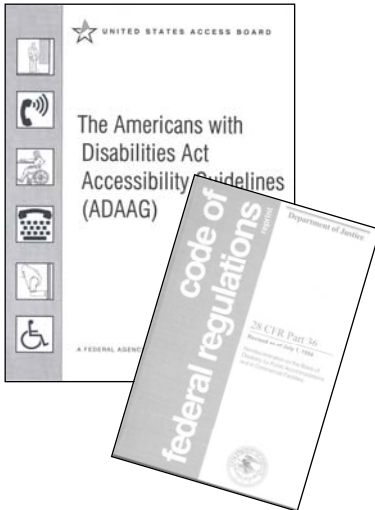




The landmark Americans with Disabilities Act (ADA), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment (title I), State and local government services (title II), public accommodations and commercial facilities (title III), and telecommunications (title IV). Both the Department of Justice and the Department of Transportation, in adopting standards for new construction and alterations of places of public accommodation and commercial facilities covered by title III and public transportation facilities covered by title II of the ADA, have issued implementing rules that incorporate the Americans with Disabilities Act Accessibility Guidelines (ADAAG), developed by the Access Board.

UNITED STATES ACCESS BOARD
A FEDERAL AGENCY COMMITTED TO ACCESSIBLE DESIGN



BULLETIN #5: USING ADAAG

What's the difference between the ADA, ADA regulations, and ADAAG?

The Americans with Disabilities Act - the ADA - is a law, passed by Congress and signed by the President in July of 1990, that prohibits discrimination on the basis of disability. To effect this prohibition, the statute required certain designated Federal agencies to develop implementing regulations, the first of which were promulgated in July of 1991. This rulemaking continues today. The regulations detail a wide range of administrative and procedural requirements, including compliance with design and construction standards; those standards are expressed in the *Americans with Disabilities Act Accessibility Guidelines: ADAAG*.

What does the ADA cover?

The Americans with Disabilities Act (Public Law 101-336), has five titles (a title is a discrete part of a larger document), each of which defines and prohibits discrimination on the basis of disability within a specific arena:

- Title I/Employment
- Title II/Public Services
 - Subtitle A covers state and local governments generally;
 - Subtitle B applies to most public transportation systems
- Title III/Public Accommodations and Services (including transportation) Operated by Private Entities
- Title IV/Telecommunications
- Title V/Miscellaneous Provisions

Strictly speaking, the titles refer to the divisions within the statute itself. However, they have come to be used as a shorthand way of discriminating between the ADA obligations of public - title II - and private - title III - entities.

The ADA generally exempts religious entities and private clubs from coverage (note that individual state or local regulations may nevertheless require accessible design in such facilities).

How is the ADA implemented?

The text of the statute - the ADA - outlines the findings that made it necessary and the purposes it is intended to achieve. In order to accomplish its objectives, however, the general and specific prohibitions of discrimination mandated by Congress in each title of the statute must be expressed in rules and regulations -

This Bulletin was developed to serve the specific needs of architects and other design professionals who must apply the ADA Accessibility Guidelines (ADAAG) to new construction and alterations projects covered by titles II and III of the ADA. It is also intended to clarify accessibility regulations generally, including those that apply to existing facilities covered by the ADA.

***PUBLIC LAW 101-336
Americans with Disabilities Act***

(a) FINDINGS.

The Congress finds that-

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older; [...]

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education,

transportation, communication, recreation, institutionalization, health service, voting, and access to public services; [...]

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; [...]

(b) PURPOSE.

It is the clear purpose of this Act-

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;*
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;*
- (3) to ensure that the Federal government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and*
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.*

terms used interchangeably here - that specify and detail its application. This rulemaking is assigned to an appropriate Federal agency in each of the substantive titles (I-IV; title V is largely administrative) of the ADA:

- Title I/Equal Employment Opportunity Commission (EEOC)
- Title II/Subtitle A/Department of Justice (DOJ)
 - Subtitle B/Department of Transportation (DOT)
- Title III/Department of Justice (DOT for vehicles)
- Title IV/Federal Communications Commission (FCC)

The DOT rule entitled *Transportation for Individuals with Disabilities* covers transportation services provided by both title II and title III entities. Title II transportation providers must look to the DOT rule for both facility, vehicle, and operational requirements; those who receive Federal monies will also be covered by DOT's implementing regulations for section 504 of the Rehabilitation Act of 1973. Incidental transportation services provided by public accommodations that are not primarily engaged in the business of transporting people is subject to DOJ's title III regulation for operations and barrier removal and to DOT's regulation for vehicles and systems.

