

## **Changes Made to Titles II and III Regulations under the Americans with Disabilities Act**

The Department of Justice (DOJ) has amended its regulations implementing Titles II and III of the Americans with Disabilities Act (ADA), which applies to public entities. Most of the new regulations took effect on March 15, 2011. Some of these changes are summarized here with information from two DOJ Fact Sheets: *Highlights of the Final Rule to Amend the Department of Justice's Regulation Implementing Title II [and Title III] of the ADA*.

Copies of this rule and the fact sheets are available in an accessible electronic format at [www.ada.gov](http://www.ada.gov). For additional information or to order copies of any documents, call the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

### **Wheelchairs and Other Power-Driven Mobility Devices**

The final rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices." "Other power-driven mobility devices" include a range of devices not designed for individuals with mobility impairments, such as the Segway® PT, but which are often used by individuals with disabilities as their mobility device of choice. Wheelchairs must be permitted in all areas open to pedestrian use. "Other power-driven mobility devices" must also be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard. The rule also lists factors to consider in making this determination. This approach accommodates both the legitimate business interests in the safe operation of a facility and the growing use of the Segway® PT as a mobility device by returning veterans and others who are using the Segway® PT as their mobility aid of choice.

### **Ticketing**

The final rule provides guidance on the sale of tickets for accessible seating, the sale of season tickets, the hold and release of accessible seating to persons other than those who need accessible seating, ticket pricing, prevention of the fraudulent purchase of accessible seating, and the ability to purchase multiple tickets when buying accessible seating. It requires a venue operator to accommodate an individual with a disability who acquired inaccessible seating on the secondary ticket market only when there is unsold accessible seating for that event.

### **Detention and Correctional Facilities**

The final rule clarifies the requirements that apply to correctional facilities. It requires three percent of newly constructed or altered cells to be accessible. At least one of each type of general holding cells, general housing cells, medical care facilities, and visiting areas must be accessible. In addition, at least one of each type of special holding cells or special housing cells also must be accessible. Also, at least one of each type of central holding cells, court-floor holding cells, and visiting areas in a judicial facility must be accessible.

### **Judicial Facilities**

The final rule requires that each courtroom must be accessible. Jury boxes, witness stands, and jury deliberation areas must be accessible. The judge's bench and other

employee work stations must be accessible, but raised courtroom work stations are not required to provide ramps or lifts at the time of construction as long as the space has been designed to permit the future addition of a ramp or lift without substantial reconstruction.

### **Residential Housing Offered for Sale to Individual Owners**

Residential housing programs provided by Title II entities are covered by the ADA. For the first time, however, the final rule establishes design requirements for residential dwelling units designed and constructed or altered by public entities that will be offered by sale to individuals. These units must comply with the requirements for residential facilities in the 2010 Standards including section 233 and 809. This requirement also applies to housing programs where the design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.

### **Effective Communication**

The rule includes video remote interpreting (VRI) services as an example of a type of auxiliary aid that may be used to provide effective communication. VRI is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images. To ensure that VRI is effective, the Department has established performance standards for VRI and requires training for users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI system.

### **Reservations Made by Places of Lodging**

The rule establishes requirements for reservations made by places of lodging, including procedures that will allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests, and requirements that will require places of lodging to identify and describe accessible features of a guest room, to hold back the accessible guest rooms for people with disabilities until all other guest rooms of that type have been rented, and to ensure that a reserved accessible guest room is removed from all reservations systems so that it is not inadvertently released to someone other than the person who reserved the accessible room. The final rule limits the obligations of third-party reservation operators that do not themselves own and operate places of lodging. In addition, to allow the hospitality industry appropriate time to change reservation systems, the final rule gives places of lodging 18 months from the publication date of September 15, 2010, to come into compliance with these requirements.

### **Timeshares, Condominium Hotels, and Other Places of Lodging**

The rule provides that timeshare and condominium properties that operate like hotels are subject to Title III, providing guidance about the factors that must be present for a facility that is not an inn, motel, or hotel to qualify as a place of lodging. The final rule limits obligations for units that are not owned or substantially controlled by the public accommodation that operates the place of lodging. Such units are not subject to reservation requirements relating to the "holding back" of accessible units. They are also not subject to barrier removal and alterations requirements if the physical features of the

guest room interiors are controlled by their individual owners rather than by a third party operator.

**New ADA Regulations covering Service Animals** are described in the article, “The New ADA Regulations: Service Animals Go to the Dogs (and Miniature Horses)” and appear in a separate link.

### **Adoption of the 2010 ADA Standards for Accessible Design**

The Department of Justice has adopted revised ADA Design Standards that include the relevant chapters of the U.S. Access Board’s 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of this rule. To minimize compliance burdens on entities subject to more than one legal standard, these design standards have been harmonized with the Federal standards implementing the Architectural Barriers Act and with the private sector model codes that are adopted by most States.

The rule became effective on March 15, 2011. On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards, the Uniform Federal Accessibility Standards (UFAS), and the 2010 Standards. Covered entities that should have complied with the 1991 Standards or the UFAS during any new construction or alteration of facilities or elements, but have not done so by March 15, 2012, must comply with the 2010 Standards.


The rule includes a general “safe harbor” under which elements in covered facilities that were built or altered in compliance with the 1991 Standards or the UFAS would not be required to be brought into compliance with the 2010 Standards until the elements were subject to a planned alteration. Similar safe harbors were adopted for elements associated with the “path of travel” to an altered area.

### **Sources**

2010 ADA Standards for Accessible Design  
[www.ada.gov/regs2010/ADAregs2010.htm](http://www.ada.gov/regs2010/ADAregs2010.htm)

Fact Sheet: Highlights of the Final Rule to Amend the Department of Justice’s Regulation Implementing Title II of the ADA  
[www.ada.gov/regs2010/factsheets/title2\\_factsheet.html](http://www.ada.gov/regs2010/factsheets/title2_factsheet.html)

Fact Sheet: Highlights of the Final Rule to Amend the Department of Justice’s Regulation Implementing Title III of the ADA  
[www.ada.gov/regs2010/factsheets/title3\\_factsheet.html](http://www.ada.gov/regs2010/factsheets/title3_factsheet.html)

Revised ADA Requirements: Effective Date and Compliance Date  
[www.ada.gov/revised\\_effective\\_dates-2010.htm](http://www.ada.gov/revised_effective_dates-2010.htm)  
[www.ada.gov/revised\\_effective\\_dates-2010.pdf](http://www.ada.gov/revised_effective_dates-2010.pdf) (PDF 4 pages, 217 KB) 

### **Additional Resources**

Service Animals TIPS: Technical Information Perspectives and Solutions (TIPS) - October 2010, [sedbtac.org/ada/training/ServiceAnimals.doc](http://sedbtac.org/ada/training/ServiceAnimals.doc)

ADA Title II Regulations

[www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_withbold.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_withbold.htm)

ADA Title III Regulations

[www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_integrated.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_integrated.htm) □

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