WCI has been working to provide access to information about the Americans with Disabilities Act (ADA). In addition to concerns about employment requirements that go into effect on July 26, 1992 and after (see the article “Job Analyses Help You Cope in the ADA Era” on page 31 of this issue), wall and ceiling contractors should also understand the accessibility requirements as outlined in Title III of ADA. These requirements may offer significant opportunities for contractors, since owners of “places of public accommodation” and virtually all commercial facilities will have to conform to Title III in the event of new construction or remodeling.

**Title III**

Title III “prohibits discrimination on the basis of disability by private entities in places of public accommodations and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities.” The intent of ADA is to provide persons with disabilities with accommodations and access equal to, or similar to, that of the general public.

Virtually any business that serves the public must comply with Title III, and its requirements apply to both new construction and alterations. It went into effect on January 26, 1992.

ADA is a civil rights law, not a building code. It will be enforced as other civil rights laws are enforced, not as building codes are enforced.

Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability by public accommodation and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by the Act.

**Application**

Sections of Title III of ADA apply to any public accommodation or commercial facility, defined as follows:

“Commercial facilities” are those facilities intended for nonresidential use by a private entity and whose operations affect commerce. The new construction and alteration requirements of ADA apply to all commercial facilities, whether or not they are places of public accommodation. Those commercial facilities built prior to January 26, 1993 that are not places of public accommodation are not subject to the requirements for removal of architectural barriers. All commercial facilities will be subject to the requirements of ADA if constructed for first occupancy after January 26, 1993.

“Places of public accommodation” are facilities, operated by private entities whose operations affect commerce and fall within one of the following 12 categories:

1. Places of lodging.
2. Establishments serving food or drink.
3. Places of exhibition or entertainment.
5. Sales or rental establishments.
7. Stations used for specified public transportation.
8. Places of public display or collection.
11. Social service center establishments.
12. Places of exercise or recreation.

The definitions are meant to be very broad, and the categories are intended to be broad as well. For example, “social service center establishments” include not only day care centers, senior citizen centers, homeless shelters, food banks, and adoption agencies, but also establishments such as substance abuse treatment centers, rape crisis centers, and halfway houses.

However, private clubs and religious institutions are excluded, and limitations are placed on size. For example, an establishment that contains not more than five rooms for rent or hire and is occupied by the proprietor of the establishment as the residence of the proprietor would not qualify as a “place of lodging.”

“Persons with disabilities” are defined as those individuals with physical or mental impairments that substantially limit one or more of their major life activities (or who have had a record of such impairments or are regarded as having such impairments). These impairments can include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic...
or asymptomatic), tuberculosis, drug addiction, and alcoholism. Some conditions are specifically excluded.

Both the landlord who owns a building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are subject to the requirements of parts of Title III.

Specific Requirements

A public accommodation shall remove architectural barriers in existing facilities, including communications barriers that are structural in nature, where such removal is “readily achievable,” i.e., easily accomplished and able to be carried out without much difficulty or expense. Examples of steps to remove barriers include but are not limited to the following:

1. Installing ramps.
3. Repositioning shelves.
4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
5. Repositioning telephones.
6. Adding raised markings on elevator control buttons.
7. Installing flashing alarm lights.
8. Widening doors.
9. Installing offset hinges to widen doorways.
10. Eliminating a turnstile or providing an alternative accessible path.
11. Installing accessible door hardware.
12. Installing grab bars in toilet stalls.
13. Rearranging toilet partitions to increase maneuvering space.
15. Installing a raised toilet seat.
16. Installing a full-length bathroom mirror.
17. Repositioning the paper towel dispenser in a bathroom.
19. Installing an accessible paper cup dispenser at an existing inaccessible water fountain.
20. Removing high pile, low density carpeting.
21. Installing vehicle hand controls.

Public accommodations are urged to take measures to comply with the barrier removal requirements of ADA in accordance with the following order of priorities:

1. Public access to a place of public accommodation, including entrance ramps, widening entrances, and providing accessible parking spaces.
2. Access to areas within public accommodations, such as adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.
3. Access to restroom facilities, including removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.
4. Other access requirements.
**New Construction**

Places of public accommodation or commercial facilities constructed for first occupancy after January 26, 1993, arc required to be readily accessible to and usable by individuals with disabilities. Full compliance with ADA is not required where it can be demonstrated that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

**Alterations**

Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

For the purpose of ADA enforcement, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements in structural parts or elements, and changes or rearrangements in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not alterations unless they affect the usability of the building or facility.

If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the provisions of ADA as set forth below.

An alteration that affects or could affect the usability of or access to an area of a facility that contains a “primary function” (defined as the major activity for which the facility is intended) shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

Exemptions are included in the “alterations” section. For example, elevators are not required to be installed in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses a shopping center, shopping mall, the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation, or an airline terminal.

**Enforcement**

Any person who is being subject to discrimination on the basis of disability in violation of ADA or who has reasonable grounds for believing that such person is about to be subject to discrimination may institute a civil action for preventive relief, including an application for a permanent or temporary injunction or restraining order. Remedies include an order to alter facilities to make them readily accessible to and usable by individuals with disabilities to the extent required by Title III. Injunctive relief can also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods.

The U.S. Attorney General may also initiate actions on behalf of the government. In addition to injunctive relief, the government can seek civil penalties of up to $50,000 for the first violation and up to $100,000 for any subsequent violations.

**Tax Incentives for Accessibility**

The Internal Revenue Service has provided two incentives in the tax code to help small businesses comply with their responsibilities under ADA. It may help you if you attempt to seek new business related to this area to be familiar with the tax incentives.

First is the Disabled Access Credit. It is a new tax credit for small business expenses associated with the costs of providing “reasonable accommodations” for individuals with disabilities as required under ADA.

Small businesses eligible for this tax credit are defined as:

—Those having gross earnings for the preceding tax year not exceeding $1 million; or

—Those that did not employ more than 30 full-time workers during the preced-
ing taxable year.

(employees are considered full-time if employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.)

The following are considered to be eligible access expenditures:

—The removal of architectural, communication, physical or transportation barriers which prevent a business from being accessible to or usable by individuals with disabilities.

—The provision of qualified sign language interpreters or other effective methods of making aurally delivered materials available to individuals who are hearing impaired.

—The provision of qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals who are visually impaired.

—The acquisition or modification of equipment or devices for individuals with disabilities.

—The provision of other similar services, modifications, materials or equipment.

The amount of “reasonable accommodations” credit for small businesses for any taxable year will be determined by the amount equal to 50% of the eligible access expenditure. The amount will have to exceed $250, but may not exceed $10,250 within the taxable year. the annual maximum tax credit is $5,000.

Second is the Deduction for Removal of Barriers, a $15,000 tax deduction for expenses incurred in making a facility or public transportation vehicle (owned or leased for use in trade or business) more accessible to and usable by people with disabilities and/or those who are elderly.

The maximum deduction is $15,000 and applies to:

—Individual taxpayers;
—Partnerships and to each partner.

The following expenses are deductible, but certain standards must be met for each expense:

—walks
—parking lots
—ramps
—entrances
—doors and doorways
—elevators
—controls
—markings
—rapid and light rail
—stairs
—floors
—toilet rooms
—water fountains
—public telephones
—warning signals
—rail facilities
—buses
—vehicles

In order to deduct expenses for removal of architectural and transportation barriers, claim the deduction on your income tax return for the tax year in which you paid or incurred the expenses. For further details of these tax advantages, contact your local IRS office.