

ACCESS ALERT

521 CMR, ADA Standards for Accessible Design, & “Substantially Equivalent”...or, could we ever have just one accessible design standard in Massachusetts?

Summary. The Massachusetts Architectural Access Board (MAAB) is considering an application to the U.S. Department of Justice (DoJ) to have its regulations (521 CMR) deemed ‘substantially equivalent’ to the *ADA Standards for Accessible Design (the ADA Standards)*. This requires expanding the MAAB’s jurisdiction to include areas of employment, and amending 521 CMR to equal or exceed the ADA Standards. Understanding the implications of ‘substantial equivalency’ will help you decide whether to support this initiative.

Accessible Design Standards in

Massachusetts. The ADA allows states to enact and enforce their own accessibility code provisions; but when ADAAG conflicts with local codes, the standard which requires greater accessibility prevails. Currently, new construction and alterations of many facilities in Massachusetts must comply with both 521 CMR and the ADA Standards in public areas, but only with the ADA Standards in areas of employment. In addition, designers must also calculate the different ‘triggers’ for additional architectural access in alterations required by both 521 CMR and the ADA Standards.

Free Lunch N’ Learn More:
17 October 2007
Noon – 1:30 pm
Boston Society of Architects
52 Broad Street
Boston, MA
RSVP: cmacdonald@architects.org

In addition to the ADA Standards and 521 CMR, architects may also have to comply with other accessible design standards, including:

- *Federal Fair Housing Act* in new construction of housing with 4-or-more units.
- *ANSI A117.1* in the common areas of new construction of housing with 4-or-more units
- *Uniform Federal Accessibility Standards* in new construction and alterations of any projects receiving federal funding, such as educational and health care facilities.

The Problem for Designers. These four codes and standards are peevishly similar, yet not the same. Failure to comply with all elements of all applicable standards can lead to costly complaints, law suits, and reconstruction. Massachusetts building inspectors have authority to enforce only 521 CMR – not the ADA Standards, FHA, or UFAS.

A recent Boston Society of Architects survey indicated a strong preference by designers to reference only one accessible design standard. More important than any single accessible design requirement is the need for one, reliable reference for accessible design and construction.

Substantial Equivalency. The ADA's Title III's implementing regulations permit the US DoJ to certify that the accessibility provisions of a state or local building code meet or exceed the requirements of the ADA. "Certification of a code by the Department does not ensure that a facility constructed in compliance with the code will comply with the ADA, but it does enable a party in litigation that alleges a violation of Title III to point to compliance with a certified code as rebuttable evidence"ⁱⁱ of compliance with the ADA."ⁱⁱⁱ

Certification of equivalency only applies to those elements that are covered by both the code and the ADA Standard. It does not assure compliance with the design requirements of the federal *Fair Housing Act* or the *Uniform Federal Accessibility Standards*. Variances received from the MAAB would not necessarily relieve the obligation to comply with the ADA Standards unless the conditions also met the ADA Standards' definition for *structural impracticability* in new construction or *technical infeasibility* for alterations.

Massachusetts House Bill 3938. Massachusetts House Bill 3938 has been filed to, among other things, expand the MAAB's jurisdiction to include areas of employment, allowing it to enact and enforce standards equivalent to those of ADAAG. This would be the first step in making 521 CMR 'substantially equivalent" to ADAAG.

Learn More At Noon, 17 October, at the BSA.

The BSA is hosting an information session to learn more about House Bill 3938 and the substantial equivalency process at noon, 17 October 2007 at the BSA. Representatives from the Massachusetts Architectural Access Board, Massachusetts Disability Policy Commission, and the Boston Society of Architects will discuss the pro's and con's of House Bill 3938 and substantial equivalency process for 521 CMR.

ⁱ *The ADA Standards for Accessible Design (28 C.F.R. pt. 36, Appendix A) are contained in the Department of Justice regulation implementing Title III. Many designers refer to these standards (erroneously) as the ADA Accessibility Guidelines (ADAAG).*

ⁱⁱ *A 'rebuttable presumption' is an assumption of fact accepted by the court until disproved. All presumptions can be characterized as rebuttable. It is an assumption that is made in the law that will stand as a fact unless someone comes forward to contest it and prove otherwise. (Source: USLegal.com)*

ⁱⁱⁱ *US DoJ Letter to Office of the State Architect, Department of General Services, State of California, July 21, 1993*