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## Department of Justice Celebrates the 20th Anniversary of Americans With Disabilities Act by Overhauling Regulations Regarding Public Accommodations

Celebrating the 20th anniversary of the Americans With Disabilities Act (ADA), the Department of Justice (DOJ) announced the issuance of the [Revised ADA Regulations Implementing Title III](#) ("2010 Regulations"), which include revised ADA Accessibility Guidelines for Buildings and Facilities ("2010 Standards").

The 2010 Regulations are expected to be published any day now. The 2010 Standards take effect 18 months from the publication date, which will likely be around January 2012 ("compliance date"). Until the compliance date covered entities can choose whether to comply with the prior standards ("1991 Standards") or the 2010 Standards. A comparison of the 1991 and 2010 Standards can be found on the [DOJ website](#). The 2010 Standards, with a few exceptions, require a higher level of access for individuals with disabilities than the 1991 Standards. These revised regulations will impact all industries in a variety of ways.

The 2010 Standards contain significant changes to areas previously covered by the 1991 Standards including single user toilet rooms, reach ranges, common use circulation paths in employee work areas, fitting rooms, dispersal of accessible guest rooms, accessible parking, public entrances, urinals, sales and service counters, and detectible warnings. Additionally,

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the 2010 Regulations extend coverage to areas previously not covered including exercise facilities, fishing piers, golf and mini-golf courses, swimming pools, wading pools, spas, play areas including those in shopping centers, and saunas and steam rooms. Existing places of public accommodations, those undergoing or contemplating alterations, and those being designed or built should consider the impact that the 2010 Revisions may have on their business operations, facilities and policies.

### Safe Harbor Provision

The 2010 Regulations include a safe harbor for existing facilities that comply with the 1991 Standards as of the compliance date. Areas complying with the 1991 Standards can remain as they are until they are altered or renovated. However, all new construction, alterations and barrier removal taking place after the compliance date must comply with the 2010 Standards. Consequently, covered entities that should have complied with the 1991 Standards during any new construction or alteration of facilities or elements but have not done so as of the compliance date will have to comply with the 2010 Standards. Public accommodations and areas covered for the first time under the 2010 Standards are required to comply with those to the extent that such compliance is readily achievable.

### Service Animals

The 2010 Regulations clarify several items regarding service animals and provide that only canines qualify as service animals, with a narrow exception for the use of trained miniature horses. The Regulations require that the animals perform tasks for individuals with disabilities and do not include dogs used purely for emotional support. The Regulations specify the inquiry that public accommodation can make regarding service animals: a public accommodation may inquire whether the animal is required because of a disability and what task the animal is trained to perform unless it is readily apparent that an animal is trained to perform tasks for an individual with a disability.

### Communication

The Regulations provide that video remote interpreting (VRI) services may be used as a type of auxiliary aid for effective communication. VRI uses video conference technology and will allow industries such as the medical profession to provide services to individuals with disabilities utilizing technology.

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

The Regulations distinguish between wheelchairs and "other power-driven mobility devices" not specifically designed for individuals with disabilities but that can be used and may be preferred by such people for mobility (e.g., a Segway<sup>®</sup>). Wheelchairs must be permitted in all areas open to pedestrian use. The "other power-driven mobility devices" must be permitted to be used in public accommodations unless the facility can demonstrate that their use would fundamentally alter their programs, services or activities, create a direct threat to others or create a safety hazard.

## **Hotel Reservations**

To ensure that individuals with disabilities can reserve accessible guest rooms with the features they need and that those rooms will in fact be available upon check-in, the 2010 Regulations require a number of changes to reservation systems. Hotels must identify the accessible features of the hotel and guest room, hold back accessible rooms in each room category for use by a person with a disability until all other rooms have been rented, and ensure that once an accessible room is reserved it is removed from all reservations systems to eliminate the possibility of double booking. Hotels will likely need to evaluate and reconfigure their reservation systems in order to comply.

The Regulations also cover condominiums and timeshares, providing that individual owners of units are not required to make those units accessible under the ADA. Areas owned by the entity that owns, leases or operates the overall facilities, however, are subject to ADA barrier removal requirements.

## **Advance Notice of Proposed Rulemaking**

In addition to the 2010 Regulations, the DOJ released advance notice of proposed rulemaking for websites, equipment and furniture. The DOJ has posed questions for the public regarding its desire to issue regulations regarding websites for public accommodations. Additionally, the DOJ is obtaining public comments regarding its desire to issue accessibility standards for medical equipment, electronic information and technology equipment, exercise equipment, golf cars, beds and furniture. The comment period for both of these items is 180 days after the date the notices are published in the Federal Register. The questions can be accessed on the [DOJ website](#).

For more information on the 2010 Regulations, please

contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.



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