summer vacation times. IAAPA notes that the barrier removal effort will have to occur "off-season" or the cost of the construction will be amplified by the loss of revenue if multiple attractions have to be closed down for barrier removal construction. This lost revenue should be factored into the proposed 1 percent cap of gross for small businesses.
Question 47: Are there types of personal mobility devices that must be accommodated under nearly all circumstances? Conversely, are there types of mobility devices that almost always will require an assessment to determine whether they should be accommodated? Please provide examples of devices and circumstances in your responses.	No. IAAPA has noted previously that the amusement ride rule is designed for "common wheelchairs" and not other overly wide or elongated chairs, scooters, Segways, lawn mowers, golf carts or other purported mobility devices. In response to the question submitted in the negative, IAAPA asserts that all types of devices purported to be mobility aids must be individually considered in the context of its proposed use. IAAPA submits the following examples in support of this position. Certain types of purported mobility devices may not be permitted on certain amusement rides and attractions because they would pose a direct threat to their users or to others during the dynamic action of the ride, or they may be incapable of containment within the restraint systems and ride containment systems unique to that particular ride. All types of mobility devices require individual

	assessment to determine if they can be safely accommodated on a ride or in a theme park. For example canes which cannot be properly stowed may not be permitted on a roller coaster because the rider must hold on to the rollercoaster's hand grips and may let go of the cane. The cane can then become a hazardous projectile posing a threat to other patrons on the ride. Further, wheelchairs, scooters and Segways cannot be physically accommodated in net climbs, water slides, bounce houses or certain types of fun houses that require a person to have ability to climb, crawl or slide. Nor can nontraditional devices such as Segways be accommodated on amusement rides that were designed using "common wheelchair" criteria provided previously by the Access Board and relied upon by the industry in designing its facilities. Non-aquatic wheelchairs, scooters, Segways and other mobility devices may not be permitted in pools because they may be damaged by the chemical treatments used to treat water, or the device itself may extrude oils or other contaminants into the bathing water. IAAPA does not believe Segways should be permitted in pedestrian intensive environments of amusement parks and fairs. IAAPA provided rational for this position above and in its public comment submitted herewith.
Question 48: Should motorized devices that use fuel or internal-combustion engines (e.g., all-terrain vehicles) be considered personal mobility devices that are covered by the ADA? Are there specific circumstances in which accommodating these devices would result in a fundamental alteration?	IAAPA believes accommodating these devices in pedestrian oriented recreational environments will cause a fundamental alteration of the experience and pose a hazard that is completely dependant on the ability of the driver to control the vehicle, the emissions produced by the vehicle, and the potential to leak fuel or otherwise create a fire hazard. Specific circumstances in which accommodating such devices would cause a fundamental alteration are: • Any indoor area. • Amusement parks, water parks, historical or themed parks, pedestrian circulation areas. • Water park pool attractions and zero entry pools. • Zoological sites and its pedestrian

	circulation areas. • Fair grounds, pedestrian temporary and permanent circulation areas. • Family and company picnic grounds and beaches. • Natural and wilderness areas that are intended for conservation and education (these can occur within the bounds of an amusement or theme park or a resort hotel) • Scenic areas where there are minimal trails (these can occur within the bounds of an amusement or theme park or a resort hotel) • Miniature golf courses or golf courses. • Go cart tracks. • Sports fields of play and sports courts. • Pedestrian circulation areas in amusement park parking lots. • Landscape and pedestrian areas surrounding and within resort hotel sites. • Performance areas of arenas and stadiums, unless the performer is intended to use such a device. • Gangways, floats, fishing piers and boarding piers at boat launch ramps that are not intentionally designed for such a vehicle. • Hoofed animal containment and exhibition areas (state and county or local fairs, rodeo arenas, or auction sites. In certain of these circumstances common wheelchairs, scooters and common manual mobility devices such as canes, walkers and crutches can be accommodated without issue. IAAPA is concerned that the NPRM's questions are too broad for such complex and varied circumstances.
Question 49: Should personal mobility devices used by individuals with disabilities be categorized by intended purpose or function, by indoor or outdoor use, or by some other factor? Why or why not?	The short time period for public comment on this NPRM does not permit IAAPA sufficient time to canvases its members on categorizing personal mobility devices by intended purpose or function, by indoor or outdoor use, or by some other factor. As demonstrated in IAAPA's public comment to questions 12 through 16, 47,and 48, there are many

