

February 27, 2007

FEDERAL MANAGEMENT REGULATION
Amendment 2005-03

TO: Heads of Federal agencies

SUBJECT: FMR Case 2005-102-8; Real Property Policies Update;
Technical Amendment

1. Purpose. This document includes pages that reflect amendment to Part 102-76 of the Federal Management Regulation (FMR).
2. Background. FMR Part 102-76, Subpart C-Architectural Barriers Act, appeared initially in the FMR Real Property Policies Update issued November 8, 2005. That update adopted the Architectural Barriers Act Accessibilities Standards (ABAAS) as the standard for Federal facilities. When the implementation dates for the accessibility standards were amended on September 6, 2006, the amendment inadvertently deleted reference to facilities other than those that were Federally-owned or leased. Accordingly, this final rule corrects this oversight.
3. Effective date. This rule was published in the *Federal Register*, at 72 FR 5942 and became effective on February 8, 2007.
4. Explanation of changes. FMR Part 102-76, Subpart C-Architectural Barriers Act, is being amended to restate in 102-76.65 (a) that the accessibility standards apply to all entities whose facilities are subject to the Architectural Barriers Act, and not just those that are Federally-owned or leased.
5. Filing instructions. Make the following page changes:

Remove FMR pages

102-76-1 thru 102-76-4

Insert FMR pages

102-76-1 thru 102-76-4

A handwritten signature in black ink, appearing to read 'Kevin Messner', with a long horizontal stroke extending to the right.

Kevin Messner
Acting Associate Administrator
Office of Governmentwide Policy

Attachment

PART 102-76—DESIGN AND CONSTRUCTION

Subpart A—General Provisions

§102-76.5—What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA’s Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The accessibility standards in Subpart C of this part apply to Federal agencies and other entities whose facilities are subject to the Architectural Barriers Act.

§102-76.10—What basic design and construction policy governs Federal agencies?

Federal agencies, upon approval from GSA, are bound by the following basic design and construction policies:

- (a) Provide the highest quality services for designing and constructing new Federal facilities and for repairing and altering existing Federal facilities. These services must be timely, efficient, and cost effective.
- (b) Use a distinguished architectural style and form in Federal facilities that reflects the dignity, enterprise, vigor and stability of the Federal Government.
- (c) Follow nationally recognized model building codes and other applicable nationally recognized codes that govern Federal construction to the maximum extent feasible and consider local building code requirements. (See 40 U.S.C. 3310 and 3312.)
- (d) Design Federal buildings to have a long life expectancy and accommodate periodic changes due to renovations.
- (e) Make buildings cost effective, energy efficient, and accessible to and usable by the physically disabled.
- (f) Provide for building service equipment that is accessible for maintenance, repair, or replacement without significantly disturbing occupied space.
- (g) Consider ease of operation when selecting mechanical and electrical equipment.
- (h) Agencies must follow the prospectus submission and approval policy identified in [§§102-73.35](#) and [102-73.40](#) of this chapter.

Subpart B—Design and Construction

§102-76.15—What are design and construction services?

Design and construction services are—

- (a) Site planning and landscape design;
- (b) Architectural and interior design; and
- (c) Engineering systems design.

§102-76.20—What issues must Federal agencies consider in providing site planning and landscape design services?

In providing site planning and design services, Federal agencies must—

- (a) Make the site planning and landscape design a direct extension of the building design;
- (b) Make a positive contribution to the surrounding landscape;
- (c) Consider requirements (other than procedural requirements) of local zoning laws and laws relating to setbacks, height, historic preservation, and aesthetic qualities of a building;
- (d) Identify areas for future building expansion in the architectural and site design concept for all buildings where an expansion need is identified to exist;
- (e) Create a landscape design that is a pleasant, dynamic experience for occupants and visitors to Federal facilities and, where appropriate, encourage public access to and stimulate pedestrian traffic around the facilities. Coordinate the landscape design with the architectural characteristics of the building;
- (f) Comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, for each project; and
- (g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies, consistent with the Interagency Security Committee standards and guidelines.

§102-76.25—What standards must Federal agencies meet in providing architectural and interior design services?

