

(e) is the same as the text of § 25.2505–1T(a) through (e) published elsewhere in this issue of the **Federal Register**].

**Par. 10.** Section 25.2505–2 is added to read as follows:

**§ 25.2505–2 Gifts made by a surviving spouse having a DSUE amount available.**

[The text of the proposed amendments to § 25.2505–2(a) through (g) is the same as the text of § 25.2505–2T(a) through (g) published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2012–14775 Filed 6–15–12; 8:45 am]

**BILLING CODE 4830–01–P**

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**36 CFR Part 1191**

[Docket No. **ATBCB–2012–0004**]

**RIN 3014–AA39**

**Americans With Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines; Emergency Transportable Housing Units**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) proposes to amend the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to specifically address emergency transportable housing units that are provided by the Federal Emergency Management Agency or other entities on a temporary site in response to an emergency need for temporary housing. The proposed amendments seek to ensure that newly constructed and altered emergency transportable housing units covered by the ADA or ABA are readily accessible to and usable by individuals with disabilities. Other federal agencies are required to issue enforceable accessibility standards for the construction and alteration of facilities covered by the ADA or ABA that are consistent with the ADA and ABA Accessibility Guidelines. When the other federal agencies amend their accessibility standards to be consistent with the proposed amendments to the ADA and ABA Accessibility Guidelines, newly constructed and altered emergency transportable housing units

covered by the ADA or ABA would be required to comply with the accessibility standards as amended.

**DATES:** Submit comments by August 17, 2012. A hearing will be held on the proposed amendments on July 11, 2012, 9:30 to 11:30 a.m. To pre-register to testify please contact Kathy Johnson at (202) 272–00041 (voice), (202) 272–0065 (TTY), or [johnson@access-board.gov](mailto:johnson@access-board.gov). Witnesses can testify in person or by telephone. More information and any updates to the hearings will be posted on the Access Board's Web site at <http://www.access-board.gov/eth/>.

**ADDRESSES:** Submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. *Regulations.gov* ID for this docket is ATBCB–2012–0004.

- *Email:* [docket@access-board.gov](mailto:docket@access-board.gov). Include docket number ATBCB–2012–0004 in the subject line of the message.

- *Fax:* 202–272–0081.

- *Mail or Hand Delivery/Courier:* Office of Technical and Informational Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments, including any personal information provided, will be posted without change to <http://www.regulations.gov> and are available for public viewing.

The hearing location is Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone numbers: (202) 272–0020 (voice); (202) 272–0076 (TTY). Email address: [mazz@access-board.gov](mailto:mazz@access-board.gov). These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:**

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**1. Public Participation and Request for Comments**

The Access Board encourages all persons interested in the rulemaking to submit comments on the proposed amendments and the questions in the

preamble. Instructions for submitting and viewing comments are provided above under **ADDRESSES**. The Access Board will consider all the comments and may change the proposed amendments based on the comments.

**2. Executive Summary**

*ADA and ABA Accessibility Guidelines*

Section 502 of the Rehabilitation Act requires the Access Board to develop and maintain accessibility guidelines to ensure that the construction and alteration of facilities covered by the Americans with Disabilities Act (ADA) or the Architectural Barriers Act (ABA) are readily accessible to and usable by individuals with disabilities. See 29 U.S.C. 792(b)(3). The Access Board's current accessibility guidelines for facilities were issued in 2004 and are known as the ADA and ABA Accessibility Guidelines. Other federal agencies are required to issue enforceable accessibility standards for the construction and alteration of facilities covered by the ADA or ABA that are consistent with the ADA and ABA Accessibility Guidelines. Newly constructed and altered facilities covered by the ADA or ABA are required to comply with the accessibility standards issued by the other agencies.

The ADA and ABA Accessibility Guidelines contain scoping and technical provisions for residential dwelling units. The scoping provisions specify the minimum number of units required to provide mobility features for individuals with mobility disabilities and the minimum number of units required to provide communication features for individuals who are deaf or have a hearing loss, as well as the accessible features to be provided within each type of unit. The technical provisions specify the design criteria for accessible features within the units.

*Purpose of Proposed Rule*

Emergency transportable housing units provided by the Federal Emergency Management Agency (FEMA) in the aftermath of Hurricanes Katrina and Rita raised issues regarding the application of the scoping and technical provisions for residential dwelling units to emergency transportable housing units. Emergency transportable housing units are used to provide temporary housing and are not intended to be used as permanent dwellings. They are prefabricated so they can be deployed rapidly in response to an emergency and are installed on temporary sites with minimal site preparation. They are

transported on a single transport vehicle over roadways, which results in size and space limitations. Emergency transportable housing units provided in the aftermath of Hurricanes Katrina and Rita typically were about 400 square feet.

The proposed rule would amend the ADA and ABA Accessibility Guidelines to treat emergency transportable

housing units as a subclass of residential dwelling units and would add new scoping and technical provisions for such units. The proposed rule also would amend existing scoping provisions for operable parts and platform lifts, and existing technical provisions for ramps, kitchens, and bathrooms to specifically address emergency transportable housing units.

*Summary of Major Proposed Provisions*

The major proposed provisions for emergency transportable housing units required to provide mobility features and emergency transportable housing units required to provide communication features are summarized separately in the tables below.

**EMERGENCY TRANSPORTABLE HOUSING UNITS REQUIRED TO PROVIDE MOBILITY FEATURES**

Major proposed provisions	Summary	Justification—benefits
Scoping 233.3.1.2, F233.3.1.2, F233.4.1.2.	Existing scoping provisions applicable to facilities with residential dwelling units provided by entities not subject to regulations issued by HUD under Section 504 of the Rehabilitation Act currently require at least 5 percent of the units to provide mobility features. These scoping provisions currently apply to emergency transportable housing units. The proposed new scoping provisions would require emergency transportable housing units with mobility features to be provided in accordance with regulations implementing Section 504 of the Rehabilitation Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the ADA. These regulations prohibit discrimination on the basis of disability. Compliance with these regulations would ensure that individuals with mobility disabilities who need units with mobility features are provided such units.	When individuals and households apply for temporary housing assistance from FEMA, their needs are assessed and they are assigned emergency transportable housing units based on their assessed needs. The proposed new scoping provisions would allow for flexibility to provide emergency transportable housing units with mobility features based on assessed needs.
Ramps: Exception 2 to 405.2, Exception to 405.6.	The proposed new exceptions to the technical provisions for ramps would permit a steeper and longer entry ramp for single unit installations of emergency transportable housing units at private home sites where existing physical or site constraints would prohibit the installation of an entry ramp that complies with the technical provisions for ramps.	The floor level of emergency transportable housing units is elevated above the ground. Ramps are installed at the entrances to units with mobility features. If sufficient space is not available on a private home site to install an entry ramp that complies with the technical provisions for ramps, a unit with mobility features may not be provided at the site. The proposed new exceptions would allow a steeper and longer entry ramp in such situations so individuals with mobility disabilities can have units with mobility features provided at their private home sites while their homes are rebuilt and avoid relocation to a group site.
Kitchen Work Surface Exception to 804.3.	The proposed new exception would permit a kitchen table complying with the technical provisions for tables, all kitchen counter tops at 34 inches high maximum, and an electrical outlet within reach of the table to be provided instead of a kitchen work surface complying with the technical provisions for kitchen work surfaces.	Kitchens in emergency transportable housing units have limited storage space. A kitchen work surface complying with the technical provisions for kitchen work surfaces would reduce the storage space. The proposed new exception would provide accessible kitchen work surfaces for individuals with mobility disabilities without reducing the storage space.
Kitchen Counter Top Electrical Outlets: Exception 3 to 205.1, Exception 3 to F205.1.	Existing exceptions currently permit one of the electrical outlets provided above a length of kitchen counter top that is uninterrupted by a sink or appliance to not comply with the technical provisions for operable parts. The proposed rule would amend these exceptions so they would not apply to emergency transportable housing units required to provide mobility features. This may result in electrical outlets installed in the face of kitchen base cabinets.	Kitchens in emergency transportable housing units have fewer electrical outlets than kitchens in other types of residential dwelling units. The proposed amendments to the existing exceptions would make all the electrical outlets accessible to and usable by individuals with mobility disabilities.
Water Shut-Off Valve: Exception 11 to 205.1, Exception 11 to F205.1.	The proposed new exceptions would permit a single water shut-off valve complying with the technical provisions for clear floor space and reach ranges to be provided in emergency transportable housing units required to provide mobility features.	Space constraints in emergency transportable housing units can limit access to water shut-off valves in kitchens and bathrooms. The proposed new exceptions would provide access to a single water shut-off valve for individuals with mobility disabilities.
Kitchen Sink Water Spray Unit: 606.4.	The proposed new provision would require a water spray unit to be provided at the kitchen sink in emergency transportable housing units required to provide mobility features.	The proposed new provision would facilitate dish washing by individuals with limited reach and dexterity.
Folding Seat in Roll-In Shower: 608.4.	The proposed new provision would require a folding seat to be provided in a roll-in shower in emergency transportable housing units required to provide mobility features.	The proposed new provision would enable individuals with mobility disabilities to use roll-in showers if shower chairs are unavailable in the aftermath of a disaster.

## EMERGENCY TRANSPORTABLE HOUSING UNITS REQUIRED TO PROVIDE MOBILITY FEATURES—Continued

Major proposed provisions	Summary	Justification—benefits
Bedrooms: 809.2.4.1, 809.2.4.2.	The proposed new provisions would: <ul style="list-style-type: none"> <li>• Require clear floor space positioned for a parallel approach to be located on one side of a bed and to be on an accessible route; and</li> <li>• Prohibit accessible routes, maneuvering clearances, and turning spaces in bedrooms less than 70 square feet from overlapping space occupied by furniture supplied with the unit in emergency transportable housing units required to provide mobility features.</li> </ul>	The proposed new provisions would make the bedrooms accessible to and usable by individuals with mobility disabilities.
Bedroom Lighting Control: 809.2.4.3.	The proposed new provision would require a means to control at least one source of lighting in the bedroom from the bed in emergency transportable housing units required to provide mobility features.	Bedrooms in emergency transportable housing units typically provide overhead lighting controlled by a wall switch near the bedroom door. The proposed new provision would result in providing a bedside lamp, an additional wall switch near the bed, or remote control device that can be operated from the bed so individuals with mobility disabilities can transfer in and out of bed safely.
Weather Alert Systems: 809.2.5.	The proposed new provision would require weather alert systems provided in emergency transportable housing units required to provide mobility features to comply with the technical provisions for clear floor space and reach ranges.	The proposed new provision would make the weather alert systems accessible to and usable by individuals with mobility disabilities.