	conditions in which a blanket definition of a mobility device, or blanket admission of mobility devices is not safe, practical or operationally feasible. Attempting to categorize devices by intended purpose or function, by indoor or outdoor use is an extremely complex problem. However, IAAPA believes that the intended use of a purported mobility device should always be instrumental in assessing the viability of such device as a mobility aid in the specific context asserted. IAAPA further asserts that such design intent should be given great weight in contrast to the mere preference of a user. For example, it is undisputed that the designers, manufactures and marketers of "Razor" type scooters never intended it to be used as a mobility aid for persons with disabilities. IAAPA believes that such a clear design intent should be dispositive on the issue despite a particular user's choice to use a Razor scooter as a mobility aid. The same consideration should apply to <u>all</u> devices that are not accepted or medically approved mobility aids. As the Department readily acknowledges, just because a person prefers a lawn tractor to get around, does not change the fundamental nature of that tractor. Nor does the preference to use a Segway as a mobility aid negate the manufacturer's express position that it is not. Neither the Department nor individual amusement facility operators should substitute their judgment to contradict the persons and entities with the most knowledge of a particular device. To do so would be imperious and quite likely, dangerous.
Question 50: The Department proposes using the start of construction as the triggering event for applying the proposed standards to new construction under title III. The Department asks for public comment on how to define the start of construction and the practicality of applying commencement of construction as a triggering event. Is the proposed definition of the start of construction sufficiently clear and inclusive of different types of facilities? Please be specific about the situations that are not covered in the proposed	IAAPA does not support "start of construction" for ride systems and ride vehicles. During public comment on the ANPRM, IAAPA requested "First Use" after "Test and Adjust" for amusement rides. We supplied extensive discussion and rational for "First Use" occurring after the amusement ride system "Test and Adjust" period. "Test and Adjust" is a standard phase of the design and construction process of amusement rides and attractions. This phase does not necessarily occur as a phase of development for conventional buildings and facilities. The operational methods and means of wheelchair access, transfer access and transfer with a transfer device is worked out, tested and adjusted when the

definitions, and suggest alternatives or additional language. In addition, the Department asks that the public identify facilities subject to title III for which commencement of construction would be ambiguous or problematic.	ride is in place and operational. Specifically this occurs with roller coasters and similar thrill rides. The critical issues at this "test and adjust" period that affect wheelchair and transfer access are: • Ride's potential for emergency cascade shut down when the wheelchair or transfer process is taking too long; • Guest's visibility of the load and unload procedure, so that the guest can anticipate what is expected of them to perform the wheelchair or transfer access; • Development of employee, operational procedures for maneuvering, parking and retrieval of wheelchair procedures. The procedure must be conducted in a timely fashion, protecting guest and companion safety, and removal of mobility devices out of the ride safety envelop. • During "Test and Adjust" the operator determines the procedures for accommodating service animals and groups of companions. Frequently, managing these two variables are more challenging than guiding access for the person with a disability. • Transfer devices are designed and developed when the ride is in place. • IAAPA recommends that wheelchair users and potentially other individuals with disabilities participate in the development of the operational procedures for wheelchair and transfer access. It is necessary to have the vehicle and ride system in place for this activity. IAAPA does take issue with conventional buildings and other facilities being designed and constructed to the 2004 ADAAG at the "start of construction".
Question 51: The Department requests comments on determining the appropriate basis for scoping for a time-share or condominium-hotel. Is it the total number of units in the facility, or some smaller number, such as the number of units participating in the rental program, or the number of units expected to be available for rent on an	No comment.

average night the most appropriate measure?	
Question 52: The Department's proposed definition of ``place of lodging'' includes facilities that are primarily short-term in nature, i.e., two weeks or less in duration. Is ``two weeks or less'' the appropriate dividing line between transient and residential use? Is thirty days a more appropriate dividing line?	No comment.
Question 53: The Department believes that the scoping and technical requirements for transient lodging, rather than those for residential dwelling units, should apply to these places of lodging. Is this the most appropriate choice?	No comment.
Question 54: How should the Department's regulation provide for a situation in which a new or converted facility constructs the required number of accessible units, but the owners of those units choose not to participate in the rental program? Does the facility have an obligation to encourage or require owners of accessible units to participate in the rental program? Does the facility developer, the condominium association, or the hotel operator have an obligation to retain ownership or control over a certain number of accessible units to avoid this problem?	No comment.
Question 55: How should the Department's regulation establish the scoping for a time-share or condominium-rental facility that decides, after the sale of units to individual owners, to begin a rental program that qualifies the facility as a place of lodging? How should the condominium association, operator, or developer determine which units to make accessible?	No comment.
Question 57: Would the residential facility requirements or the transient lodging requirements in the 2004 ADAAG be more appropriate for housing at places	No comment.

