

ADA: Proposed Accessibility Regulations

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Title III of the ADA – Public Accommodations

Certain Proposed Revisions/Technical Requirements

- Protects persons with disabilities
- Governs places of public accommodation – not employment
 - Places of public accommodation include inns, hotels, motels, other places of lodging, restaurants, bars, theaters, stadiums, convention centers, bakeries, most retailers, parks, hospitals, museums, schools, and more.
 - Also extends to education/testing.
- Title III guarantees disabled individuals the “full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation.”

Title III (con't.)

- Prohibited Activities: Denying participation or opportunity to participate; Providing unequal benefits; Providing separate benefits; Discrimination because of a relationship or association with a disabled person; Not having an integrated setting; Utilizing eligibility criteria that screen out the disabled
- Requires Modification of Policies and Procedures – unless doing so fundamentally alters goods and services provided
- Providing Auxiliary Aids and Services – to extent necessary to achieve effective communication, unless undue burden
- Barrier Removal – “readily achievable” for existing structures; different rules for new and renovated structures.

Title III : The Impact of the ADAAA

- Title III employs the same definition of disability as Title I. Therefore, the new definition of “disability” set forth in the ADAAA applies equally to Title III.
- ADAAA does not change the “undue burden” defense.

Restaurants/Concessions (Bars)

- Current Requirement – 5% of fixed tables (or a portion of a dining counter) be accessible. §5.1
- 2004 ADAAG §226.1 – at least 5% of seating spaces and standing spaces – be accessible

Issues

- Loss of tables/path of travel

- Parking
- entrances
- sales/service counters

- shelves
- tables
- restrooms

- employee workspace
- reach range
- construction tolerance

- website
- captioning
- triggering event

- city/state
- ANSI/IBC



Mobility Devices §36.311

- Power driven mobility devices:

Issues

- Safety
- Size
- Speed
- Storage

Service Animals

- Individually trained to *do work or perform tasks* for the benefit of an individual with a disability. (Emphasis added.)
- Does not include
 - wild animals (including nonhuman primates born in captivity), farm animals, reptiles, rabbits, ferrets, amphibians, rodents
 - comfort animals
- Includes
 - blind/deaf/pulling wheelchair
 - psychiatric service animals

Service Animals (cont'd)

- Further Issues
 - cannot charge extra fees/deposits
 - size/weight limitations
 - tether, lease, collar
 - cannot require special ID or certification



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Safe Harbor

§§ 36.304(d)(2) 36.403(a)(i)

- Allowed where an element in an existing facility is in compliance with the current 1991 standards.
- Modifications not necessary unless renovated.

Issues:

- ELEMENT-BY-ELEMENT
- Compliance
- Consent decrees/settlements
- Does not apply to: auxiliary aids and services policy issues

- **NO GRANDFATHERING**