## EMERGENCY TRANSPORTABLE HOUSING UNITS REQUIRED TO PROVIDE COMMUNICATION FEATURES

Major provisions	Summary	Justification—benefits
Scoping: 233.3.2.2, F233.3.2.2, F233.4.2.2.	Existing scoping provisions applicable to facilities with residential dwelling units provided by entities not subject to regulations issued by HUD under Section 504 of the Rehabilitation Act currently require at least 2 percent of the units to provide communication features. These scoping provisions currently apply to emergency transportable housing units. The proposed new scoping provisions would require emergency transportable housing units with communication features to be provided in accordance with regulations implementing Section 504 of the Rehabilitation Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the ADA. These regulations prohibit discrimination on the basis of disability. Compliance with these regulations would ensure that individuals who are deaf or have a hearing loss and need units with communication features are provided such units.	When individuals and households apply for temporary housing assistance from FEMA, their needs are assessed and they are assigned emergency transportable housing units based on their assessed needs. The proposed new scoping provisions would allow for flexibility to provide emergency transportable housing units with communication features based on assessed needs.
Residential Dwelling Unit Smoke Alarms: 809.3.1.2.	The proposed new provision would require residential dwelling unit smoke alarms with built-in visible alarms to provide either a commercial light and power source along with a secondary power source, or a non-commercial alternating current power source along with a secondary power source.	The proposed new provision is consistent with the National Fire Protection Association (NFPA) 72 National Fire Alarm Code. It would ensure that residential dwelling unit smoke alarms with built-in visible alarms have a secondary power source in the event the primary power source fails so that individuals who are deaf or have a hearing loss are alerted when the alarms are activated.
Weather Alert Systems: 809.3.4.	The proposed new provision would require weather alert systems provided in emergency transportable housing units required to provide communication features to provide both audible and visible output.	The proposed new provision would make the weather alert systems accessible to and usable by individuals who are deaf or have a hearing loss.

*Entities Affected by Proposed Rule*

The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes FEMA to provide temporary housing assistance to individuals and households in response to a major disaster or emergency declared by the President. See 42 U.S.C. 5174 and 5192.

FEMA provides emergency transportable housing units where there is a need for temporary housing and a lack of available housing resources in the affected area. A review of the Web sites of state agencies and nongovernmental organizations that provide services in response to disasters did not show that these entities

currently provide emergency transportable housing units.

*Question 1.* Do state, local, or tribal governments or nongovernmental organizations provide emergency transportable housing units in response to disasters?

Emergency transportable housing units provided by FEMA are covered by

the ABA and are required to comply with the accessibility standards for residential facilities issued by the Department of Housing and Urban Development (HUD). See 42 U.S.C. 4151 and 4153. HUD's current accessibility standards for residential facilities are the Uniform Federal Accessibility Standards (UFAS). When HUD updates its accessibility standards for residential facilities to be consistent with the ADA and ABA Accessibility Guidelines, newly constructed and altered emergency transportable housing provided by FEMA would be required to comply with HUD's updated accessibility standards.

The Access Board has prepared a preliminary regulatory assessment for the proposed rule. The regulatory assessment is available on the Access Board's Web site at: <http://www.access-board.gov/eth/index.htm>. The regulatory assessment estimates the additional costs that would be incurred by FEMA assuming HUD updates its accessibility standards for residential facilities to be consistent with the ADA and ABA Accessibility Guidelines, as amended by the proposed rule. The additional costs that would be incurred by FEMA are discussed in the Regulatory Analyses section of the preamble. Based on the regulatory assessment, the Access Board has determined that the proposed rule is not an economically significant regulatory action.

### 3. Statutory and Regulatory Background

Section 502 of the Rehabilitation Act requires the Access Board to develop and maintain accessibility guidelines to ensure that the construction and alteration of facilities covered by the Americans with Disabilities Act (ADA) or the Architectural Barriers Act (ABA) are readily accessible to and usable by individuals with disabilities. See 29 U.S.C. 792(b)(3). The Access Board's current accessibility guidelines for facilities were issued in 2004 and are known as the ADA and ABA Accessibility Guidelines. See 36 CFR part 1191.

Title II of the ADA covers state and local government facilities, and Title III of the ADA covers public accommodations and commercial facilities. See 42 U.S.C. 12101 *et seq.* The Department of Justice (DOJ) and Department of Transportation (DOT) are required to issue enforceable accessibility standards for the construction and alteration of facilities covered by Titles II and III of the ADA that are consistent with the ADA and

ABA Accessibility Guidelines.<sup>1</sup> DOJ and DOT have adopted the ADA and ABA Accessibility Guidelines, with additions and modifications, as the accessibility standards for facilities covered by Titles II and III of the ADA.<sup>2</sup>

The ABA covers facilities designed, constructed, or altered with federal funds, and facilities leased by federal agencies. See 42 U.S.C. 4151 *et seq.* The Department of Housing and Urban Development (HUD), Department of Defense (DOD), United States Postal Service (USPS), and General Services Administration (GSA) are responsible for issuing enforceable accessibility standards for the construction, alteration, and leasing of facilities covered by the ABA that are consistent with the ADA and ABA Accessibility Guidelines.<sup>3</sup> DOD, USPS, and GSA have adopted the ADA and ABA Accessibility Guidelines as the accessibility standards for facilities covered by the ABA.<sup>4</sup> HUD's current accessibility standards for residential facilities covered by the ABA are the Uniform Federal Accessibility Standards (UFAS).<sup>5</sup> HUD plans to update its accessibility standards for residential facilities covered by the ABA to be consistent with the ADA and ABA Accessibility Guidelines.

The federal agencies that issue accessibility standards for facilities covered by the ADA or ABA are represented on the Access Board. They were involved in the development of the proposed rule to minimize any differences between the proposed rule and eventual updates to their

<sup>1</sup> DOT is responsible for issuing accessibility standards for facilities used to provide designated and specified transportation services, and DOJ is responsible for issuing accessibility standards for the other facilities covered by the ADA. See 42 U.S.C. 12134, 12149, 12164, and 12186.

<sup>2</sup> See 28 CFR 35.104 and 35.151 for DOJ's accessibility standards for facilities covered by Title II of the ADA; 28 CFR 36.104 and 36.406 for the DOJ's accessibility standards for facilities covered by Title III of the ADA; and 49 CFR 37.9 and Appendix A to 49 CFR part 37 for DOT's accessibility standards for transportation facilities covered by Titles II and III of the ADA.

<sup>3</sup> HUD is responsible for issuing accessibility standards for residential facilities covered by the ABA; DOD is responsible for issuing accessibility standards for military facilities covered by the ABA; USPS is responsible for issuing accessibility standards for postal facilities covered by the ABA; and GSA is responsible for issuing accessibility standards for the other facilities covered by the ABA.

<sup>4</sup> See DOD Memorandum on Access for People with Disabilities (October 31, 2008) available at: <http://www.access-board.gov/ada-aba/dod-memorandum.htm> for DOD's accessibility standards; 39 CFR 254.1 and 254.2 for USPS' accessibility standards; and 41 CFR 102-76.60 through 102-76.85 for GSA's accessibility standards.

<sup>5</sup> See 24 CFR 40.4 for HUD's accessibility standards.

accessibility standards. FEMA also was involved in the development of the proposed rule.

### 4. Advisory Committee

In August 2007, the Access Board established an advisory committee comprised of disability rights advocates, manufacturers of emergency transportable housing units, and federal agencies (DOJ, HUD, and FEMA) to make recommendations for amending the ADA and ABA Accessibility Guidelines to address issues regarding the accessibility of emergency transportable housing units that were raised in the aftermath of Hurricanes Katrina and Rita. The committee submitted its report to the Access Board in November 2008. The proposed rule is based on the committee's report. The committee's report is available on the Access Board's Web site at: <http://www.access-board.gov/eth/index.htm>.

### 5. Issues Discussed by the Advisory Committee That Are Not Addressed in the Proposed Rule

The issues noted below were discussed by the advisory committee but are not addressed in the proposed rule.

#### *Indoor Environmental Quality*

The advisory committee included members representing individuals with disabilities who have multiple chemical sensitivities. The committee discussed issues related to the indoor environmental quality of emergency transportable housing units, particularly the formaldehyde levels in the units, but did not reach a consensus on the issues.

Formaldehyde is present in many products used in homes. Pressed wood products containing formaldehyde-based resins used in construction and furnishings are the primary contributors of household airborne formaldehyde. Prolonged exposure to elevated levels of formaldehyde can cause health risks.<sup>6</sup> At FEMA's request, the Centers for Disease Control and Prevention tested a random sample of travel trailers, park models, and manufactured homes in Louisiana and Mississippi in December 2007 and January 2008. The average level of formaldehyde in all the units was about 77 parts per billion (ppb) and ranged from 3 ppb to 590 ppb in individual units.<sup>7</sup>

<sup>6</sup> The Environmental Protection Agency released a draft report on June 2, 2010 that provides scientific support and rationale for the hazard and dose-response assessment pertaining to chronic inhalation exposure to formaldehyde. The draft report is available at: [http://cfpub.epa.gov/ncea/iris\\_drafts/recordisplay.cfm?deid=223614](http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=223614).

