

2010 Revised ADA Regulations: An Overview



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Revised ADA Rules

- Overview of revised rule.
- 2010 Standards
 - ❖ Effective/Compliance Dates
 - ❖ Safe Harbor
- Selected changes to nondiscrimination policies.

Revisions to ADA Regulations Published September 15, 2010

- First major updates/revisions in 19 years
 - ❖ Update of nondiscrimination policies
 - ❖ Adoption of updated accessibility standards
- Two regulations
 - ❖ Title II: State and local governments
 - ❖ Title III: Public accommodations and commercial facilities

Effective Date of Title II and Title III Rules

- General effective date - March 15, 2011
- As of this date, policies must be compliant with new requirements (except for hotel reservations – 18 months).

The 2010 Standards for Accessible Design:

Compliance Dates

“Existing Facility”

Safe Harbor

Supplemental Requirements

Compliance Date for 2010 Standards

- **March 15, 2012** (18 months from date of publication in the Federal Register).
 - ❖ 2010 standards must be followed for new construction, alterations, and program access.
 - ❖ Immediate use allowed.

New Construction and Alterations: Applicable Standards Until Compliance Date

Until March 15, 2012, entities can choose to use:

- ❖ the 2010 Standards;
- ❖ the 1991 Standards (no elevator exception), or
- ❖ UFAS (title II entities only).

Must follow choice consistently in a facility.

As of March 15, 2012

2010 Standards replace the 1991 Standards
and must be followed.

What Standards Apply to Existing Facilities?

- Title II — Program accessibility
- Title III — Readily achievable barrier removal

Definition of “Existing Facility”

An “existing facility” is “a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.”

Safe Harbor – Existing Facilities

- Elements that *comply* with the corresponding requirements for those elements in the 1991 Standards *do not need to be modified* to meet the 2010 Standards unless those elements are altered on or after March 15, 2012.
- Safe Harbor *does not apply* to those elements in existing facilities that are not subject to specific requirements in the 1991 Standards.

Supplemental Requirements: No Safe Harbor

- ❖ Amusement Rides;
- ❖ Recreational Boating Facilities;
- ❖ Exercise Machines and Equipment;
- ❖ Fishing Piers and Platforms;
- ❖ Golf and Miniature Golf Facilities;
- ❖ Play Areas;
- ❖ Saunas and Steam Rooms;
- ❖ Swimming Pools, Wading Pools and Spas;
- ❖ Shooting Positions with Firing Positions; and
- ❖ Miscellaneous: Team/Player Seating, Accessible Routes to Bowling Lanes and Court Sports Facilities.

Noncomplying Facilities

Noncomplying facilities, i.e., facilities built after the compliance date for the 1991 Standards, but that are **not** in compliance with those standards, must be modified as follows:

Noncomplying Facilities Continued

- **Before March 15, 2012** choice of:
 - ❖ 1991 Standards
 - ❖ 2010 Standards
 - ❖ UFAS (Title II only)
- **On or after March 15, 2012**, covered entities must bring their noncomplying facilities into compliance with the 2010 Standards.

Selected Changes to Nondiscrimination Requirements

- Service Animals;
- Mobility Devices;
- Auxiliary Aids & Effective Communication;
and
- Ticket Sales.

New Definitions

- Service Animal
- Wheelchair
- Other Power-Driven Mobility Device
- Revised definitions: Auxiliary Aids and Services and Qualified Interpreter
- New definition: Qualified Reader
- Video Remote Interpreting (VRI) Service
- Direct threat in title II (mirrors title III)

Service Animals

- Revises “service animal” definition in title III;
- Adds “service animal” definition and service animal provisions to title II; and
- Codifies a variety of the Department’s longstanding policies and interpretations regarding service animals.

Definition of “Service Animal”

Overview

- Definition can be found in § 35.104 in Title II and § 36.104 in Title III.
- The definition:
 - ❖ limits the species of service animals to dogs;
 - ❖ makes clear that comfort or emotional support animals are not covered; and
 - ❖ also makes clear that individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals.

Definition of Service Animal: Overview

“Service animal means any dog that is *individually trained* to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability... The work or tasks performed by a service animal must be *directly related* to the individual's disability...”

Revisions to the General Service Animal Provisions

- Service animal provisions can be found in § 35.136 in Title II and § 36.302 in Title III.
- Overview of changes:
 - ❖ Provides when a service animal can be excluded.
 - ❖ Requires animal to be under handler's control.
 - ❖ Provides guidance on inquiries.
 - ❖ Care and supervision.
 - ❖ Access to all areas open to public.
 - ❖ Surcharges.

Exclusion of Service Animals

- General rule is that covered entities must permit service animals. The revised rules, however, add two specific exceptions for when service animals can be excluded:
 - ❖ The animal is out of control and the handler does not take effective action to control it; or
 - ❖ The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.

“Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control (i.e., voice control, signals, or other effective means.)

Permissible Inquiries

- Only *two* inquiries may be made by covered entities:
 - ❖ Whether the animal is required because of a disability; and
 - ❖ What work or task the animal has been trained to perform.

NOTE: Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.

Miniature Horses

- Rules require reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- Rules provide assessment factors to assist entities in determining whether reasonable modifications can be made.
- Generally weigh between 70 and 100 pounds; between 24” – 34” in height.

Mobility Devices: Overview of Changes

- Adds a definition of “wheelchair.”
- Adds a definition of “other power-driven mobility device.”
- Provides a number of general provisions regarding these two categories of mobility devices.

