

CHAPTER 1: APPLICATION AND ADMINISTRATION

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101 Purpose

101.1 General. This document contains scoping and technical requirements for *accessibility* to *sites, facilities, buildings, and elements* by individuals with disabilities. The requirements are to be applied during the design, construction, *additions* to, and *alteration* of *sites, facilities, buildings, and elements* to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990 (ADA).

35.151(a) New Construction and Alterations; Design and Construction.

(1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

36.401(a) New Construction; General.

(1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.

(2) For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only -

(i) If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 26, 1992); and

(ii) If the first certificate of occupancy for the facility is issued after January 26, 1993.

Advisory 101.1 General. In addition to these requirements, covered entities must comply with the regulations issued by the Department of Justice and the Department of Transportation under the Americans with Disabilities Act. There are issues affecting individuals with disabilities which are not addressed by these requirements, but which are covered by the Department of Justice and the Department of Transportation regulations.

101.2 Effect on Removal of Barriers in Existing Facilities. This document does not address existing facilities unless *altered* at the discretion of a covered entity. The Department of Justice has authority over existing facilities that are subject to the requirement for removal of barriers under title III of the ADA. Any determination that this document applies to existing facilities subject to the barrier removal requirement is solely within the discretion of the Department of Justice and is effective only to the extent required by regulations issued by the Department of Justice.

ETA Editor's Note

While the 2010 Standards address new construction and alterations of existing facilities, the Title II and Title III regulations include a safe harbor provision for existing facilities. In addition, Title III requires removal of barriers for

existing facilities not undergoing alterations as defined in the Standards. Included below are the sections referring to safe harbor and removal of barriers.

(For more information go to <http://www.ADAsafeharbor.com>)

35.150(b) Existing Facilities; Methods

(2)(i) Safe harbor. Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101-19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(ii) The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—

(A) Residential facilities dwelling units, sections 233 and 809.

(B) Amusement rides, sections 234 and 1002; 206.2.9; 216.12.

(C) Recreational boating facilities, sections 235 and 1003; 206.2.10.

(D) Exercise machines and equipment, sections 236 and 1004; 206.2.13.

(E) Fishing piers and platforms, sections 237 and 1005; 206.2.14.

(F) Golf facilities, sections 238 and 1006; 206.2.15.

(G) Miniature golf facilities, sections 239 and 1007; 206.2.16.

(H) Play areas, sections 240 and 1008; 206.2.17.

(I) Saunas and steam rooms, sections 241 and 612.

(J) Swimming pools, wading pools, and spas, sections 242 and 1009.

(K) Shooting facilities with firing positions, sections 243 and 1010.

(L) Miscellaneous.

(1) Team or player seating, section 221.2.1.4.

(2) Accessible route to bowling lanes, section 206.2.11.

(3) Accessible route in court sports facilities, section 206.2.12.

36.304 Removal of Barriers

(a) General. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) Examples. Examples of steps to remove barriers include, but are not limited to, the following actions -

(1) Installing ramps;

(2) Making curb cuts in sidewalks and entrances;

- (3) Repositioning shelves;
- (4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- (5) Repositioning telephones;
- (6) Adding raised markings on elevator control buttons;
- (7) Installing flashing alarm lights;
- (8) Widening doors;
- (9) Installing offset hinges to widen doorways;
- (10) Eliminating a turnstile or providing an alternative accessible path;
- (11) Installing accessible door hardware;
- (12) Installing grab bars in toilet stalls;
- (13) Rearranging toilet partitions to increase maneuvering space;
- (14) Insulating lavatory pipes under sinks to prevent burns;
- (15) Installing a raised toilet seat;
- (16) Installing a full-length bathroom mirror;
- (17) Repositioning the paper towel dispenser in a bathroom;
- (18) Creating designated accessible parking spaces;
- (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- (20) Removing high pile, low density carpeting; or

(21) Installing vehicle hand controls.

(c) Priorities. A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.

(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.

(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.

(4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(d) Relationship to Alterations Requirements of Subpart D of this Part.

(1) Except as provided in paragraph (d)(3) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for