<sup>7</sup> Results of Indoor Air Quality Testing of Trailers and Mobile Homes for Formaldehyde in Mississippi

FEMA has discontinued the use of travel trailers and is phasing out the use of park models. FEMA currently purchases only manufactured homes that meet HUD's Manufactured Home Construction and Safety Standards, which include formaldehyde emission levels for plywood and particleboard materials installed in such homes. See 24 CFR 3280.308. The Formaldehyde Standards for Composite Wood Products Act, which was enacted into law on July 7, 2010, establishes limits for formaldehyde emissions from composite wood products, including hardwood plywood, medium-density fiberboard, and particleboard. See 15 U.S.C. 2697. The composite wood products formaldehyde standards in the law mirror the standards previously established by the California Air Resources Board for products sold, offered for sale, supplied, used, or manufactured for sale in California.<sup>8</sup> These developments should result in the reduction of formaldehyde levels in emergency transportable housing units, as well as other facilities.

#### *Slide-Outs*

Some emergency transportable housing units provide additional space within the unit by extending a floor and wall section to one side when the unit is installed on a site. This feature is known as a "slide-out." The advisory committee was concerned that if slide-outs are provided in emergency transportable housing units required to provide mobility features, they may not meet the existing technical provisions for floor surfaces and changes in level in 302 and 303 of the ADA and ABA Accessibility Guidelines. These provisions currently require floor surfaces to be stable, firm, and slip resistant, and changes in level to be not greater than ¼ inch vertical and ½ inch beveled on accessible routes and in accessible spaces. The slide-out joint cover and the joint between the unit floor and the slide-out floor would need to be almost flush to meet these provisions. With careful design and installation, slide-outs can meet these provisions.

Some slide-outs need to be cycled periodically for preventative maintenance. This maintenance operation could be difficult for

occupants with disabilities to perform. Committee members representing manufacturers noted that electric and hydraulic slide-outs do not need to be cycled. The committee recommended that slide outs should be allowed in emergency transportable housing units required to provide mobility features only where the manufacturer's warranty indicates that the slide-out does not need to be cycled after set-up and the floor surfaces and changes in level between floors meet the technical provisions for floor surfaces and changes in level in 302 and 303 of the ADA and ABA Accessibility Guidelines.

Slide-outs are a useful design option given the space constraints within emergency transportable housing units. Although some slide-outs need to be cycled periodically for preventative maintenance, the housing provider can perform this maintenance operation. The technical provisions for floor surfaces and changes in level in 302 and 303 of the ADA and ABA Accessibility Guidelines apply to every type of facility. It is not necessary to amend these provisions to specifically apply to emergency transportable housing units required to provide mobility features.

#### **6. Discussion of Proposed Amendments**

The proposed rule would amend the ADA and ABA Accessibility Guidelines to treat emergency transportable housing units as a subclass of residential dwelling units and would add new scoping and technical provisions for such units. The proposed rule also would amend existing scoping provisions for operable parts and platform lifts, and existing technical provisions for ramps, kitchens, and bathrooms to specifically address emergency transportable housing units.

The ADA and ABA Accessibility Guidelines consist of 10 chapters that are codified as appendices to 36 CFR part 1191. The proposed amendments to the ADA and ABA Accessibility Guidelines are discussed below under the relevant chapters of the guidelines.

*ADA Chapters 1 and 2 (Appendix B to 36 CFR Part 1191)*

*ABA Chapters 1 and 2 (Appendix C to 36 CFR Part 1191)*

ADA Chapters 1 and 2 contain application and scoping provisions for facilities covered by the ADA, and are codified in Appendix B to 36 CFR part 1191. ABA Chapters 1 and 2 contain application and scoping provisions for facilities covered by the ABA, and are codified in Appendix C to 36 CFR part 1191. The application and scoping provisions in ABA Chapters 1 and 2 are

preceded by the letter "F" to distinguish them from the application and scoping provisions in ADA Chapters 1 and 2. Because the same changes are proposed to the application and scoping provisions in ADA Chapters 1 and 2 and ABA Chapters 1 and 2, corresponding provisions in these chapters are discussed together.

#### *106.5 and F106.5 Defined Terms*

The proposed rule would add a new definition for the term "emergency transportable housing unit" in 106.5 and F106.5 to read as follows:

*Emergency Transportable Housing Unit.* A single or multiple section prefabricated structure that is transportable on a single transport vehicle and that can be set-up and installed on a temporary site in response to an emergency need for temporary housing. Such structures include, but are not limited to, travel trailers, park models, manufactured housing, and other factory-built housing. For the purposes of this document, emergency transportable housing units are considered a type of residential dwelling unit.

The proposed definition would consider emergency transportable housing units as a type of residential dwelling unit for purposes of the ADA and ABA Accessibility Guidelines. Some structures that would be included in the proposed definition such as travel trailers may not be considered residential dwelling units for other purposes. Advisory committee members representing manufacturers of recreational vehicles such as travel trailers did not want the definition to imply a permanent dwelling because of regulatory limitations on the use of the units. Recreational vehicles built on a single chassis and not larger than 400 square feet when measured at the largest horizontal projections are not subject to HUD's Manufactured Home Construction and Safety Standards if they are designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use and not for use as a permanent dwelling. See 24 CFR 3282.8. As described in the proposed definition, emergency transportable housing units are used to provide temporary housing and are not intended to be used as permanent dwellings. The units typically are installed on private home sites while residents repair permanent dwellings that were rendered uninhabitable by a disaster. State or local governments may limit the amount of time that the units can remain on a site. The proposed definition would not include larger manufactured or modular

and Louisiana, FEMA (June 2009) available at: <http://www.fema.gov/media/archives/2008/021408.shtm>.

<sup>8</sup> California Environmental Protection Agency Air Resources Board, Airborne Toxic Control Measures to Reduce Formaldehyde Emissions from Composite Wood Products, Final Regulation Order (April 18, 2008) available at: <http://www.arb.ca.gov/regact/2007/compwood07/compwood07.htm>.

homes that are transportable on multiple transport vehicles and then attached to one another in sections on a site.

#### 205 and F205 Operable Parts

These sections currently require operable parts located on accessible elements and accessible routes and in accessible rooms and spaces to comply with the technical provisions for operable parts in 309, including clear floor space, reach ranges, and operation. As discussed below, the proposed rule would revise existing Exception 3 and would add new Exceptions 9, 10, and 11 to 205.1 and F205.1.

#### Exception 3—Kitchen Countertop Electrical Outlets

The proposed rule would amend existing Exception 3 to 205.1 and F205.1 to read as follows:

*Exception 3.* Except within emergency transportable housing units required to provide mobility features complying with 809.2, where two or more outlets are provided in a kitchen above a length of counter top that is uninterrupted by a sink or appliance, one outlet shall not be required to comply with 309.

The National Electrical Code® (NEC) requires electrical outlets in kitchens to be installed every 4 feet and within 24 inches of a corner. This can result in at least one electrical outlet installed in a location above a kitchen counter top that cannot meet the technical provisions for obstructed reach ranges. To address this situation, where two or more electrical outlets are provided above a length of kitchen counter top that is uninterrupted by a sink or appliance, existing Exception 3 to 205.1 and F205.1 currently permits one of the outlets to not comply with the technical provisions for operable parts in 309.

The advisory committee recommended that all the electrical outlets provided at kitchen counter tops in emergency transportable housing units required to provide mobility features should comply with the technical provisions for operable parts in 309 since kitchens in such units typically have fewer electrical outlets than kitchens in other types of residential dwelling units. The NEC permits electrical outlets in accessible kitchens to be installed in the face of base cabinets provided the outlets are located not more than 12 inches below a counter top that extends not more than 6 inches beyond its base. Face-mounted electrical outlets enable an occupant with a disability to plug small appliances into the outlet without reaching across the counter top. The proposed rule would amend existing

Exception 3 so that it would not apply to emergency transportable housing units required to provide mobility features since face-mounted electrical outlets can be provided.

Although face-mounted electrical outlets are more accessible to individuals with disabilities who have limited reach, the outlets and electrical cords attached to appliances are also within reach of small children and can pose a safety hazard. For this reason, face-mounted electrical outlets typically are not provided. The Access Board may reconsider the proposed amendments to existing Exception 3 to 205.1 and F205.1.

*Question 2.* Should the proposed amendments to existing Exception 3 to 205.1 and F205.1 be reconsidered?

#### Exception 9—Operable Parts in Residential Dwelling Units and Guest Rooms Not Required To Provide Mobility Features

The proposed rule would add a new Exception 9 to 205.1 and F205.1 to read as follows:

*Exception 9.* Operable parts located within residential dwelling units not required to provide mobility features complying with 809.2 and transient lodging guest rooms not required to provide mobility features complying with 806.2 shall not be required to comply with 309.

The proposed new exception would clarify that the technical provisions for operable parts in 309 do not apply to residential dwelling units and transient lodging guest rooms that are not required to provide mobility features. Thus, residential dwelling units and transient lodging guest rooms required to provide communications features would not be required to comply with the technical provisions for operable parts in 309.

#### Exception 10—Controls Beneath the Body of an Emergency Transportable Housing Unit

The proposed rule would add a new Exception 10 to 205.1 and F205.1 to read as follows:

*Exception 10.* In emergency transportable housing units required to provide mobility features complying with 809.2, controls located beneath the unit body shall not be required to comply with 309.

The proposed new exception would exempt controls located beneath the body of emergency transportable housing units required to provide mobility features from the technical provisions for operable parts in 309. These controls are typically for maintenance purposes and would be

operated by personnel servicing the unit.

#### Exception 11—Water Shut-Off Valves

The proposed rule would add a new Exception 11 to 205.1 and F205.1 to read as follows:

*Exception 11.* In emergency transportable housing units required to provide mobility features complying with 809.2, water shut-off valves shall not be required to comply with 309 where a single shut-off valve complying with 309.2 and 309.3 is provided for the entire unit.

Space constraints in emergency transportable housing units can limit access to water shut-off valves in kitchens and bathrooms. The proposed new exception would permit a single shut-off valve that complies with the technical provisions for clear floor space in 309.2 and reach ranges in 309.3 to be provided in emergency transportable housing units required to provide mobility features.

*Question 3.* Can water shut-off valves comply with the technical provisions in 309.4 for operating forces not exceeding five pounds and one handed operation without tight grasping, pinching, or twisting of the wrist? If water shut-off valves cannot comply with the technical provisions in 309.4, should they be exempted from complying with the technical provisions for clear floor space in 309.2 and reach ranges in 309.3? Are there other controls typically provided within emergency transportable housing units that cannot comply with any of the technical provisions for operable parts in 309?

