



Safe Harbor

TM 2012-05

Effective Date: January 22, 2013
2012 TAS Reference: 106.5.57

The following clarifications are provided to address variances issued for projects constructed under the 1994 TAS and their effect on safe harbor:

1. **1994 TAS Variances.** Variances issued by the Department are only applicable to the EABPRJ construction project for which they are issued and cannot be applied to any other construction project, including, but not limited to, any project constructed on or after March 15, 2012.

In addition, information that an element or space constructed under the 1994 TAS may have been issued a variance does not mean that the element or space has been granted safe harbor.

2. **Full Compliance with 1994 TAS.** Only elements and spaces in full compliance with the 1994 TAS are eligible for safe harbor. Thus, where an element or space was constructed, renovated, altered, or modified prior to March 15, 2012 but full compliance with the 1994 TAS was not achieved; that element or space does not fall within the scope of safe harbor.**

**This determination is based on a similar commentary by the U.S. Department of Justice in the Guidance and Analysis for 28 CFR Parts 36 Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (as amended by the final rule published September 15, 2010).