How does ADAAG fit into the ADA regulations?

The DOJ and DOT rules describe all of the ADA obligations of covered entities arising from titles II and III of the Act. The *ADA Accessibility Guidelines (ADAAG)* were developed to guide new construction and alterations undertaken by covered entities. The guidelines establish the minimum requirements for accessibility in buildings and facilities and in transportation vehicles subject to the title II and title III regulations. When adopted by DOJ and DOT, the Access Board guidelines became the standards for accessible design under title III (title II entities may choose either ADAAG or UFAS - the *Uniform Federal Accessibility Standards* - until the Board completes title II rulemaking now underway).

Regulations implementing the general provisions of titles II and III of the ADA - including those that cover buildings and facilities, the focus of this bulletin - were published in the Federal Register (FR) on July 26, 1991 in three parts (the Part designations are Federal Register divisions only and do not relate to titles of the statute):

- Part II/Architectural and Transportation Barriers Compliance Board/36 CFR Part 1191/*Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities*; Final Guidelines (this is ADAAG);
- Part III/Department of Justice/Office of the Attorney General/28 CFR Part 36/Nondiscrimination by Public Accommodations and in Commercial Facilities; Final Rule (this is the title III regulation; subpart C contains requirements for existing facilities; subpart D covers new construction and alterations, incorporating ADAAG as Appendix A), and
- Part IV/Department of Justice/Office of the Attorney General/28 CFR Part 35/Nondiscrimination on the Basis of Disability in State and Local Government Services; Final Rule (this is the title II regulation: subpart D contains requirements for existing facilities and new construction and alterations).

Regulations implementing the transportation provisions of titles II and III of the ADA were published in the Federal Register on September 6, 1991, also in three parts:

- Part II/Architectural and Transportation Barriers Compliance Board/36 CFR 1191/ *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities*; Transportation Facilities; Amendment to Final Guidelines (this is *Section 10* of ADAAG, initially reserved in its July

[Department of Justice title III regulation: RULE]

Subpart A--General 36.101 Purpose.

The purpose of this part is to implement title III of the Americans with Disabilities Act of 1990 (42 USC 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the accessibility standards established by this part.

[Department of Justice title II regulation: RULE]

Subpart A -- General 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (42 USC 12131), which prohibits discrimination on the basis of disability by public entities.

35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA (42 USC 12141), they are not subject to the requirements of this part.

publication);

- Part III/Architectural and Transportation Barriers Compliance Board/36 CFR Part 1192/Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles; Final Guidelines (called 'vehicle guidelines' or 'ADAAG for vehicles'), and
- Part IV/Department of Transportation/49 CFR Parts 27, 37 and 38/Transportation for Individuals with Disabilities; Final Rule (this is known as the DOT rule; it incorporates ADAAG, including *Section 10* on transportation facilities and the vehicle guidelines).

How are the regulations organized?

The DOJ regulations governing title III entities have three major divisions:

- the Preamble (pps. 35544-35592) discusses the rulemaking history and contains a detailed, section-by-section analysis of the regulation, including a discussion of public comment on the proposed rule; its three-column text can be distinguished by its italicized headings;
- the Rule (pps. 35592-35604), also in three columns, but with bolded headings, contains the legal requirements that cover private sector entities. These are divided into subparts, each containing a series of sections (note that requirements for existing facilities - including barrier removal in places of public accommodation - are only covered in the regulation and not in ADAAG).
- ADAAG (pps. 35605-35691), the Access Board's *ADA Accessibility Guidelines*, is incorporated in the regulations as Appendix A - Standards for Accessible Design. Its two-column text with figures is based on ANSI A117.1-1980, the American National Standards Institute's voluntary standard for accessible buildings and facilities (text new to ADAAG, including all of the scoping provisions, is italicized).

Similarly, the DOJ title II rule contains a preamble and regulation; however, no ADAAG is appended to the document published in the Federal Register. Title II entities may elect to follow either ADAAG - excluding its elevator exceptions - or the 1984 *Uniform Federal Accessibility Standards (UFAS)* for new construction and alterations (the Department of Justice will consider removing this option when it adopts title II guidelines).

