

§ 84.23 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after June 3, 1977.

(b) *Alterations.* Each facility or part of a facility altered by, on behalf of, or for the use of a recipient in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after June 3, 1977.

(c) *Accessibility standards and compliance dates for recipients that are public entities.* (1) The accessibility standards and compliance dates in this paragraph (c) apply to recipients that are public entities. Public entities are any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; and the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (45 U.S.C. 541)

(2) If physical construction or alterations commenced after June 3, 1977, but before January 18, 1991, then construction and alterations subject to this section shall be deemed in compliance with this section if they meet the requirements of the ANSI Standards (ANSI A117.1-1961(R1971)) (ANSI). Departures from particular requirements of ANSI by the use of other methods are permitted when it is clearly evident that equivalent access to the facility or part of the facility is provided.

(3) If physical construction or alterations commence on or after January 18, 1991, but before July 8, 2024, then new construction and alterations subject to this section shall be deemed in compliance with this section if they meet the requirements of the Uniform Federal Accessibility Standards (UFAS), appendix A to 41 CFR part 101-19, subpart 101-19.6 (revised as of July 1, 2002). Departures from particular requirements of UFAS by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(4) For physical construction or alterations that commence on or after July 8, 2024, but before May 9, 2025, then new construction and alterations subject to this section may comply with either UFAS or the 2010 Standards. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(5) If physical construction or alterations commence on or after May 9, 2025, then new construction and alterations subject to this section shall comply with the 2010 Standards.

(6) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(d) *Accessibility standards and compliance dates for recipients that are private entities.* (1) The accessibility standards and compliance dates in this paragraph (d) apply to recipients that are private entities. Private entities are any person or entity other than a public entity.

(2) New construction and alterations subject to this section where the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government between June 3, 1977, and January 18, 1991, or if no permit is required, if the start of physical construction or alterations occurs between June 3, 1977, and January 18, 1991, shall be deemed in compliance with this section if they meet the requirements of ANSI. Departures from particular requirements of ANSI by the use of other methods are permitted when it is clearly evident that equivalent access to the facility or part of the facility is provided.

(3) New construction and alterations subject to this section shall comply with UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after January 18, 1991, and before July 8, 2024, or if no permit is required, if the start of physical construction or alterations occurs on or after January 18, 1991, and before July 8, 2024. Departures from particular requirements of UFAS by the use of other methods are permitted when it is clearly evident that equivalent access to the facility or part of the facility is provided.

(4) New construction and alterations subject to this section shall comply either with UFAS or the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after July 8, 2024, and before May 9, 2025, or if no permit is required, if the start of physical construction or alterations occurs on or after July 8, 2024, and before May 9, 2025. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(5) New construction and alterations subject to this section shall comply with the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after May 9, 2025, or if no permit is required, if the start of physical construction or alterations occurs on or after May 9, 2025.

(6) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(e) *Noncomplying new construction and alterations.* (1) Newly constructed or altered facilities or elements covered by paragraph (a) or (b) of this section that were constructed or altered between June 3, 1977, and January 18, 1991, and that do not comply with ANSI shall be made accessible in accordance with the 2010 Standards.

(2) Newly constructed or altered facilities or elements covered by paragraph (a) or (b) of this section that were constructed or altered on or after January 18, 1991, and before May 9, 2025, and that do not comply with UFAS shall before May 9, 2025, be made accessible in accordance with either UFAS or the 2010 Standards.

(3) Newly constructed or altered facilities or elements covered by paragraph (a) or (b) of this section that were constructed or altered before May 9, 2025, and that do not comply with ANSI (for facilities constructed or altered between June 3, 1977, and January 18, 1991) or UFAS (for facilities constructed or altered on or after January 18, 1991) shall, on or after May 9, 2025, be made accessible in accordance with the 2010 Standards.

(f) *Public buildings or facilities requirements.* New construction and alterations of buildings or facilities undertaken in compliance with the 2010 Standards will comply with the scoping and technical requirements for a “public building or facility” regardless of whether the recipient is a public entity as defined in 28 CFR 35.104 or a private entity.

(g) *Compliance with the Architectural Barriers Act of 1968.* Nothing in this section relieves recipients whose facilities are covered by the Architectural Barriers Act, from their responsibility of complying with the requirements of the Architectural Barriers Act and its implementing regulations, 41 CFR 102-76.60 through 102-76.95 (General Services Administration); 39 CFR part 255 (U.S. Postal Service); 24 CFR part 40 (U.S. Department of Housing and Urban Development); and the U.S. Department of Defense “Policy Memorandum for Secretaries of the Military Departments: Access for People with Disabilities” (October 31, 2008).

(h) *Mechanical rooms.* For purposes of this section, section 4.1.6(1)(g) of UFAS will be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical disabilities.

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