**Section 400.330 Exemptions**

a) The following buildings or parts of buildings are exempted from applicability of the minimum requirements for new construction:

1) Types of Housing

A) Privately owned single and two-family residences and any sheds, storage buildings, or garages incidental thereto.

B) Privately owned apartment buildings which are not herein classified as multi-story housing units.

C) Individual dwelling units in privately owned multi-story housing units, except as required to be adaptable or accessible as defined herein.

D) Housing, owned or financed by a governmental unit, consisting of fewer than five dwelling units located on an individual site, and any sheds, storage buildings, or garages incidental thereto.

2) Elevators

Exemptions. The following areas do not have to be served by accessible passenger elevators:

A) The basement or second floor or mezzanine space of privately owned public facilities, subject to all of the following:

i) The basement functional space, second story space, or mezzanine space are each limited to 1000 net square feet or less. See definition of "functional space" (Section 400.320(b)(52) of this Part).

ii) The exempt area must consist of the following type of space:

the second story of a two-story building without a basement; or

the mezzanine of a one-story building without a basement; or

the second story of a two-story building with a basement with less than 50% functional space; or

the mezzanine of a one-story building with a basement with less than 50% functional space; or

a basement with 50% or more functional space in a one-story building.

iii) For mezzanines, see also Section 400.230(l)(4) of this Part.

iv) The exemption does not apply to areas of visitor usage or to areas of common employee usage such as locker areas, toilet facilities or lunchrooms, if these facilities are the only ones in the building.

v) The exemption also does not apply to a shopping center, shopping mall, or the professional office of a health care provider. (ADAAG 4.1.3(5))

B) Temporary raised platforms, seating tiers, theater rows, stadium rows, and auditorium rows utilizing fixed seating, provided that they comply with Section 400.320(a)(1) of this Part, and further provided that the same functions and services are available on an accessible level of the space. Elevators do not have to be provided to all levels of a multi-level platform.

C) Areas served by ramps that conform to Section 400.310(e) of this Part.

D) Areas permitted to be served by platform lifts pursuant to and in conformance with Section 400.310(h) of this Part.

The elevator exemption in this subsection (a)(2) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this Section.

3) Employee Work Areas

Areas that are used only by employees as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. Areas used only as work areas are not required to be constructed to permit maneuvering within the work area or to be constructed or equipped (i.e., with racks or shelves) to be accessible. (ADAAG 4.1.1(3))

4) Temporary Structures

Temporary buildings, structures, sites and equipment directly associated with the actual process of major construction, such as scaffolding, bridging, rigging, materials hoists or construction trailers are exempt. Temporary safe pedestrian passageways around a construction site are not exempt. (ADAAG 4.1.1(4))

b) General Exceptions

Accessibility is not required for:

1) observation galleries used primarily for security purposes; or

2) non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping, or equipment catwalks. (ADAAG 4.1.1(5)(b))

c) Structurally Impracticable

Full compliance with the requirements for new construction is not required in those rare circumstances when the unique characteristics of terrain prevent the incorporation of all required accessibility features. If full compliance is structurally impracticable, compliance shall be provided insofar as possible. Compliance with all other accessibility requirements, in any other portion of the building or facility to the extent that it is not structurally impracticable, is required. (Adapted from: ADAAG 4.1.1(5)(a))