#### 206.7 and F206.7 Platform Lifts

These sections currently permit platform lifts to be used as a component of an accessible route in new construction in certain situations.

The proposed rule would amend these sections to read as follows:

*206.7 Platform Lifts.* Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an accessible route in new construction in accordance with 206.7. Platform lifts shall be permitted as a component of an accessible route in an existing building or facility. In emergency transportable housing units, platform lifts shall not be used at the primary entrance to a unit required to provide mobility features complying with 809.2.

*F206.7 Platform Lifts.* Platform lifts shall comply with 410. Platform lifts shall be permitted as a component of an accessible route in new construction in accordance with F206.7. Platform lifts shall be permitted as a component of an accessible route in an existing building

or facility. In emergency transportable housing units, platform lifts shall not be used at the primary entrance to a unit required to provide mobility features complying with 809.2.

Emergency transportable housing units typically are installed on constrained sites, such as in driveways on private home sites while residents rebuild permanent dwellings that were rendered uninhabitable by a disaster. The floor level of the units is elevated above the ground and the units typically have one entrance that also serves as the only accessible means of escape from the unit in an emergency. Although safety standards typically require factory-built housing to provide a secondary means of escape, the secondary means of escape usually is

not accessible to occupants with mobility disabilities.

The advisory committee recommended that platform lifts should not be used at the primary entrance to emergency transportable housing units required to provide mobility features because the time needed to operate a platform lift could cause an unnecessary delay for occupants needing to evacuate the unit quickly. The proposed rule would amend 206.7 and F206.7 to not permit the use of platform lifts at the primary entrance to emergency transportable housing units required to provide mobility features.

*233 and F233 Residential Facilities*

The proposed rule would add new scoping provisions to these sections for

emergency transportable housing units required to provide mobility features and emergency transportable housing units required to provide communication features. The proposed rule also would add a new exception to the dispersion provision. When the final rule is published, the provisions in 233 and F233 would be renumbered to accommodate the new scoping provisions for emergency transportable housing units and the renumbered provisions would be referenced in other sections, as appropriate. The table below shows the proposed renumbering of the provisions in 233 and F233 for the final rule and where the provisions are located in the current guidelines.

Proposed renumbering of provisions for the final rule	Current guidelines
<b>ADA Chapter 2: Scoping Requirements</b>	
233 Residential Facilities	233 Residential Facilities
233.1 General	233.1 General
233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations	233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations
233.3 Residential Dwelling Units Provided by Entities Not Subject to HUD Section 504 Regulations	233.3 Residential Dwelling Units Provided by Entities Not Subject to HUD Section 504 Regulations
233.3.1 Residential Dwelling Units with Mobility Features	233.3.1 Minimum Number: New Construction
233.3.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units	233.3.1.1 Residential Dwelling Units with Mobility Features
233.3.1.2 Facilities Containing Emergency Transportable Housing Units	233.3.1.2 Residential Dwelling Units with Communication Features
233.3.2 Residential Dwelling Units with Communication Features	
233.3.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units	
233.3.2.2 Facilities Containing Emergency Transportable Housing Units	
233.3.3 Residential Dwelling Units for Sale	233.3.2 Residential Dwelling Units for Sale
233.3.4 Additions	233.3.3 Additions
233.3.5 Alterations	233.3.4 Alterations
233.3.5.1 Alterations to Vacated Buildings	233.3.4.1 Alterations to Vacated Buildings
233.3.5.2 Alterations to Individual Residential Dwelling Units	233.3.4.2 Alterations to Individual Residential Dwelling Units
233.3.6 Dispersion	233.3.5 Dispersion
<b>ABA Chapter 2: Scoping Requirements</b>	
F233 Residential Facilities	F233 Residential Facilities
F233.1 General	F233.1 General
F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD	F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD
F233.3 Residential Dwelling Units Provided on Military Installations	F233.3 Residential Dwelling Units Provided on Military Installations
F233.3.1 Residential Dwelling Units with Mobility Features	F233.3.1 Minimum Number: New Construction
F233.3.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units	F233.3.1.1 Residential Dwelling Units with Mobility Features
F233.3.1.2 Facilities Containing Emergency Transportable Housing Units	F233.3.1.2 Residential Dwelling Units with Communication Features
F233.3.2 Residential Dwelling Units with Communication Features	
F233.3.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units	

Proposed renumbering of provisions for the final rule	Current guidelines
F233.3.2.2 Facilities Containing Emergency Transportable Housing Units	
F233.3.3 Additions F233.3.4 Alterations F233.3.4.1 Alterations to Vacated Buildings F233.3.4.2 Alterations to Individual Residential Dwelling Units	F233.3.2 Additions F233.3.3 Alterations F233.3.3.1 Alterations to Vacated Buildings F233.3.3.2 Alterations to Individual Residential Dwelling Units
F233.3.5 Dispersion	F233.3.4 Dispersion
F233.4 Residential Dwelling Units Provided by Other Federal Agencies or Through Grant or Loan Programs Administered by Other Federal Agencies F233.4.1 Residential Dwelling Units with Mobility Features F233.4.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units F233.4.1.2 Facilities Containing Emergency Transportable Housing Units F233.4.2 Residential Dwelling Units with Communication Features F233.4.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units F233.4.2.2 Facilities Containing Emergency Transportable Housing Units	F233.4 Residential Dwelling Units Provided by Other Federal Agencies or Through Grant or Loan Programs Administered by Other Federal Agencies F233.4.1 Minimum Number: New Construction F233.4.1.1 Residential Dwelling Units with Mobility Features F233.4.1.2 Residential Dwelling Units with Communication Features
F233.4.3 Residential Dwelling Units for Sale	F233.4.2 Residential Dwelling Units for Sale
F233.4.4 Additions	F233.4.3 Additions
F233.4.5 Alterations F233.4.5.1 Alterations to Vacated Buildings F233.4.5.2 Alterations to Individual Residential Dwelling Units	F233.4.4 Alterations F233.4.4.1 Alterations to Vacated Buildings F233.4.4.2 Alterations to Individual Residential Dwelling Units
F233.4.6 Dispersion	F233.4.5 Dispersion

*Proposed Scoping Provisions for Emergency Transportable Housing Units Required To Provide Mobility Features (233.3.1, F233.3.1, and F233.4.1)*

Existing scoping provisions applicable to facilities with residential dwelling units provided by entities not subject to regulations issued by the HUD under Section 504 of the Rehabilitation Act currently require at least 5 percent of the units to provide mobility features.<sup>9</sup> Where facilities contain 15 or fewer residential dwelling units, the existing scoping provisions apply to the total number of units that are constructed under a single contract or are developed as a whole, whether or not the units are located on a common site. These scoping provisions currently apply to emergency transportable housing units.

The proposed rule would add new scoping provisions for emergency transportable housing units required to provide mobility features at:

- 233.3.1 for units covered by the ADA that are provided by entities not subject to regulations issued by HUD

<sup>9</sup> Facilities with residential dwelling units that are provided by entities subject to regulations issued by HUD under Section 504 of the Rehabilitation Act are required to provide residential dwelling units with mobility features in a number required by the applicable HUD regulations.

under Section 504 of the Rehabilitation Act;

- F233.3.1 for units covered by the ABA that are provided on military installations; and
- F233.4.1 for units covered by the ABA that are provided by federal agencies, other than HUD, or through grant or loan programs administered by federal agencies, other than HUD.

The references to these provisions are as they would be renumbered when the final rule is published.

The proposed new scoping provisions read as follows:

*233.3.1 Residential Dwelling Units With Mobility Features.* Facilities, other than those containing emergency transportable housing units, shall comply with 233.3.1.1. Facilities containing emergency transportable housing units shall comply with 233.3.1.2. Residential dwelling units required to provide mobility features complying with 809.2 shall be on an accessible route as required by 206.

*233.3.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 5 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide mobility features complying with 809.2.

*Exception:* Where facilities contain 15 or fewer residential dwelling units, the requirements of 233.3.1.1 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

*233.3.1.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency transportable housing units with mobility features complying with 809.2 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

*F233.3.1 Residential Dwelling Units With Mobility Features.* Facilities on military installations containing residential dwelling units, other than emergency transportable housing units, shall comply with F233.3.1.1. Facilities on military installations containing emergency transportable housing units shall comply with F233.3.1.2. All residential dwelling units required to provide mobility features complying with 809.2 shall be on an accessible route as required by F206.

*F233.3.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 5 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide mobility features complying with 809.2.

*F233.3.1.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency transportable housing units with mobility features complying with 809.2 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

*F233.4.1 Residential Dwelling Units With Mobility Features.* Facilities, other than those containing emergency transportable housing units, shall comply with F233.4.1.1. Facilities containing emergency transportable housing units shall comply with F233.4.1.2. Residential dwelling units required to provide mobility features complying with 809.2 shall be on an accessible route as required by F206.

*F233.4.1.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 5 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide mobility features complying with 809.2.

*Exception:* Where facilities contain 15 or fewer residential dwelling units, the requirements of F233.4.1.1 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

*F233.4.1.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency transportable housing units with mobility features complying with 809.2 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

The advisory committee recommended that 10 percent of emergency transportable housing units provided at group sites should be required to provide mobility features. Emergency transportable housing units

are more often provided at private home sites than at group sites. The committee recommended no minimum number be established for single unit installations provided at private home sites because the individual need for such units could exceed the minimum number. Instead, the committee recommended that the number of emergency transportable housing units with mobility features provided for single unit installations at private home sites should be based on individual need in accordance with regulations implementing Section 504 of the Rehabilitation Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the ADA.<sup>10</sup> These regulations prohibit discrimination on the basis of disability. Compliance with these regulations would ensure that individuals with mobility disabilities who need emergency transportable housing units with mobility features are provided such units.