The DOT transportation rule contains a preamble and regulation as well, and incorporates ADAAG (including *Section 10. Transportation Facilities*) as Appendix A to Part 37. Appendix D contains an interpretive guide. Vehicle standards are in Part 38.

The Access Board's ADAAG, also published in the Federal Register as a stand-alone document, contains only a preamble, the guidelines, and an advisory appendix. The detailed discussion of the provisions for new construction and alterations found in its preamble will be of particular use to design professionals applying its scoping and technical requirements (copies containing the preamble are no longer being published; consult the July 26, 1991 Federal Register, available at many libraries).

How is ADAAG organized?

The guidelines contain requirements applicable to new construction and alterations. Organized into five parts, ADAAG includes:

- general information, instructions, and definitions (Sections 1 -3);
- technical specifications for accessible elements (Section 4.2 - 4.35);
- scoping provisions for new construction and alterations of sites and buildings that define when, which, and how many elements are required to be accessible (Section 4.1.1 - 4.1.7);

[Department of Justice title II regulation: RULE]
Subpart D--Program Accessibility

35.151 New construction and alterations.

(a) *Design and construction.* 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...

35.151 New construction and alterations.

[...]
(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Part 101-19.6) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at 4.1.3(5) and 4.1.6(1)(j) of ADAAG shall not apply...

[Department of Justice title III regulation: REGULATION]
Subpart D--New Construction and Alterations

36.401 New construction.

(a) *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...that are readily accessible to and usable by individuals with disabilities.

- special occupancy sections that apply additional scoping and technical provisions to certain facility types (Sections 5 - 10), and
- an advisory appendix that offers additional (non-mandatory) information on accessibility (paragraph numbers correspond to those in the guidelines, where an asterisk notes a related entry in the appendix).

Scoping provisions may require that an accessible element be provided; require accessibility of an element if any are provided; require that a minimum number or percentage of several elements of a type be accessible; or require conformance to a technical provision generally. A few scoping provisions permit limited exceptions to the general application of accessibility requirements. The special occupancy sections, though subject to sections 4.1 through 4.35, contain additional and, in some instances differing scoping and technical requirements.

Technical provisions describe the characteristics of an accessible element: the width of a door, the maneuvering clearance required to use it, mounting heights for operating hardware, etc. Some building elements - telephones are a good example - are subject to several kinds of technical provisions as a result of separate scoping provisions: some units must be installed at a height accessible to persons who use wheelchairs; some must be equipped for use by persons who are hard of hearing; others must incorporate (or support the connection of a portable) text telephone. The technical provisions specify the accessibility required in scoping.

In general, specific provisions take precedence over general requirements, and words and text over figures (although some figures may contain requirements not specified in text). Definitions (in ADAAG 3.5) do not constitute provisions and should not be read as requirements. Furniture, furnishings and equipment not fixed to building construction are not scoped or specified in ADAAG (although the DOJ and DOT rules may cover some such items). Designers are encouraged to read ADAAG in concert with the relevant regulation and preamble discussion (a chart on p. 35602 of the DOJ title III regulation simplifies cross-referencing). This is particularly important for existing facilities, whose ADA obligations may be markedly different than those applied to new construction and alterations.

How was ADAAG developed?

The responsibility to supplement existing Federal accessibility guidelines for application to titles II and III of the ADA was assigned to the Architectural and Transportation Barriers Compliance Board (the Access Board) in the statute itself. A Notice of Proposed Rulemaking (NPRM), published in the Federal Register on January 22, 1991, contained the proposed document, the *ADA Accessibility Guidelines*, modeled on the format and technical specifications of ANSI A117.1-1980 and -1986, with scoping based on that required by the existing *Uniform Federal Accessibility Standards (UFAS)*. Public input was sought during a 60-day comment period, which included a number of public hearings across the country. Several proposed provisions were modified as a result of information and data received in response to questions in the NPRM.

Proposed *Section 10 Transportation Facilities* of the guidelines was reserved at initial publication and later proposed as an amendment to ADAAG in a Supplemental Notice of Proposed Rulemaking.

Have there been any changes in ADAAG?

There have been a number of changes to the basic ADAAG since publication of the initial document in the Federal Register of July 26, 1991. Several typographical errors have been corrected and minor editorial changes made to clarify intent. Major changes to the design standards include:

- on September 6, 1991 the Board's guidelines for *Section 10*.