Federal agencies must design distinctive and high quality Federal facilities that meet all of the following standards:

- (a) Reflect the local architecture in buildings through the use of building form, materials, colors, or detail. Express a quality of permanence in the building interior similar to the building exterior.
- (b) Provide individuals with disabilities ready access to, and use of, the facilities in accordance with the standards in [§102-76.65](#).
- (c) Use metric specifications in construction where the metric system is the accepted industry standard, and to the extent that such usage is economically feasible and practical.
- (d) Provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of Government operations during civil disturbances, natural disasters and other emergency situations.

(e) Design and construct facilities that meet or exceed the energy performance standards applicable to Federal buildings in 10 CFR part 435.

§102-76.30—What seismic safety standards must Federal agencies follow in the design and construction of Federal facilities?

Federal agencies must follow the seismic safety standards identified in [§102-80.45](#) of this chapter.

National Environmental Policy Act of 1969

§102-76.35—What is the purpose of the National Environmental Policy Act of 1969, as amended (NEPA)?

The purpose of NEPA is to—

- (a) Declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- (b) Promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- (c) Enrich the understanding of the ecological systems and natural resources important to the Nation; and
- (d) Establish a Council on Environmental Quality (CEQ).

§102-76.40—To which real property actions does NEPA apply?

NEPA applies to actions that may have an impact on the quality of the human environment, including leasing, acquiring, developing, managing and disposing of real property.

§102-76.45—What procedures must Federal agencies follow to implement the requirements of NEPA?

Federal agencies must follow the procedures identified in the Council on Environmental Quality’s NEPA implementing regulations, 40 CFR 1500–1508. In addition, Federal agencies must follow the standards that they have promulgated to implement CEQ’s regulations.

Sustainable Development

§102-76.50—What is sustainable development?

Sustainable development means integrating the decision-making process across the organization, so that every decision is made to promote the greatest long-term benefits. It means eliminating the concept of waste and building on natural processes and energy flows and cycles; and recognizing the interrelationship of our actions with the natural world.

§102-76.55—What sustainable development principles must Federal agencies apply to the siting, design, and construction of new facilities?

In keeping with the objectives of Executive Order 13123, “Greening of the Government Through Efficient Energy Management,” and Executive Order 13101, “Greening of the Government Through Waste Prevention, Recycling, and Federal Acquisition,” Federal agencies must apply sustainable development principles to the siting, design, and construction of new facilities, which include—

- (a) Optimizing site potential;
- (b) Minimizing non-renewable energy consumption;
- (c) Using environmentally preferable products;
- (d) Protecting and conserving water;
- (e) Enhancing indoor environmental quality; and
- (f) Optimizing operational and maintenance practices.

Subpart C—Architectural Barriers Act

§102-76.60—To which facilities does the Architectural Barriers Act apply?

(a) The Architectural Barriers Act applies to any facility that is intended for use by the public or that may result in the employment or residence therein of individuals with disabilities, which is to be—

- (1) Constructed or altered by, or on behalf of, the United States;
- (2) Leased in whole or in part by the United States;
- (3) Financed in whole or in part by a grant or loan made by the United States, if the building or facility is subject to standards for design, construction, or alteration issued under the authority of the law authorizing such a grant or loan; or
- (4) Constructed under the authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(b) The Architectural Barriers Act does not apply to any privately owned residential facility unless leased by the Government for subsidized housing programs, and any facility on a military reservation designed and constructed primarily for use by able bodied military personnel.

§102-76.65—What standards must facilities subject to the Architectural Barriers Act meet?

(a) GSA adopts Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the Architectural Barriers Act Accessibility Standard (ABAAS). Facilities subject to the Architectural Barriers Act (other than facilities described in paragraphs (b) and (c) of this section) must comply with ABAAS as set forth below:

- (1) For construction or alteration of facilities subject to the Architectural Barriers Act (other than Federal lease-construction and other lease actions described in paragraphs

(a)(2) and (3), respectively, of this section), compliance with ABAAS is required if the construction or alteration commenced after May 8, 2006. If the construction or alteration of such a facility commenced on or before May 8, 2006, compliance with the Uniform Federal Accessibility Standards (UFAS) is required.

