

Testimony of the National Restaurant Association Regarding Proposed ADAAG Revisions

By Steven Grover, Vice President
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The National Restaurant Association, representing more than 40,000 member companies and 200,000 individual foodservice establishments appreciates the opportunity to comment on this proposed revision to the Americans with Disabilities Act Accessibility Guidelines. Our comments reflect not only our concerns for our members and their employees, but are, in some instances, in direct response to the agency's request for information.

As a leading member of the hospitality industry, restaurants have a long-standing commitment to offer a warm welcome to all customers with or without special needs. The architectural progress to build new facilities and to modify existing buildings, and to eliminate barriers for our customers has been particularly rapid in the restaurant industry given the life expectancy for new buildings, which may range from 20 to 30 years.

National Restaurant Association publications and materials have assisted hundreds of thousands of restaurants in the identification and elimination of barriers to our customers. "*A Warm Welcome*" is the title of one of our information videos on ADA and we believe it typifies the hospitality industry's attitude towards the accommodation of all customers.

While the Access Board moves forward with proposed rulemaking for an ADAAG revision, we believe that it is particularly important to consider and weigh the concerns of the industries that will ultimately bear the cost of proposed changes. The Access Board needs to be fully aware of the effect ADAAG changes have regarding regulatory benchmarks enforced by DOJ and State and local governments. Speculative or poorly justified ADAAG changes have the potential to create enormous cost and business disruptions, while not resulting in substantially improved access for special needs customers.

Clarifications and simplification of the current ADAAG definitions and dimensional benchmarks are encouraged and welcomed by the restaurant industry. Indeed, many of the proposed revisions are consistent with this concept and afford a needed measure of clarification. However, expanding ADAAG definitions and dimensional changes without substantial new information and an absolutely clear benefit to special needs individuals must be strictly avoided.

Section 203.3 Employee Work Areas.

The preamble's discussion relating to this issue is especially troubling to us: *"the advisory committee recommended that ADAAG be changed to require an accessible route to each individual work station."* This element was not incorporated into the proposal; however, we are deeply troubled that the board is considering whether to include the advisory committee's language into the final rule. We are strongly opposed to a requirement for accessible routes to each individual workstation. We challenge the appropriateness of such a requirement because state and local sanitation laws generally bar customers from restaurant kitchens; thus, restaurant kitchens and work areas are clearly not public areas. Title III of the ADA's intent was to clearly establish accessibility in areas of "public accommodation" for individuals with disabilities. To require changes in a restaurant kitchen design, therefore, is clearly a misapplication of the Title III access requirements which is more appropriately and is fully addressed under Title I of the ADA.

1. ADA, Title I appropriately requires that reasonable accommodations be made for disabled employees and allows for individual disability accommodations. Since the issue of accommodation of employees is already adequately addressed under Title I and access by the general public to restricted employee work areas is inappropriate.
2. If ADAAG requires access to individual workstations, it could be economically devastating for many small or medium restaurants and could virtually eliminate "compact restaurant kitchens." If implemented as regulation, this proposed change could require expensive, massive changes in the design of new kitchens. The massive design costs would not improve public accommodation
3. We strongly believe that the years of experience and other factors that go into safe, compact and functional kitchen designs (employee safety, public health, ventilation, traffic flow and cost efficiency) would needlessly be disrupted if this requirement were included in the new ADAAG.
4. The term "areas used only by employees as work areas" is a clear and concise term used in section 106.5, defined terms, to help define "employee work area." This term needs no clarification

The current section 4.1.1(3) is clear and provides a workable, reasonable compromise for full public access and appropriate cost effective design of restaurant kitchens, storage areas and work

areas. The Access Board should retain the existing ADAAG language regarding work areas.

Response to General Question 37 - Convenience Food Restaurants:

We understand that the Board is considering including a provision in the final rule that would require quick service restaurants to provide accessible "drive through" communications. We *strongly* believe that such a requirement would be unjustified, extremely costly to the restaurant industry and would not provide any greater access for disabled persons. The Department of Justice employed sensible judgement when requiring restaurants to accept orders at pick-up windows when the communications system is not accessible to deaf, hard of hearing or other people who are unable to use voice communication.

Response to General Question 16 - Windows:

We strongly believe that lowering the maximum sill height would inadvertently create a safety hazard in public spaces that may contain young children. The provision of the proposed ADAAG governing windows, in essence, requires that accessible windows be operable by all potential building occupants, including those with disabilities. Obviously, for a window to be in compliance for disabled persons, who use wheelchairs, the sill of operable, accessible windows must be lowered—creating a window that may now be accessible and operable by children, leading to possible accidents. Hence, we strongly recommend that this new requirement be omitted from the final rule.

The National Restaurant Association takes a great interest in the "New ADAAG" proposals, and we believe it is in our best interest to work with businesses, interest groups and government officials to remove barriers to any potential restaurant customers. We thank you for the opportunity to comment on this important proposed rulemaking.