The U.S. Census Bureau estimates that for the civilian noninstitutionalized population aged 5 and older living in the United States:

- 27.4 million people (11.9 percent) have difficulty with ambulatory activities of the lower body and 19.0 million people (8.2 percent) have difficulty with upper body physical tasks;
- 8.5 million people (3.7 percent) have difficulty performing one or more activities of daily living such as getting around inside the home, getting into or out of bed, taking a bath or shower, getting to or using the toilet, dressing, and eating; and
- 3.3 million (1.4 percent) used a wheelchair or other wheeled mobility device and 10.2 million (4.4 percent) used a cane, crutches, or walker to assist with mobility.<sup>11</sup>

The rate of physical disability varies by state and ranged from 5.9 percent in Utah to 13.5 percent in West Virginia.<sup>12</sup> FEMA's current policy is to have 20 percent of its inventory of emergency transportable housing units comply with UFAS, HUD's current accessibility standard for residential facilities. When individuals and households apply for temporary housing assistance from

<sup>10</sup> See 44 CFR part 16 for FEMA's regulations implementing Section 504 of the Rehabilitation Act; 44 CFR part 200 for FEMA's regulations implementing the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and 28 CFR parts 35 and 36 for DOJ's regulations implementing Titles II and III of the ADA.

<sup>11</sup> U.S. Census Bureau, Americans with Disabilities:2005 (Issued December 2008) available at: <http://www.census.gov/prod/2008pubs/p70-117.pdf>.

<sup>12</sup> U. S. Census Bureau, Disability Status: 2000 (Issued March 2003) available at: <http://www.census.gov/prod/2003pubs/c2kbr-17.pdf>.

FEMA, their needs are assessed and they are assigned emergency transportable housing units based on their assessed needs. The percentage of UFAS units that FEMA provides varies widely from disaster to disaster based on assessed needs.

To allow for flexibility to provide emergency transportable housing units with mobility features based on the assessed needs of applicants, the proposed rule adopts the approach recommended by the advisory committee for single unit installations at private home sites to group sites also. The proposed new scoping provisions would require that emergency transportable housing units with mobility features be provided in accordance with regulations implementing Section 504 of the Rehabilitation Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the ADA.

*Proposed Scoping Provisions for Emergency Transportable Housing Units Required To Provide Communication Features (F233.3.2, F233.3.2, and F233.4.2)*

Existing scoping provisions applicable to facilities with residential dwelling units provided by entities not subject to regulations issued by the HUD under Section 504 of the Rehabilitation Act currently require at least 2 percent of the units to provide communication features.<sup>13</sup> Where facilities contain 15 or fewer residential dwelling units, the existing scoping provisions apply to the total number of units that are constructed under a single contract or are developed as a whole, whether or not the units are located on a common site. These scoping provisions currently apply to emergency transportable housing units.

The proposed rule would add new scoping provisions for emergency transportable housing units required to provide communication features at:

- 233.3.2 for units covered by the ADA that are provided by entities not subject to regulations issued by HUD under Section 504 of the Rehabilitation Act;
- F233.3.2 for units covered by the ABA that are provided on military installations; and
- F233.4.2 for units covered by the ABA that are provided by federal agencies, other than HUD, or through

<sup>13</sup> Facilities with residential dwelling units that are provided by entities subject to regulations issued by HUD under Section 504 of the Rehabilitation Act are required to provide residential dwelling units with communication features in a number required by the applicable HUD regulations.

grant or loan programs administered by federal agencies, other than HUD.

The references to these provisions are as they would be renumbered when the final rule is published.

The proposed new scoping provisions read as follows:

*233.3.2 Residential Dwelling Units with Communication Features.*

Facilities, other than those containing emergency transportable housing units, shall comply with 233.3.2.1. Facilities containing emergency transportable housing units shall comply with 233.3.2.2.

*233.3.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 2 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide communication features complying with 809.3.

*Exception:* Where facilities contain 15 or fewer residential dwelling units, the requirements of 233.3.2.1 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

*233.3.2.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency transportable housing units with residential dwelling unit smoke alarms complying with 809.3.1 and, where weather alert systems are provided, with weather alert systems complying with 809.3.4 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

*F233.3.2 Residential Dwelling Units With Communication Features.* Facilities on military installations, other than those containing emergency transportable housing units, shall comply with F233.3.2.1. Facilities on military installations containing emergency transportable housing units shall comply with F233.3.2.2.

*F233.3.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 2 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide communication features complying with 809.3.

*F233.3.2.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency

transportable housing units with residential dwelling unit smoke alarms complying with 809.3.1 and, where weather alert systems are provided, with weather alert systems complying with 809.3.4 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

*F233.4.2 Residential Dwelling Units With Communication Features.*

Facilities, other than those containing emergency transportable housing units, shall comply with F233.4.2.1. Facilities containing emergency transportable housing units shall comply with F233.4.2.2.

*F233.4.2.1 Facilities Other Than Those Containing Emergency Transportable Housing Units.* At least 2 percent, but not less than one, of the total number of residential dwelling units, other than emergency transportable housing units, in the facility shall provide communication features complying with 809.3.

*Exception:* Where facilities contain 15 or fewer residential dwelling units, the requirements of F233.4.2.1 shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

*F233.4.2.2 Facilities Containing Emergency Transportable Housing Units.* Entities shall provide emergency transportable housing units with residential dwelling unit smoke alarms complying with 809.3.1 and, where weather alert systems are provided, with weather alert systems complying with 809.3.4 in accordance with applicable regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended; the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended; and the Americans with Disabilities Act of 1990, as amended.

The proposed new scoping provisions for emergency transportable housing required to provide communication features are the same as the proposed new scoping provisions for emergency transportable housing units required to provide mobility features. The proposed new scoping provisions would require that emergency transportable housing units with communication features be provided in accordance with regulations implementing Section 504 of the Rehabilitation Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the ADA.

The proposed new scoping provisions would require visible smoke alarms in emergency transportable housing units required to provide communication features. FEMA currently provides visible smoke alarms in all its emergency transportable housing units. FEMA can exceed the proposed new scoping provisions. Where weather alert systems are provided in emergency transportable housing units required to provide communication features, the proposed new scoping provisions would require the systems to provide both audible and visible output. FEMA currently provides weather alert systems in all its emergency transportable housing units, and the systems provide both audible and visible output. As noted above, FEMA can exceed the proposed new scoping provisions.

*233.3.6, F233.3.5, and F233.4.6 Dispersion*

The proposed rule would add a new exception to the dispersion provisions in 233.3.6, F233.3.5, and F233.4.6 for emergency transportable housing units required to provide mobility features and emergency transportable housing units required to provide communication features. The references to the dispersion provisions in 233.3.6, F233.3.5, and F233.4.6 are as they would be renumbered when the final rule is published.

The proposed new exception to the dispersion provisions in 233.3.6, F233.3.5, and F233.4.6 read as follows:

*Exception 2.* Emergency transportable housing units required to provide mobility features complying with 809.2 shall not be required to be dispersed among the various types of residential dwelling units in a facility or to provide choices of residential dwelling units comparable to those available to other residents.

Residential dwelling units required to provide mobility features and residential dwelling units required to provide communication features currently are required to be dispersed among the various types of residential dwelling units in a facility to provide choices comparable to, and integrated with, units available to other residents. Since emergency transportable housing units with mobility features and emergency transportable housing units with communication features are provided to applicants based on their assessed needs, it is not necessary to require comparable choices of units at each facility. If two or three bedroom units with mobility features are not needed at a particular group site, they should not be provided at that site but should be provided at other group sites

or private home sites where they are needed.

The proposed rule would add a new exception to the dispersion provisions in 233.3.6, F233.3.5, and F233.4.6 that would not require emergency transportable housing units required to provide mobility features and emergency transportable housing units required to provide communication features to be dispersed among the various types of residential dwelling units in a facility. Emergency transportable housing units required to provide mobility features and emergency transportable housing units required to provide communication features would be required to be integrated with other units in a facility so individuals with disabilities and their families are not isolated or segregated at group sites.

*Chapters 4, 6, and 8 (Appendix D to 36 CFR Part 1191)*

Chapters 3 through 10 contain technical provisions for facilities covered by the ADA and ABA, and are codified in Appendix D to 36 CFR part 1191. As discussed below, the proposed rule would amend existing provisions in Chapters 4, 6, and 8 and also would add new provisions to these chapters.

#### *Advisory 404.2.5 Thresholds*

The proposed rule would add a new advisory note to 404.2.5 to read as follows:

*Advisory 404.2.5 Thresholds.* Some doors, particularly entrance doors to emergency transportable housing units, include a lip on the bottom edge of the face of the door. This design may result in a ramp landing positioned more than the allowable 1/2-inch maximum below the threshold.

The existing technical provisions in 404.2.5 currently require thresholds at doorways to be 1/2-inch high maximum and changes in level between 1/4-inch high minimum and 1/2-inch high maximum to be beveled with a slope not steeper than 1:2. Entry doors on smaller emergency transportable housing units typically have a lip that extends approximately 5/8-inch to 3/4-inch below the bottom edge of the door face. Ramps installed to provide an accessible route to the entry door typically are made from exterior grade wood that will warp over time. The ramp landing needs to be positioned below the door lip so the door can operate freely without binding against the landing surface. This can result in changes in level between the ramp landing and the entry doorway that exceed the 1/2-inch maximum threshold height by one inch.

The advisory committee recommended adding a new advisory note to 404.2.5 to address this situation. The proposed new advisory note would indicate that entry doors with a lip on the bottom edge of the door face may result in exceeding the 1/2-inch maximum threshold height. Larger emergency transportable housing units typically use entry doors more common to residential construction that meet the 1/2-inch maximum threshold height.

#### *405.2 Slope and 405.6 Rise (Ramp Runs)*

The proposed rule would add a new exception to the technical provision for the slope of ramp runs in 405.2 to read as follows:

*Exception 2.* In emergency transportable housing units, where existing physical or site constraints prohibit the installation of an entry ramp complying with 405.2, ramps shall be permitted to provide a single ramp run with a slope no steeper than 1:10 provided that the maximum rise of all ramp runs serving the unit entrance is not greater than 36 inches (915 mm) and one of the following conditions is met:

- (a) The emergency transportable housing unit is located on a site containing a private home for the use of the occupant of the private home; or
- (b) The emergency transportable housing unit is located on a privately-owned residential site that is designed for the later installation of a dwelling unit for the use of the owner of the site.