of education? How would the different requirements affect the cost when building new dormitories and other student housing?	
Question 58: Is there a way to ensure that accessible hospital rooms are dispersed throughout the facility in a way that will not unduly restrain the ability of hospital administrators to allocate space as needed? The 1991 Standards require that ten percent (10 percent) of the patient bedrooms be accessible. If it is not feasible to distribute these rooms among each of the specialty areas, would it be appropriate that required accessible rooms be dispersed so that there are accessible patient rooms on each floor? Are there other methods of dispersal that would be more effective?	No comment.
Question 59: The Department would like to hear from the public about the suggestion of allowing multiple breaks in the sequence of accessible holes, provided that the accessible holes are connected by an accessible route. Should the Department ask the Access Board to change the current requirement in the 2004 ADAAG?	IAAPA concurs with this concept. This will permit flexibility in design and provide a more vibrant recreational golf experience. An additional benefit is that a guest with a disability and their companions could find other miniature golf holes to be usable, where they may not be 100 percent compliant. IAAPA agrees that the accessible holes shall be connected via an accessible route from the point of entry to the first accessible hole, and from the last accessible hole back to the retail building and parking.

D. COMMENTARY ON REGULATORY IMPACT ANALYSIS

The Regulatory Impact Analysis welcomes public comment on the facility groups used in the initial RIA and states it will consider such comments carefully when preparing the final RIA.

IAAPA believes the regulatory impact analysis to the amusement industry is incorrect. Our members do not agree with the Department's or the HDR/HLB Decision Economics, Inc's certain assumptions and analysis.

> According to the Department's initial Regulatory Impact Analysis ("RIA"), it is estimated that the incremental costs of the proposed requirements for each of the following eight existing elements will exceed monetized benefits by more than $100 million when using the 1991 Standards as the comparative baseline: **side reach; water closet clearances in single-user toilet rooms with in-swinging doors; stairs; elevators; location of accessible routes to stages; accessible attorney areas and witness stands; assistive listening systems; and accessible teeing grounds, putting greens, and weather shelters at golf courses.**

IAAPA believes the regulatory impact will exceed $100,000,000 for amusement rides and attractions play equipment and other recreational element. Many IAAPA members are qualified small business. Their businesses include amusement ride vehicles, pools and play equipment which are not adequately accounted for within this eight item baseline analysis. The short period for public comment does not provide IAAPA members sufficient time to analyze these impacts on an incremental and accumulative basis.

Un-Accounted Administrative Burdens. Several other economic impacts occur on amusement industry businesses with this new rule. Both US Access Board's and Department's RIA focuses on hard construction cost impacts. They do not account for:

- The RIA fails to take into account that businesses will have to re-survey existing and recently constructed facilities for incremental compliance to 1992 and then 2004 accessibility standard, especially since the Department claims safe harbor is limited to 1992 New Construction or Alteration standard and not the priorities, or alternates to barrier removal permitted under sections 436.304 and 36.305.
- The administrative burdens to redesign guest brochures, web sites, attraction signage, ride and attraction operational procedure manuals, employee and training materials and retraining of employees.
- Having a fixed six-month trigger would have a draconian effect on many theme parks, particularly seasonal ones, as they will not be able to plan their construction around weather and other concerns.
- Even if an amusement business conducts all the activities listed above, this will not guarantee they will have satisfied the safe harbor requirement or any good faith effort. We propose that public accommodations be afforded the ability to use a self-evaluation or transition plan as provided for in Title II. We are not proposing this as a guarantee for "safe harbor" or evidence of good faith efforts,

but as means to provide a declaration of intent to use in the face of unjust litigation. Public Accommodations are not afforded the umbrella that a title II ADA Self Evaluation or Transition Plan provides to a state or local government entity. The small business is still subject to the administrative and legal costs to defend their actions in mediation or court.

The short period for public comment does not provide IAAPA members sufficient time to complete an impact analysis of these operational issues.

