I heard a rumor...

by Kimberly Paarlberg,
ICC Senior Staff Architect, Codes and Standards

The Department of Justice has finally adopted the 2004 ADA/ABA Accessibility Guidelines. With a few minor revisions, they have renamed it the 2010 Standard for Accessible Design. Starting March 15, 2011, when a building is constructed new or being altered, there is the alternative of using either the 1991 ADAAG or the 2010 ADA Standard for compliance. After March 15, 2012, using the 2010 ADA Standard will be required.

The rumor that I had heard, unfortunately from several different ‘informed’ sources, is that all elements that are not compliant with the new standard must be retrofitted by March 15, 2012. That is NOT the case. The use of the term ‘safe harbor’ is causing confusion.

What ‘safe harbor’ means is that elements that were covered in the 1991 ADAAG or UFAS, and were built compliant, can stay that way even if the provisions in the 2010 ADA Standard may be different. The most common and obvious application of this will probably be the single occupant bathrooms. The 2010 ADA standard requires a clear floor space next to the water closet, while the 1991 ADAAG and UFAS allowed for the lavatory to overlap that space. The intent of the new provisions is to allow space for a side transfer to the water closet. The 2010 ADA Standard allows for the door to swing into the bathroom as long as there is a clear floor space past the swing of the door, so that a person can enter the room, shut the door and then maneuver. The 1991 ADAAG and UFAS did not allow the door to swing over the clear floor space for any of the fixtures. While 2010 ADA standard still requires this in multi-stall bathrooms, it is not required for single occupant bathrooms.

Once you shut the door in a single occupant bathroom, you can lock it so someone else will not enter and possibly hit you with the door. (The DOJ has done a wonderful service by offering a section by section comparison, including bathroom configuration comparisons in Appendix B to part 36 (http://www.ada.gov/reg32010/titleii_2010/reg3_2010_appendix_b.htm). Well worth a visit.

‘Safe harbor’ is not applicable to items covered in the 1991 ADAAG when the building is undergoing an alteration or is new construction. For example, if you alter the bathrooms or build new bathrooms, they must comply with the 2010 ADA Standard. In existing buildings, altering the bathrooms may be part of improving the accessible route for primary function spaces.

“The rumor that I had heard, unfortunately from several different ‘informed’ sources, is that all elements that are not compliant with the new standard must be retrofitted by March 15, 2012. That is NOT the case. The use of the term ‘safe harbor’ is causing confusion.”

There are several areas in the 2010 ADA Standard regulations that were not covered in the 1994 ADAAG. Mainly these are the residential facilities and all the recreational facilities. Although these items are not covered by the ‘safe harbor’ provisions, it is not intended to require immediate mandatory compliance with...
the new provisions. For example: If my school has a swimming pool, as a Title II entity I am obligated to continually look at program access for classes/activities offered in the pool. (Any Title III building needs to maintain barrier removal.) If I have program access, I do not have to do anything. If I do not have program access and I decide to perform alteration to fix that, or if I just make alterations to the pool, I must follow the new requirements for pools in the 2010 ADA Standard. If I build a new pool, I must follow the new requirements for pools in the 2010 Standard. For swimming pools there are different entry options offered, such as zero level entry, transfer steps, ramps or mechanical chair lifts. The number of entry points and options depend upon the pool size and the type of pool. Large swimming pools may require two entry points, while lazy river pools may only need one entry point. Pools that are catchments for slides are exempted from providing accessible entry points: for that matter, water slides and diving boards are also exempted from accessibility.

These are just simple examples, and I am sure there are lots of "what if's" that are not addressed, but there is not a mandate to totally retrofit by March 15, 2012. The idea is that over time existing buildings will become as accessible as technically feasible. With an aging population, that is where the largest market will be, so take advantage of those alterations, additions and new construction to make buildings more accessible for everyone!

I am afraid I cannot end without a plug for the International Building Code (IBC). ICC is very proud that the IBC is referenced in the 2010 ADA Standard for accessible means of egress. Also, the 2010 ADA Standard and the IBC and ICC A117.1 are extensively coordinated. Coordination of the requirements in the codes and the federal accessibility provisions makes compliance easier for architects and contractors. After all, we are all aiming for the same goal.

The US Department of Justice, Civil Rights Division has posted a new technical assistance document, entitled ADA 2010 Revised Requirements: Effective Date, Compliance Date on their website. The document is available in HTML format at: http://www.ada.gov/revised_effective_dates-2010.htm and in PDF format online at: http://www.ada.gov/revised_effective_dates-2010.pdf