36.406 Standards for new construction and alterations.

(a) *New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).*

**[PUBLIC LAW 101-336 (ADA)]
Regulations by the
Architectural and
Transportation Barriers
Compliance Board.**

(a) ISSUANCE OF GUIDELINES. *The Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.*

(b) CONTENTS OF GUIDELINES. *The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.*

**[Department of Justice title II regulation:
RULE]
Subpart D--Program
Accessibility
35.149 Discrimination
prohibited.**

[...] no qualified individual with a disability shall, because a public entity facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the

Transportation Facilities and Transportation Vehicles were published as amendments (both have been adopted by DOJ and DOT as standards);

- on August 16, 1993, in a joint rulemaking with DOJ and DOT, the Board published revisions to the reach ranges for ATMs and fare vending machines to clarify that either a forward or a side approach was permissible. A table of values for reach over a horizontal obstruction was added;
- On September 28, 1998, the Board and DOT supplemented ADAAG by adding requirements for over-the-road buses. The added provisions address ramps, wheelchair lifts, and wheelchair securement devices. These supplement existing requirements, which only addressed non-structural design features such as floor surfaces, lighting, and handrails and stanchions.

The Board also has supplemented ADAAG. These supplements, however, have not yet been incorporated into the enforceable standards:

- On January 13, 1998, the Board issued a supplement to ADAAG covering state and local government facilities. This rulemaking provided provisions specific to these kinds of facilities and added new chapters on courthouses and prisons.
- On January 13, 1998, the Board published amendments to ADAAG that provide alternate specifications based on children's dimensions for certain elements such as drinking fountains, water closets, toilet stalls, lavatories and sinks, and fixed or built-in seating and tables. As originally published, ADAAG, like most other accessibility guidelines, contained specifications based only on adult dimensions.
- On October 18, 2000, the Board issued a supplement to ADAAG that covers access to play areas.
- On September 3, 2002, the Board issued a supplement to ADAAG that covers access to various types of recreation facilities.

Copies of these additional individual rulemakings are available from the Access Board.

How can I tell if I have a current edition of ADAAG?

Designers who consult the Federal Register of Friday, July 26, 1991 containing the DOJ title III regulation (28 CFR Part 36), which incorporates ADAAG as an appendix, are using the original document, which can be most easily identified by the omission of *Section 10 Transportation Facilities*. The Access Board publication of a stand-alone ADAAG in the Federal Register of the same date may be similarly identified by the absence of *Section 10*. Both documents pre-date the ADAAG changes noted above.

On July 1, 1994, DOJ published a compact edition of the title III regulation incorporating ADAAG. It contains *Section 10* and updates ATM and fare machine requirements. Minor editorial changes have been made to the text. However, this edition does not reflect the temporary suspension of certain detectable warning requirements. Its cover identifies it as a reprint from the Code of Federal Regulations.

Access Board editions of ADAAG are dated on the title page. The current publication contains - or references - all of the major changes to ADAAG that have been adopted to date.

What if there are no provisions in ADAAG for a facility type, element, or feature?

Facilities for which there are no specific ADAAG criteria are nevertheless subject to other ADA requirements, including the duty to provide equal opportunity. In

services, programs, or activities of a public entity...

**[Department of Justice title II regulation: RULE]
Subpart D--Program Accessibility**

35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not--

(1) *Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities...*

[Department of Justice title II regulation: PREAMBLE]

.... [T]his regulation adopts the program accessibility concept found in the section 504 [of the Rehabilitation Act of 1973] regulations for federally conducted programs or activities. It allowed recipients to make their federally assisted programs and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities, by offering those programs through alternative methods.

Program accessibility has proven to be a useful approach and was adopted in the regulations issued for programs and activities conducted by Federal Executive agencies.

The [ADA] provides that the concept of program access will continue to apply with respect to facilities now in existence, because the cost of retrofitting existing facilities is often prohibitive.

Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals

many cases it will be feasible to provide access by incorporating basic elements specified in ADAAG, such as ramps and other parameters of an accessible route. Where appropriate standards exist, they should be applied. Scoping may be derived from similar occupancies or uses, considering the range of experiences provided; in new construction and alterations, a reasonable number, but at least one of each type of element should be designed to be accessible.