The proposed rule also would add a new exception to the technical provision for the rise of ramp runs in 405.6 to read as follows:

*Exception:* In emergency transportable housing units, where existing physical or site constraints prohibit the installation of an entry ramp complying with 405.6, ramps shall be permitted to provide a single ramp run with a rise 36 inches (915 mm) maximum provided that the one of the following conditions is met:

- (a) The emergency transportable housing unit is located on a site containing a private home for the use of the occupant of the private home; or
- (b) The emergency transportable housing unit is located on a privately-owned residential site that is designed for the later installation of a dwelling unit for the use of the owner of the site.

Persons whose homes have been rendered uninhabitable by a disaster prefer to have emergency transportable housing units provided on their private home sites so they can protect their property, supervise the reconstruction of their homes, and maintain relationships within their community.

Federal, state, and local laws require the tires to remain on emergency transportable housing units and the floor level is typically elevated 36 inches above the ground. Entry ramps are installed at emergency transportable housing units with mobility features and the entry ramps cannot encroach on adjacent sites or public rights-of-way where the units are provided at private home sites. An entry ramp that complies with the technical provisions for ramp run slope in 405.2 (1:12 maximum) and ramp run rise in 405.6 (30 inches maximum) needs at least two ramp runs and an intermediate landing between the ramp runs. The landing would be approximately 18 square feet, and 40 square feet if the ramp needs to change direction in order to fit on the site. The entry ramp would be approximately 158 to 180 square feet depending on the landing configuration. If sufficient space is not available on a private home site to install the entry ramp, an emergency transportable housing unit with mobility features may not be provided at the site and individuals with disabilities may be relocated to a group site.

The advisory committee recommended adding new exceptions to the technical provisions for the slope and rise of ramp runs in 405.2 and 405.6 so individuals with disabilities can have an emergency transportable housing unit with mobility features provided at their private home site while their homes are rebuilt and avoid relocation to a group site. When existing physical or site constraints on a private home site prohibits the installation of an entry ramp that meets the technical provisions for ramp slope and ramp rise in 405.2 and 405.6, the proposed new exceptions to these provisions would permit a single ramp run with a slope not steeper than 1:10 and a 36 inches maximum rise. The proposed new exceptions would result in a space savings of approximately 38 to 60 square feet, depending on the landing configuration, or about one-third of the space needed for an entry ramp that meets the technical provisions for the slope and rise of ramp runs without the proposed new exceptions.

Many individuals with disabilities have difficulty using ramps with slopes steeper than 1:12 and may find a ramp with a 1:10 slope not usable. Because individuals with disabilities have varying needs and capabilities, the concurrence of individuals with disabilities who will use the entry ramp should be obtained before applying the proposed new exceptions.

*604.5 Grab Bars (Water Closets)**607.4 Grab Bars (Bathtubs)**608.3 Grab Bars (Showers)*

These sections currently require grab bars at toilet and bathing fixtures. Existing exceptions to these sections currently permit grab bars to be omitted at the time of construction in residential dwelling units where the walls are reinforced to support the installation of grab bars when needed by an occupant with a disability.

The proposed rule would amend the existing exception to 604.5 to read as follows:

*Exception 2.* In residential dwelling units, other than emergency transportable housing units required to provide mobility features complying with 809.2, grab bars shall not be required to be installed in toilet or bathrooms provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

The proposed rule would amend the existing exception to 607.4 to read as follows:

*Exception 2.* In residential dwelling units, other than emergency transportable housing units required to provide mobility features complying with 809.2, grab bars shall not be required to be installed in bathtubs located in bathing facilities provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 607.4.

The proposed rule would amend the existing exception to 608.3 to read as follows:

*Exception 2.* In residential dwelling units, other than emergency transportable housing units required to provide mobility features complying with 809.2, grab bars shall not be required to be installed in showers located in bathing facilities provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

The existing exceptions to 604.5, 607.4, and 608.3 are intended to be used where residential dwelling units would be occupied by different persons over the life of the unit and some occupants may not need grab bars at toilet and bathing fixtures. The advisory committee recommended that these existing exceptions should not be used for emergency transportable housing units required to provide mobility features because they could result in delays in installing grab bars in the units. FEMA requires grab bars to be

installed at toilet and bathing fixtures at the time of construction in emergency transportable housing units required to provide mobility features. The proposed rule would amend the existing exceptions to 604.5, 607.4, and 608.3 so they would not apply to emergency transportable housing units required to provide mobility features.

*606.2 Clear Floor Space (Lavatories and Sinks)*

This section currently requires clear floor space with knee and toe clearance to be provided at lavatories and sinks. An existing exception to this section currently permits readily removable base cabinets and finished floors and walls to be installed beneath lavatories and sinks so the cabinets can be removed and stored when an occupant with a disability needs clear floor space with knee and toe clearance at the lavatory and sink.

The proposed rule would amend the existing exception to 606.2 to read as follows:

*Exception 3.* In residential dwelling units, other than emergency transportable housing units required to provide mobility features complying with 809.2, cabinetry shall be permitted under lavatories and kitchen sinks provided that all of the following conditions are met:

(a) The cabinetry can be removed without removal or replacement of the fixture;

(b) The finish floor extends under the cabinetry; and

(c) The walls behind and surrounding the cabinetry are finished.

The existing exception to 606.2 is intended to be used where residential dwelling units would be occupied by different persons over the life of the unit and some occupants may not need clear floor space with knee and toe clearance at the lavatory and sink. The advisory committee recommended that this existing exception should not be used for emergency transportable housing units required to provide mobility features because the units do have space to store the removable base cabinets. FEMA requires clear floor space with knee and toe clearance to be provided at lavatories and sinks at the time of construction in emergency transportable housing units required to provide mobility features. The proposed rule would amend the existing exception to 606.2 so it would not apply to emergency transportable housing units required to provide mobility features.

*606.4 Faucets and Water Spray Units*

This section currently requires controls for faucets to comply with the

technical provisions for operable parts in 309 and hand-operated metering faucets to remain open for at least 10 seconds.

The proposed rule would amend this section to read as follows:

*606.4 Faucets and Water Spray Units.* Controls for faucets and water spray units shall comply with 309. Hand-operated metering faucets shall remain open for 10 seconds minimum. A water spray unit shall be provided at the kitchen sink in emergency transportable housing units required to provide mobility features complying with 809.2.

The proposed rule would add a new provision for a water spray unit to be provided at the kitchen sink in emergency transportable housing units required to provide mobility features. The advisory committee recommended that a water spray unit be provided at the kitchen sink to facilitate dish washing by individuals with limited reach and dexterity because dishwashers typically are not provided in emergency transportable housing units.

*608.4 Seats (Roll-In Type Showers)*

This section currently requires folding or non-folding seats to be provided in transfer-type shower compartments, and in roll-in type showers in transient lodging guest rooms required to provide mobility features.

The proposed rule would amend this section to read as follows:

*608.4 Seats.* A folding or non-folding seat shall be provided in transfer type shower compartments. A folding seat shall be provided in roll-in type showers required in transient lodging guest rooms with mobility features complying with 806.2 and in roll-in type showers provided in emergency transportable housing units required to provide mobility features complying with 809.2. Seats shall comply with 610.

The proposed rule would add a new provision to 608.4 for a folding seat to be provided in roll-in type showers provided in emergency transportable housing units required to provide mobility features. The advisory committee recommended that a folding seat be provided in roll-in type showers provided in emergency transportable housing units required to provide mobility features since individuals with disabilities who use shower chairs for bathing may not have these mobility aids available in the aftermath of a disaster. Shower chairs are designed specifically for bathing and are not suitable for other uses. Many individuals with mobility disabilities could not use roll-in showers without a folding seat or shower chair. FEMA

currently provides a folding seat in roll-in type showers in emergency transportable housing units required to provide mobility features.

*Question 4.* Are there other building elements in addition to a water spray unit at the kitchen sink and a folding seat in a roll-in type showers that should be provided in emergency transportable housing units required to provide mobility features to facilitate independent living by individuals with disabilities who do not have the personal assistants or mobility aids that they typically depend on to perform activities of daily living in the aftermath of a disaster? Where possible, comments should include information regarding the cost of the recommended building elements.

The 2009 edition of the International Code Council American National Standard for Accessible and Usable Buildings and Facilities (ICC/ANSI A117.1) requires a folding seat in all roll-in type showers regardless of the occupancy type to facilitate use by a broader range of individuals with disabilities.

*Question 5.* Should a folding seat be required in roll-in type showers regardless of the type of occupancy? Will a folding seat improve the usability of roll-in type showers? What costs are associated with requiring a folding seat in new and altered roll-in type showers?

**804.3 Kitchen Work Surface**

This section currently requires at least one 30 inch wide section of kitchen counter space to provide a work surface that is 34 inches high maximum and has

a clear floor space with knee and toe clearance for a forward approach to the work surface.

The proposed rule would add a new exception to 804.3 to read as follows:

*Exception:* In emergency transportable housing units, a work surface complying with 804.3 shall not be required provided that the following criteria are met:

- (a) A kitchen table complying with 902 is provided within the kitchen;
- (b) All kitchen counter tops are 34 inches high maximum; and
- (c) An electrical outlet is provided at a location within reach of the table.

Kitchens in emergency transportable housing units are usually small in size in order to maximize living space and have less storage space than other types of residential dwelling units. The advisory committee was concerned that a kitchen work surface complying with 804.3 reduces the amount of available storage space in the kitchen and recommended permitting a kitchen table complying with 902 to be provided instead of a kitchen work surface complying with 804.3. The committee also was concerned that occupants who use wheelchairs would not be able to use small kitchen appliances when they are positioned parallel to the kitchen counter tops. Kitchen counter tops are typically 36 inches high, which prevents a side reach over an obstruction. Therefore, the committee also recommended that all kitchen counter tops be 34 inches high maximum and that an electrical outlet be provided within reach of the kitchen table.

