

# 2010 Revised Title II and III ADA Regulations: An Overview

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## DOJ's Revised ADA Rules

- Overview of revised rule.
- 2010 Standards: Compliance Dates, "Existing Facilities", Safe Harbor, and Supplemental Requirements.
- 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).

## 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.

## 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.

## Wheelchairs and Other Power-Driven 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;

## OPDMD Assessment Factors

- ❖ Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility; and
- ❖ 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 safe operation are permissible.
  - ❖ Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

## 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.

## General Rule: Title II

"A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others."

## General Rule: Title III

“A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services....”

## 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.

## 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*.

## Other Examples. . .

Other examples of auxiliary aids and services:

- ❖ Voice, text, and video-based telecommunications products and systems.
- ❖ Braille or tactile displays.
- ❖ Screen reader software.
- ❖ Video remote interpreting (VRI).

## 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.”

## 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.

## Definition of Service Animal

(§ 35.104 in Title II and § 36.104 in Title III)

"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..."

## Definition: Species Limitation

- Service animals are now limited to one species — dogs.
- The definition provides that other animals besides dogs, whether wild or domestic, do not qualify as service animals.
- The Department's rules do not affect coverage of other animals under other laws, like the Fair Housing Act or Air Carrier Access Act.

## Definition: Do Work or Perform Tasks

- Requires that the dog be *individually trained to do work or perform tasks*.
- The work or tasks performed by a service animal must be *directly related* to the individual's disability.

## Definition: Do Work or Perform Tasks ..... Continued

- Includes a non-exhaustive list of examples of work and tasks, such as retrieving items, e.g., medicine or telephone.
- Covers individuals with psychiatric, intellectual, or other mental disability that use service animals.

Example: Helping persons with psychiatric and neurological disabilities by reminding to take medication, preventing or interrupting impulsive or destructive behaviors.

## Emotional Support Animals

- Because service animals must do work or perform tasks, emotional support and comfort animals *are not included* in the definition of service animal.
- The provision of emotional support, well-being, comfort, or companionship *do not constitute work or tasks* for the purposes of the service animal definition.

## 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.
  - ❖ 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

- Miniature horses range in weight from 70 to 100 pounds.
- Miniature horses can range in height from 24 to 34 inches.

## Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features.
- Handler has sufficient control of the horse.
- Horse must be housebroken.
- Whether the horse's presence in a specific facility compromises legitimate safety requirements.

## Ticketing: General Provisions

- Policy is not new - always been our understanding that ticketing policies are covered to provide equal opportunity.
- However, policy had never been fully articulated in one document before.
- Why?

## Who Can Purchase a Seat?

- Individuals who use wheelchairs;
- Individuals with other mobility disabilities who cannot walk for long distances (cardiac, respiratory, circulatory conditions; severe arthritis); and
- Others who require the features of accessible seat (i.e., service dog user whose dog cannot fit under a non-accessible seat or would obstruct the aisle).

## Overview of Ticketing Provisions

- **Ticket sales:** tickets for accessible seats must be sold in the same manner and under the same conditions as all other ticket sales.
- **Information about where accessible seats are located:** must provide the same information about accessible seats as provided about non-accessible seats, using the same text and visual representations.

## Ticketing Provisions – Cont'd

- **Ticket prices:** May not charge higher prices for accessible seats than for non-accessible seats in the same seating section.
- **Purchasing multiple tickets:** People purchasing an accessible seat may purchase up to three additional seats for their companions in the same row and contiguous with the accessible seat. Accessible seats may be used as companion seats.

## Ticketing Provisions – Cont'd

- **Hold and Release of tickets for accessible seating:** Unsold accessible seats may be released and sold to the general public only in three specific circumstances.
- **Ticket transfers:** An individual with a ticket for an accessible seat may transfer it to anyone, including someone who does not have a disability.

## Ticketing Provisions – Cont'd

- **Secondary ticket market:** Must allow individual with a disability who has purchased a non-accessible seat through the secondary market to exchange the ticket for a comparable accessible seat, if available. May move someone, but not required to do so.

## Ticketing Provisions – Cont'd

- **Fraud:** Venues cannot require proof of disability as a condition for purchasing tickets for accessible seats. However, venues .....
- ❖ May ask purchasers to attest to the need for the accessible seat.
- ❖ May also mark tickets to clearly identify that they are for accessible seats.
- ❖ May investigate the potential misuse of accessible seats where there is good cause to believe that seating was purchased fraudulently.

## Resources

### Department of Justice (DOJ)

Regulations, appendices, standards are available at DOJ's ADA web site at [www.ada.gov](http://www.ada.gov).

DOJ Information Line:

800-514-0301 (Voice)

800-514-0383 (TTY)

### Great Lakes ADA Center:

800-949-4232 (Voice/TTY)

[www.adagreatlakes.org](http://www.adagreatlakes.org)