(2) For Federal lease-construction actions subject to the Architectural Barriers Act, where the Government expressly requires new construction to meet its needs, compliance with ABAAS is required for all such leases awarded on or after June 30, 2006. UFAS compliance is required for all such leases awarded before June 30, 2006.

(3) For all other lease actions subject to the Architectural Barriers Act (other than those described in paragraph (a)(2) of this section), compliance with ABAAS is required for all such leases awarded pursuant to solicitations issued after February 6, 2007. UFAS compliance is required for all such leases awarded pursuant to solicitations issued on or before February 6, 2007.

(b) Residential facilities subject to the Architectural Barriers Act must meet the standards prescribed by the Department of Housing and Urban Development.

(c) Department of Defense and United States Postal Service facilities subject to the Architectural Barriers Act must meet the standards prescribed by those agencies.

§102-76.70—When are the costs of alterations to provide an accessible path of travel to an altered area containing a primary function disproportionate to the costs of the overall alterations for facilities subject to the standards in §102-76.65(a)?

For facilities subject to the standards in §102-76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations when they exceed 20 percent of the costs of the alterations to the primary function area. If a series of small alterations are made to areas containing a primary function and the costs of any of the alterations considered individually would not result in providing an accessible path of travel to the altered areas, the total costs of the alterations made within the three year period after the initial alteration must be considered when determining whether the costs of alterations to provide an accessible path of travel to the altered areas are disproportionate. Facilities for which new leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations.

§102-76.75—What costs are included in the costs of alterations to provide an accessible path of travel to an altered area containing a primary function for facilities subject to the standards in §102-76.65(a)?

For facilities subject to the standards in §102-76.65(a), the costs of alterations to provide an accessible path of travel to an altered area containing a primary function include the costs associated with—

(a) Providing an accessible route to connect the altered area and site arrival points, including but not limited to interior and exterior ramps, elevators and lifts, and curb ramps;

(b) Making entrances serving the altered area accessible, including but not limited to widening doorways and installing accessible hardware;

(c) Making restrooms serving the altered area accessible, including, but not limited to, enlarging toilet stalls, installing grab bars and accessible faucet controls, and insulating pipes under lavatories;

(d) Making public telephones serving the altered area accessible, including, but not limited to, placing telephones at an accessible height, and installing amplification devices and TTYs;

(e) Making drinking fountains serving the altered area accessible; and

(f) Making parking spaces serving the altered area accessible.

§102-76.80—What is required if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations for facilities subject to the standards in §102-76.65(a)?

For facilities subject to the standards in §102-76.65(a), if the costs of alterations to provide an accessible path of travel to an altered area containing a primary function are disproportionate to the costs of the overall alterations, the path of travel must be made accessible to the extent possible without exceeding 20 percent of the costs of the alterations to the primary function area. Priority should be given to those elements that will provide the greatest access in the following order:

(a) An accessible route and an accessible entrance;

(b) At least one accessible restroom for each sex or a single unisex restroom;

(c) Accessible telephones;

(d) Accessible drinking fountains; and

(e) Accessible parking spaces.

§102-76.85—What is a primary function area for purposes of providing an accessible route in leased facilities subject to the standards in §102-76.65(a)?

For purposes of providing an accessible route in leased facilities subject to the standards in §102-76.65(a), a primary

function area is an area that contains a major activity for which the leased facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the leased facility are carried out.

§102-76.90—Who has the authority to waive or modify the standards in [§102-76.65\(a\)](#)?

The Administrator of General Services has the authority to waive or modify the standards in [§102-76.65\(a\)](#) on a case-by-case basis if the agency head or GSA department head submits a request for waiver or modification and the Administrator determines that the waiver or modification is clearly necessary.

§102-76.95—What recordkeeping responsibilities do Federal agencies have?

(a) The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for

the design, construction or alteration of a facility and on each lease for a facility subject to the standards in [§102-76.65\(a\)](#) containing one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards.

(4) The standards have been waived or modified by the Administrator of General Services, and a copy of the waiver or modification is included with the statement.

(b) If a determination is made that a facility is not subject to the standards in [§102-76.65\(a\)](#) because the Architectural Barriers Act does not apply to the facility, the head of the Federal agency must ensure that documentation is maintained to justify the determination.