*Question 6.* Would allowing the kitchen work surface complying by 804.3 to be replaced by a table complying with 902, all kitchen counter tops at 34 inches high maximum, and an electrical outlet within reach of the table result in a kitchen that is usable by individuals with disabilities? Would the proposed new exception have any cost impacts? Would the proposed new exception necessitate the installation of specialized or modified cabinetry? Would installing the counter tops at 34 inches high maximum affect the amount of usable storage currently required by 804.5 to be within the reach ranges specified in 308? Is there any reason why an electrical outlet should not be provided near a kitchen table?

**809 Residential Dwelling Units**

The proposed rule would add new technical provisions to 809 for emergency transportable housing units with mobility features and emergency transportable housing units with communication features. When the final rule is published, the provisions in 809 would be renumbered to accommodate the new technical provisions for emergency transportable housing units, and the renumbered provisions would be referenced in other sections, as appropriate. The proposed rule also would reorganize the existing technical provisions for alarms in emergency transportable housing units with communication features. The table below shows the proposed renumbering of the provisions in 809 for the final rule and where the provisions are located in the current guidelines.

Proposed renumbering of provisions for the final rule	Current guidelines
809 Residential Dwelling Units	809 Residential Dwelling Units
809.1 General	809.1 General
809.2 Residential Dwelling Units with Mobility Features	809.2 Accessible Routes
809.2.1 Accessible Routes	809.2.1 Location
809.2.1.1 Turning Space	809.2.2 Turning Space
809.2.1.2 Carpet	809.3 Kitchen
809.2.2 Kitchen	809.4 Toilet Facilities and Bathing Facilities
809.2.3 Toilet Facilities and Bathing Facilities	
809.2.4 Bedrooms in Emergency Transportable Housing Units	
809.2.4.1 Clear Floor Space	
809.2.4.2 Overlap	
809.2.4.3 Lighting Controls	
809.2.5 Weather Alert Systems	
809.3 Residential Dwelling Units with Communication Features	809.5 Residential Dwelling Units with Communication Features
809.3.1 Alarms	809.5.1 Building Fire Alarm System
809.3.1.1 Building Fire Alarm System	809.5.1.1 Alarm Appliances
809.3.1.2 Residential Dwelling Unit Smoke Alarms	809.5.1.2 Activation
	809.5.2 Residential Dwelling Unit Smoke Alarms
809.3.1.3 Activation	809.5.2.1 Activation
809.3.2 Residential Dwelling Unit Primary Entrance	809.5.3 Interconnection
809.3.2.1 Notification	809.5.4 Prohibited Use
809.3.2.2 Identification	809.5.5 Residential Dwelling Unit Primary Entrance

Proposed renumbering of provisions for the final rule	Current guidelines
809.3.3 Site, Building, or Floor Entrance	809.5.5.1 Notification
809.3.4 Weather Alert Systems	809.5.5.2 Identification
	809.5.6 Site, Building, or Floor Entrance

### 809.2 Residential Dwelling Units With Mobility Features

As discussed below, the proposed rule would add new technical provisions to 809.2 for emergency transportable housing units with mobility features. The references to these provisions are as they would be renumbered when the final rule is published.

#### 809.2.1.2 Carpet

The proposed rule would add a new provision at 809.2.1.2 to read as follows:

**809.2.1.2 Carpet.** Within emergency transportable housing units, carpet shall be prohibited on floor surfaces.

This proposed new provision would prohibit carpet in emergency transportable housing units with mobility features.

#### 809.2.4 Bedrooms in Emergency Transportable Housing Units

The proposed rule would add new provisions at 809.2.4 to read as follows:

**809.2.4 Bedrooms in Emergency Transportable Housing Units.** Bedrooms in emergency transportable housing units shall comply with 809.2.4.

**809.2.4.1 Clear Floor Space.** A clear floor space complying with 305 shall be provided on one side of a bed. The clear floor space shall be positioned for parallel approach to the side of the bed and shall be on an accessible route.

**809.2.4.2 Overlap.** Where bedrooms are less than 70 square feet, the accessible route, maneuvering clearances required at doors, and turning space shall not overlap space occupied by furniture supplied with the unit.

**809.2.4.3 Lighting Controls.** A means to control at least one source of bedroom lighting from the bed shall be provided.

These proposed new provisions would apply to bedrooms in emergency transportable housing units with mobility features. They would require clear floor space positioned for a parallel approach to be located on one side of a bed and to be on an accessible route; would prohibit required accessible routes, maneuvering clearances, and turning spaces in bedrooms less than 70 square feet from overlapping space occupied by furniture supplied with the unit; and would require a means to control at least one source of lighting from the bed.

The advisory committee recommended these proposed new provisions to address space constraints in bedrooms in emergency transportable housing units. Emergency transportable housing units typically are furnished at the factory leaving little flexibility in furniture layout. Rearranging furniture supplied with the unit to increase accessibility often is impossible because of the small size of the unit. The committee did not recommend providing clear floor space on both sides of the bed because it would unnecessarily encroach on the limited space within the bedroom. If an individual with a disability cannot transfer on the side of the bed served by the clear floor space, the furniture can be rearranged.

Existing technical provisions in 809.2 and 404.2.4 currently require all rooms in residential dwelling units served by an accessible route to have a turning space (i.e., T-Turn or 60 inch diameter circle) and all doors on accessible routes to provide maneuvering clearances. Building codes generally require residential dwelling unit bedrooms to be at least 70 square feet. However, emergency transportable housing units rarely are subject to building codes and their bedrooms may be smaller. The proposed new provisions would prohibit required accessible routes, maneuvering clearances, and turning spaces in bedrooms less than 70 square feet from overlapping space occupied by furniture supplied with the unit. With careful design of room shape, door arrangement, and furniture layout, small bedrooms can meet the proposed new provisions.

Emergency transportable housing units typically are supplied with overhead lighting controlled by a wall switch near the bedroom door. These switches currently are required to comply with the technical provisions for operable parts in 309, including reach ranges, but they usually cannot be operated from the bed and bedside lamps are rarely supplied with the unit. Providing a means to control at least one source of lighting from the bed, such as bedside lamps, wall switches near the bed, or remote control devices that can be operated from the bed, allows individuals with disabilities to transfer in and out of bed safely.

### 809.2.5 Weather Alert Systems

The proposed rule would add a new provision at 809.2.5 to read as follows:

**809.2.5 Weather Alert Systems.** Where provided in emergency transportable housing units, weather alert systems shall comply with 309.1 through 309.3.

This proposed new provision would require weather alert systems provided in emergency transportable housing units with mobility features to comply with the technical provisions for clear floor space in 309.2 and for reach ranges in 309.3. The advisory committee did not recommend that weather alert systems comply with technical provisions for operation in 309.4 because some of the controls on currently available systems require tight grasping or pinching to operate. The proposed rule does not require weather alert systems to be provided. FEMA currently provides weather alert systems that comply with the proposed new provision in all its emergency transportable housing units.

### 809.3 Residential Dwelling Units With Communication Features

The references to the provisions for residential dwelling units with communication features are as they would be renumbered when the final rule is published.

#### 809.3.1 Alarms

The proposed rule would reorganize the existing technical provisions for alarms in residential dwelling units with communication features at 809.3.1 and add a new provision on power sources in 809.3.1.2 to read as follows:

**809.3.1 Alarms.** Alarms shall comply and 809.3.1. The same visible alarm appliances shall be permitted to provide notification of building fire alarm and residential dwelling unit smoke alarm activation. Visible alarm appliances used to indicate building fire alarm or residential dwelling unit smoke alarm activation shall not be used for any other purpose within the residential dwelling unit.

**809.3.1.1 Building Fire Alarm System.** Where a building fire alarm system is provided, the system wiring shall be extended to a point within the residential dwelling unit in the vicinity of the residential dwelling unit smoke alarm system. Alarm appliances

provided within a residential dwelling unit as part of the building fire alarm system shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

**809.3.1.2 Residential Dwelling Unit Smoke Alarms.** Residential dwelling unit smoke alarms shall provide audible alarm appliances with integral visible alarms complying with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1). Smoke alarms with an integral visible notification appliance shall be supplied with power from one or more power sources as follows:

(a) A commercial light and power source along with a secondary power source; or

(b) A non-commercial alternating current (ac) power source along with a secondary power source.

**809.3.1.3 Activation.** All alarms within the residential dwelling unit providing visible notification of a building fire alarm shall be activated upon activation of the building fire alarm in the portion of the building containing the residential dwelling unit. All visible smoke alarms within the residential dwelling unit shall be activated upon smoke detection.

The proposed new provision in 809.3.1.2 would require smoke alarms with built-in visible alarms to provide either a commercial light and power source along with a secondary power source, or a non-commercial alternating current power source along with a secondary power source. Commercial light and power is generated and distributed from a central station and is the type of power provided by public utilities in most communities in the United States. Most home generators provide a non-commercial light and power source. A secondary power source can be a battery installed in the unit. The proposed provision is consistent with requirements in the National Fire Protection Association (NFPA) 72 National Fire Alarm Code, which is referenced in 809.3.1.2. The proposed new provision would apply to all types of residential dwelling units required to provide communication features, including emergency transportable housing units.

#### **809.3.4 Weather Alert Systems**

The proposed rule would add a new provision at 809.3.4 to read as follows:

**809.3.4 Weather Alert Systems.** Where provided in emergency transportable housing units, weather alert systems shall provide audible and visual output.

The proposed new provision would require weather alert systems provided in emergency transportable housing units with communication features to provide both audible and visible output. The proposed rule does not require weather alert systems to be provided. FEMA currently provides weather alert systems that comply with the proposed new provision in all its emergency transportable housing units.

#### **7. Regulatory Analyses**

Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order

*12866 (Regulatory Planning and Review): Preliminary Regulatory Assessment*

The Office of Management and Budget has reviewed this proposed rule in accordance with Executive Orders 13563 and 12866. Among other things, Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Access Board has prepared a preliminary regulatory assessment for the proposed rule. The preliminary regulatory assessment is available on the Access Board's web site at: <http://www.access-board.gov/eth/index.htm>. The benefits and costs of the proposed rule are discussed below.