Definition of Wheelchair

“A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.”

Use of Wheelchairs

- Covered entities must permit individuals with mobility disabilities to use wheelchairs in any area open to pedestrian use.
- Must also allow individuals with mobility disabilities to use manually-powered mobility aids (includes include walkers, crutches, canes, braces, or other similar devices) in areas open to pedestrian use.

Other Power-Driven Mobility Device (OPDMD) Defined

- “[A]ny mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion”.

Definition of “OPDMD,” Continued

Includes:

- Golf cars;
- Electronic personal assistance mobility devices (e.g., Segway[®]); or
- Any mobility device that is not a wheelchair that is designed to operate in areas without defined pedestrian routes.

Use of OPDMDs

- Covered entities must make reasonable modifications to permit individuals with mobility disabilities to use OPDMDs, unless. . .

the entity can demonstrate that the *class* of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity.

Reasonable Modifications Regarding OPDMDs

- Burden on entity to show it is not reasonable to allow OPDMD on premises or portion of premises.
- Assessment is made regarding the *class* of devices, instead of an *individual's use* of the device.

OPDMD Assessment Factors

- Covered entities must consider specific assessment factors to determine whether a reasonable modification can be made.
 - ❖ Type, size, weight, dimensions and speed of device;
 - ❖ Facility's volume of pedestrian traffic;
 - ❖ Facility's design and operational characteristics;
 - ❖ Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility;

OPDMD Assessment Factors

- ❖ Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility;
- ❖ Whether there is a substantial risk of substantial harm to immediate environment or natural or cultural resources; conflicts with Federal land management laws and regulations.

Legitimate Safety Requirements

- Described in § 35.130, new for Title II entities.
- Legitimate safety requirements necessary for the safe operation are permissible.
- Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Impermissible Questions

Entities may *not* ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

Permissible Questions

The rules allow covered entities to ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person’s disability.

Credible Assurance

- A valid, disability parking placard or card, or other State-issued proof of disability: one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements.
- In lieu of valid placard, card, or other State-issued proof of disability, verbal representation, not contradicted by observable fact, that the OPDMD is being used because of a mobility disability.

Effective Communication

- § 35.160 Title II (“Communications”)
- § 36.303 Title III (“Auxiliary Aids and Services”)
- Definition of auxiliary aids revised to include additional examples such as:
 - Accessible electronic and information technology.
 - Qualified interpreters *on-site or through video remote interpreting services.*

General Rule

- Entities must take appropriate steps to ensure that communications with individuals with disabilities are “as effective” as communications with others
- Includes providing appropriate auxiliary aids and services “where necessary”

Communication with everyone

ADA requires communication with everyone, not just “primary” communicator

- ❖ Medical: deaf spouse of hearing patient.
- ❖ Court: not just parties; also jurors, spectators.
- ❖ Anyone who would be able or eligible to communicate or participate in the activity.

Individuals with Disabilities

- Individuals who are deaf or hard of hearing;
- Individuals who are blind or have low vision;
and
- Individuals who have speech-related disabilities.

Qualified Reader

“Qualified reader” defined as “a person who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.”

Qualified Interpreter

“Qualified interpreter” defined as “An interpreter who, via video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary... include sign language interpreters, oral transliterators and cued-language transliterators”.

Revisions to Effective Communication Requirements

- Qualified reader: new definition.
- Qualified interpreter: revised definition.
- Companions with disabilities.
- Types of auxiliary aids and services that are necessary to ensure effective communication.
- Use of individuals or children as interpreters.
- Performance standards for video remote interpreting services.

Companions

- Covered entities must communicate effectively with companions with disabilities, as appropriate.
- Companion defined as “family member, friend, or associate of an individual seeking access to a service, program or activity of a public entity, who along with such individual is an appropriate person with whom the public entity should communicate.”

Types of Auxiliary Aids or Services

- Type of auxiliary aid or service will vary in accordance with:
 - ❖ Method of communication used by individual;
 - ❖ Nature, length, and complexity of communication involved; and
 - ❖ The context in which communication is taking place.
- Provide auxiliary aids in accessible formats, in timely manner, and in manner that protects privacy and independence of individual.

Video Remote Interpreting

Definition:

“An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images...”

Video Remote Interpreting Continued

DOJ standards require:

- ❖ Quality of video and audio that is high quality, clear, real-time, with clear uninterrupted images;
- ❖ Dedicated high-speed connection;
- ❖ Picture: Clear, sufficiently large, and sharply delineated, showing face, arms, hands and fingers;
- ❖ Voices: clear and easily understood transmission;
- ❖ Quick set-up and training of users.

Use of Adults Accompanying Individual With a Disability

- Public entities shall not require individual to bring own interpreter.
- Public entities shall not require adults accompanying individual to interpret except:
 - ❖ In emergency involving imminent threat to safety or welfare of individual or public and no interpreter available, or
 - ❖ Where specific request by person with disability, accompanying adult agrees, and reliance on that person is appropriate under circumstances.

Use of Children as Interpreters

Only permissible in emergency involving imminent threat to safety or welfare of an individual or the public where there is no interpreter available.

Resources

Regulations, appendices, standards are available at DOJ's ADA web site at www.ada.gov.

For answers to specific questions, DOJ toll-free ADA information line:

800-514-0301 (Voice)

800-514-0383 (TTY)

Network of ADA Centers (DBTACs): 800-949-4232
(Voice/TTY)

U.S. Access Board web site at www.access-board.gov.