

(6) Not applicable under Section 3504(h) of Public Law 96-511.

Public comment on this item is encouraged.

Dated: March 28, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

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## Office of the Assistant Attorney General for Civil Rights

### Certification of Washington State Regulations for Barrier Free Design Under the Americans With Disabilities Act

**AGENCY:** Department of Justice.

**ACTION:** Notice of certification.

**SUMMARY:** The Department of Justice has certified that the Washington State Regulations for Barrier Free Design meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

**EFFECTIVE DATE:** March 29, 1995.

**ADDRESSES:** Inquiries may be addressed to: John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035-6738.

**FOR FURTHER INFORMATION CONTACT:** John Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035-6738. Telephone number (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TDD)

#### SUPPLEMENTARY INFORMATION:

##### Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 through 36.608. Certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated January 27, 1992, the Washington State Building Code

Council (Council) requested certification that the Washington State Regulations for Barrier Free Design (code) meets or exceeds the new construction and alterations requirements of title III of the ADA.

On May 20, 1993, after consulting with the Architectural and Transportation Barriers Compliance Board (Access Board), the Department provided technical assistance to the Council identifying issues that needed to be addressed before certification could be considered.

On August 20, 1993, the Council made a supplemental submission, providing its 1992 amendments to the code, newly-issued interpretations of the code, and comments responding to the Department's preliminary response. By letter dated March 23, 1994, the Council provided further supplementation of its submission.

On July 22, 1994, the Department responded to the supplemental submissions. On November 17, 1994, the Council adopted amendments to the code addressing the remaining issues raised by the Department. By letter dated November 28, 1994, the Council submitted those amendments as a supplement to its certification request.

The Department has analyzed the Washington code, as adopted on November 8, 1991, and amended on November 13, 1992, and November 17, 1994, and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated December 6, 1994, the Department notified the Council of its preliminary determination of equivalency.

On January 12, 1995, the Department published a notice in the **Federal Register** (60 FR 2986) announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on March 13, 1995. In addition, the Department held public hearings in Seattle, Washington on January 27, 1995, and in Washington, DC on March 27, 1995.

The Department received six written comments and 17 persons testified at the hearings. Comments and testimony were submitted by building officials, disability-rights advocates, design professionals, and interested individuals, including individuals with disabilities. The Department has read and analyzed each comment, as well as the testimony submitted at the hearings, and has consulted with the Access Board.

The vast majority of comments supported certification of the Washington code. One individual commented that he did not believe the Washington code was equivalent regarding regulation of maximum activating force for door and window hardware. However, close examination of the ADA Standards for Accessible Design reveals that they do not address maximum activating force for such elements. Therefore, the Washington code is, in fact, equivalent in this respect. All the remaining comments supported equivalency and certification.

Based on these comments, the Department has determined that the Washington code is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the Washington code and has issued a seal of certification.

#### Limitations of Certification

The certification determination is limited to the version of the Washington code, including the amendments and interpretations, that has been submitted to the Department. The certification does not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

The certification does not apply to any elements or features not addressed in the Washington code. If a builder incorporates such elements, he or she will not be entitled to rely on the rebuttable evidence of ADA compliance provided by certification for those elements. Nor does the certification apply to the Appendix provisions of the Washington code, which are advisory only. Finally the certification does not apply to waivers granted under the Washington code by local building officials. Therefore, if a builder receives a waiver, modification, variance, or other exemption from the requirements of the Washington code for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Dated: March 29, 1995.

**Deval L. Patrick,**

*Assistant Attorney General, Civil Rights Division.*

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