Analysis of impact on small entities. Under the second type of analysis that the Department has undertaken to review and consider the five factors affecting small businesses, IAAPA provides the following context that does not appear in the RIA related to small business in the amusement and recreation industries:

Item (1)	
Item (2) the nature of complaints or comments received concerning the rule from the public;	The Department does not identify the nature or quantity of complaints associated with amusement rides and water park attractions.
Item (3) the complexity of the rule;	The amusement ride portion of the rule is very complex for business operators to interpret and does not consider that small operators lack the engineering and manufacturing expertise to modify the existing or newly-purchased rides. Most rides are of foreign manufacture and most operators are contractually restricted from modifying their rides or do so only at extremely high cost. In addition, the specialized vehicle increases the maintenance cost of the entire ride.
Item (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules;	The rule does not overlap, duplicate or conflict with federal, state and government rules in that there are no adopted regulations for amusement rides and water park attractions. These rules have not been promulgated due to the delay in final interpretation of the barrier removal requirements, reduced scoping, exceptions and administrative changes to the body of Title II and Title III. With the exception of several large amusement park entities, these new rules for recreation elements will be a new and untested frontier for small amusement businesses. For all amusement parks and attractions the new accessibility guidelines for play areas and water park play components, and subsequent alteration and barrier removal obligations will be new and untested frontiers.

Item (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.	Amusement ride manufactures and aquatic play system manufactures have no incentive to change their products or advancement of technology to meet the proposed rules, since they are not legally responsible for compliance. Also the changes proposed by delays in advancing final Rule and the changes to the body for title III have not advanced change in the industry. This is complicated by the fact that majority of amusement rides and waterpark play components are not of US manufacture. These foreign companies do not have home-based regulations and the manufacturers have no incentive to modify products to meet the new Access Board rules, largely because they do not sell many rides in the U.S., compared to the international market.

The NPRM has extensive discussion of the harmonization efforts between the International Building Code and 2004 ADAAG, a potential mitigate of economic impact. This harmonization is not relevant to amusement rides, play equipment, aquatic play components, fishing piers and docks, boats facilities, other recreational elements and obligations for barrier removal, since these items do not appear it the IBC or the related ICC-ANSI A117.1 Accessible and Usable Buildings and Facilities Standard.

E. OTHER PUBLIC COMMENTS SUBMITTED BY IAAPA MEMBERS THROUGH IAAPA

Member A:

RE: Concerns about the Americans With Disabilities Act Regulations

Effective Dates:
We supports IAAPA's efforts to extend the comment periods. We agree that more time should be given for us to examine these complicated proposals.

Our Company also supports changing the effective date to 36 to 60 months for amusement ride vehicles. These grace periods reflect the time necessary for effective barrier removal activities and are necessary to secure funding, prepare designs and complete construction projects that are required to meet the new rules.

Service Animals:
Our Company supports the proposed rules pertaining to service animals. We have had a number of snakes, parrots and other animals that created health hazards labeled as comfort animals.

Mobility Devices:
We are concerned about the use of Segways and other two-wheeled devices by persons with disabilities in our public space. Our public space is extremely limited and often during our busy summer season there is little, if any, space in our walkways between guests. Our surfaces are often damp, either from moisture from the ocean or from spilled soft drinks. A Segway manufacturer representative told us that Segways are not stable in a very crowded moist environment. We currently do not allow Segway use so we can provide a safe environment for our guests.

Miniature Golf:
Our biggest concern is that our miniature golf course is located inside of an existing building with very limited space on two floors. We understand the Department of Justice is considering creating an exception for existing miniature golf facilities with limited amounts of space that are on different levels. We currently make every reasonable accommodation possible. If we needed to make 50 percent of the holes accessible and connected to an accessible route, we would need to close the operation of our miniature golf course.

We ask that changing carpeting on our golf course for safety reasons not be defined as an alteration that would trigger additional accessibility. We routinely maintain our golf course by renewing the carpeting.

Circulation Path in Employee Work Areas:
The proposed rules mandate compliance with accessible routes with 36" wide isles, with flat non-slip surfaces, with no protruding objects.
Many of our existing fast food restaurants do not meet these requirements. We do have newer restaurants that we could accommodate employees with disabilities that need more space. We do not have the space to remodel these existing restaurants and other workspaces. We would like to have these spaces exempt.

Reach:
The proposed guidelines change the reach from 54" to 48". This change will be a problem for our merchandise dept. We display items above 48" and successfully assist guests.

Public Entrances:
Revised ADAAG mandates that 60 percent of public entrances be accessible. This will create a problem for us that is not possible to resolve because of the geography of our facility. We

request that the current entrances be grandfathered in and be made an exemption because we are a State and Federal Historic Site.

Sales and Service Counters-Forward Approach:
The regulations mandate that a portion of the counter surface that is 30 inches long minimum and 36 inches high maximum be provided. In addition specific knee and toe clearances are required. The requirement for knee and toe clearances is new and will significantly adversely affect sales counters and displays.

Please articulate our Companies concerns anonymously to the Department of Justice. We share our concerns with other amusement, miniature golf, fast food and retail establishments. Thank you in advance for your excellent work.