#### *Benefits*

The U.S. Census Bureau estimates that for the civilian noninstitutionalized population aged 5 and older living in the United States:

- 27.4 million people (11.9 percent) have difficulty with ambulatory activities of the lower body and 19.0 million people (8.2 percent) have difficulty with upper body physical tasks;

- 8.5 million people (3.7 percent) have difficulty performing one or more activities of daily living such as getting around inside the home, getting into or out of bed, taking a bath or shower,

getting to or using the toilet, dressing, and eating;

- 3.3 million (1.4 percent) used a wheelchair or other wheeled mobility device and 10.2 million (4.4 percent) used a cane, crutches, or walker to assist with mobility; and

- 7.8 million people (3.4 percent) have difficulty hearing.<sup>14</sup>

The proposed rule seeks to ensure that newly constructed and altered emergency transportable housing units are readily accessible to and usable by this population. The Executive Summary includes a summary of the major proposed provisions that discusses the justification for and benefits of the proposed provisions for this population. These benefits are difficult or impossible to quantify.

#### *Costs*

FEMA's planning estimate is to maintain an inventory of 2,500 emergency transportable housing units ready to deploy in response to disasters. As of March 2012, FEMA had approximately 2,065 units in its inventory. FEMA's current policy is to have 20 percent of the units in its inventory comply with UFAS. FEMA periodically purchases new units to replenish its inventory.

When FEMA purchases new units, the units are constructed to FEMA's requirements. Costs are attributed to the proposed provisions if it would result in FEMA requiring newly constructed units to provide a feature that it would not otherwise require and manufacturers would incur additional costs to construct the feature that would increase the cost of the units. FEMA reviewed the proposed rule and consulted with five manufacturers to determine whether any costs would be attributed to the proposed provisions. FEMA determined that no additional costs would be attributed to the proposed provisions for emergency transportable housing units required to provide communication features since it currently requires smoke alarms with built-in visible alarms and weather alert systems with both audible and visible output in all newly constructed units.

For emergency transportable housing units required to provide mobility features, FEMA determined that costs would be attributed to the proposed provisions for kitchen counter top electrical outlets, a single water shut-off valve, a kitchen sink water spray unit, and a bedroom lighting control. FEMA's

<sup>14</sup> U.S. Census Bureau, Americans with Disabilities: 2005 (Issued December 2008) available on the web at: <http://www.census.gov/prod/2008pubs/p70-117.pdf>.

unit cost estimates for these proposed provisions are shown in the table below. No costs would be attributed to the

proposed provision for folding seats in roll-in type showers since FEMA

currently requires folding seats to be provided in roll-in type showers.

Proposed provisions	FEMA Unit cost estimates
Kitchen Counter Top Electrical Outlets Exception 3 to 205.1 and F205.1 .....	\$150–\$500
Single Water Shut-Off Valve Exception 11 to 205.1 and F205.1 .....	200–500
Kitchen Sink Water Spray Unit 606.4 .....	75
Bedroom Lighting Control 809.2.4.3 .....	60
<b>Total .....</b>	<b>485–1,135</b>

FEMA provided low and high unit cost estimates for the kitchen counter top electrical outlets. The high unit cost estimate assumes additional costs for custom made base cabinets that may be needed for electrical outlets installed in the face of the cabinets. FEMA also provided low and high unit cost estimates for the single water shut-off valve. The high unit cost estimate assumes that the units would have a sprinkler system and would need some

redesign of the plumbing system. FEMA currently does not require the units to provide a sprinkler system and the high unit cost estimate for the single water shut-off valve would apply if FEMA would require the units to provide sprinkler systems in the future.

*Question 7.* Are these cost estimates reasonable? Should compliance costs be attributed to any of the other proposed provisions and, if so, what additional

costs would be incurred due to the proposed provisions?

The number of emergency transportable housing units that FEMA deploys varies by disaster and from year to year. The number of units deployed during the four year period from 2008 to 2011 is shown in the table below. FEMA sometimes provides UFAS units to applicants who do not have a disability due to lack of inventory of other units.

**EMERGENCY TRANSPORTABLE HOUSING UNITS DEPLOYED BY FEMA**

Year	Number of disasters	Total units deployed	UFAS units	Other units	Percentage UFAS units (percent)
2008 .....	5	3,798	369	3,429	10
2009 .....	5	1,353	201	1,152	15
2010 .....	3	51	3	48	6
2011 .....	14	4,036	420	3,616	10
<b>Total .....</b>	<b>27</b>	<b>9,238</b>	<b>993</b>	<b>8,245</b>	<b>11</b>
<b>4-Year Average .....</b>	<b>7</b>	<b>2,310</b>	<b>248</b>	<b>2,061</b>	<b>11</b>

The total additional costs that FEMA would incur assuming HUD updates its accessibility standards for residential facilities to be consistent with the ADA and ABA Accessibility Guidelines, as amended by the proposed rule, are estimated under three scenarios.

*Scenario 1: 4-Year Average Deployment From 2008 to 2011*

Under this scenario, the total additional costs that FEMA would incur on an annual basis are based on the average number of emergency transportable housing units deployed by FEMA from 2008 to 2011. During this

period, FEMA deployed an average of 248 UFAS units per year. The scenario assumes that FEMA would purchase the same number of new units with mobility features annually to replenish the inventory. FEMA’s total additional annual costs under Scenario 1 are shown in the table below.

**SCENARIO 1—ADDITIONAL ANNUAL COSTS BASED ON 4-YEAR AVERAGE DEPLOYMENT FROM 2008 TO 2011**

Number of new units purchased annually with mobility features	Low estimate (\$485 per unit)	High estimate (\$1,135 per unit)
248	\$120,280	\$281,480

*Scenario 2: 20 Percent of Units in Inventory Provide Mobility Features*

Under this scenario, the total additional costs that FEMA would incur on an annual basis are based on its

planning estimate to maintain an inventory of 2,500 emergency transportable housing units and its current policy to have 20 percent of the units in the inventory comply with UFAS. The scenario assumes that FEMA

deploys the entire inventory each year and would purchase 500 new units with mobility features annually to replenish the inventory. FEMA’s total additional annual costs under Scenario 2 are shown in the table below.

## SCENARIO 2—ADDITIONAL ANNUAL COSTS BASED ON 20 PERCENT OF UNITS IN INVENTORY PROVIDE MOBILITY FEATURES

Number of new units purchased annually with mobility features	Low estimate (\$485 per unit)	High estimate (\$1,135 per unit)
500	\$242,500	\$567,500

*Scenario 3: Disasters Equivalent to Hurricanes Katrina and Rita*

Under this scenario, the total additional costs that FEMA would incur are based on disasters equivalent to Hurricanes Katrina and Rita. During Hurricanes Katrina and Rita, FEMA

deployed 145,000 emergency transportable housing units. The scenario assumes three different levels of assessed need for units with mobility features: 14,500 (10 percent), 21,700 (15 percent), and 29,000 (20 percent). FEMA's total additional costs under

Scenario 3 are shown in the table below. The costs may be incurred over more than one year depending on whether the disasters occur in the early part or late part of the year, and the manufacturing capacity and production time needed to construct large numbers of units.

## SCENARIO 3—ADDITIONAL COSTS BASED ON DISASTERS EQUIVALENT TO HURRICANES KATRINA AND RITA

Number of new units purchased with mobility features	Low estimate (\$485 per unit)	High estimate (\$1,135 per unit)
14,500	\$7,032,500	\$16,457,500
21,700	10,548,750	24,686,250
29,000	14,065,000	32,915,000

The Access Board has made a preliminary determination based on the preliminary regulatory assessment that the benefits of the proposed amendments would justify the costs; that the proposed amendments would impose the least burden on society, consistent with obtaining the regulatory objectives; and that the regulatory approach selected would maximize net benefits.

*Regulatory Flexibility Act: Certification of No Significant Impact on a Substantial Number of Small Entities*

Pursuant to Section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 605 (b)), the Access Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes FEMA to provide temporary housing assistance to individuals and households in response to a major disaster or emergency declared by the President. See 42 U.S.C. 5174 and 5192. FEMA provides emergency transportable housing units where there is a need for temporary housing and a lack of available housing resources in the affected area. A review of the Web sites of state agencies and nongovernmental organizations that provide services in response to disasters did not show that these entities currently provide emergency transportable housing units. There is no information available indicating that local or tribal governments, including small jurisdictions with a population less than 50,000, provide emergency

transportable housing units for people who need temporary housing in the aftermath of a disaster.

*Question 8.* Do any small jurisdictions with a population less than 50,000 or small nongovernmental organizations provide emergency transportable housing units for people who need temporary housing in the aftermath of a disaster?

*Executive Order 13132 (Federalism)*

The proposed rule adheres to the fundamental federalism principles and policy making criteria in Executive Order 13132. The proposed rule would amend the ADA and ABA Accessibility Guidelines to specifically address emergency transportable housing units that are provided by the Federal Emergency Management Agency or other entities on a temporary site in response to an emergency need for temporary housing. Other federal agencies are required to issue enforceable accessibility standards for the construction and alteration of facilities covered by the ADA or ABA that are consistent with the ADA and ABA Accessibility Guidelines. The ADA was enacted by Congress pursuant to its authority to enforce the Fourteenth Amendment to the U.S. Constitution and to regulate commerce. The ADA was enacted to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. See 42 U.S.C. 12101 (b) (1). The ADA recognizes the authority of State and local governments to enact and enforce laws that provide for greater or equal protection for the rights of individuals

with disabilities than are afforded by this chapter. See 42 U.S.C. 12201 (b).

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. The proposed rule would amend the ADA and ADA Accessibility Guidelines to specifically address emergency transportable housing units that are provided by the Federal Emergency Management Agency or other entities on a temporary site in response to an emergency need for temporary housing. Other federal agencies are required to issue enforceable accessibility standards for the construction and alteration of facilities covered by the ADA or ABA that are consistent with the ADA and ABA Accessibility Guidelines. Since the ADA prohibits discrimination on the basis of disability, an assessment of the rule's effect on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

**List of Subjects in 36 CFR Part 1191**

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

**Susan Brita,**

*Chair.*

[FR Doc. 2012-14811 Filed 6-15-12; 8:45 am]

**BILLING CODE 8150-01-P**