ADAAG 2.2 *Equivalent Facilitation* also permits the use of alternative designs and technologies that provide substantially equivalent or superior access to and usability of a facility. Such innovative approaches may also be useful in providing access to facility types for which no specific standards have been written.

What about ADA requirements for existing facilities?

ADAAG was developed for new construction and alterations. Existing facilities not otherwise being altered are subject to requirements specified in the DOJ/DOT regulations, *not in the guidelines*. Title II entities must achieve program accessibility; title III entities must pursue barrier removal - or alternatives - in existing places of public accommodation. Broadly viewed, ADA implementing regulations outline a hierarchy of obligations:

- new construction must be fully accessible, in compliance with applicable provisions of ADAAG;
- alterations must observe ADAAG new construction criteria where technically feasible; less stringent technical specifications may be applied where technical infeasibility is encountered; alterations to primary function areas carry an additional obligation to improve the path of travel to the altered area;
- existing facilities must achieve a level of usability that balances user needs, the constraints of existing conditions, and the resources available for remedial work.

Thus, the highest degree of accessibility is expected in new work, when the cost of providing accessible features is nominal compared to the overall cost of construction. Alterations and additions, constrained by work already in place, may default to an intermediate standard when structural and site conditions prohibit full accessibility. Existing facilities must do the best they can with what they have, a flexibility that permits needs to be balanced against available resources.

Again, these requirements for remedial action in existing facilities are contained in the DOJ/DOT implementing regulations. There is no expectation under the ADA that existing facilities be improved to fully meet the scoping and technical standards set in ADAAG.

State and local government services are subject to a program accessibility standard (see 35.150/p. 35719 of the title II regulation and related preamble material). Existing private sector facilities that are places of public accommodation have an on-going obligation to remove barriers to use by persons with disabilities when it is readily achievable to do so (see 36.304/p. 35597 of the title III regulation and related preamble). In general, where barrier removal or program accessibility measures involve construction, ADAAG (or UFAS, if elected by title II entities) technical standards for alterations should apply as feasible. However, neither ADAAG nor UFAS contain scoping for accessibility measures taken to comply with barrier removal or program accessibility requirements in existing facilities.

How does program accessibility apply to existing facilities?

A public (title II) entity may not deny the benefits of its programs, activities, and services to persons with disabilities because its existing facilities are

with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible.

**[Department of Justice title III regulation: RULE]
Subpart C-Specific Requirements**

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.

[Department of Justice title III regulation: PREAMBLE]

Section 36.104 Definitions [...]

The final rule defines "place of public accommodation" as a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the 12 specified categories [...] represented in the statutory definition of public accommodation in section 301(7) of the ADA:

- 1. Places of lodging.*
- 2. Establishments serving food or drink.*
- 3. Places of exhibition or entertainment.*
- 4. Places of public gathering.*
- 5. Sales or rental establishments.*
- 6. Service establishments.*
- 7. Stations used for specified public transportation.*
- 8. Places of public display or collection.*
- 9. Places of recreation.*
- 10. Places of education.*
- 11. Social service center establishments.*
- 12. Places of exercise or recreation.*

inaccessible. Thus, it is the general availability of a program to persons with disabilities that must be evaluated, not compliance with facility standards developed for new construction and alterations.

While state and local governments may wish to measure the accessibility of their existing buildings against the scoping and technical provisions in ADAAG or UFAS, program accessibility may be achieved without making every existing facility - or every part of an existing building - accessible. Alternatives to building retrofit can include the temporary relocation of an activity to an accessible facility or the delivery of the service or benefit by other means. In many cases, however, permanent construction that provides physical access may be the most efficient and economical approach to program access, particularly when life cycle costs are considered.

Although physical changes are required only when there is no other feasible way to make a program accessible, public entities are nevertheless required to give priority to methods that result in the most integrated setting appropriate.

The program access obligation is limited: title II entities do not have to take actions that they can demonstrate would result in a fundamental alteration in the nature of a program or that would impose undue financial or administrative burdens.

Most state and local governments were required to prepare a self-evaluation plan to identify program access issues; from this, a transition plan was to be developed to fix items of construction that would be undertaken to achieve program accessibility. Transition plan work - except for curb ramp installation, for which DOJ has proposed an extension - was to have been completed by January 1995.

On November 29, 1995, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) proposing to extend the date by which public entities must complete the installation of curb ramps required by the title II rule. The comment period closed on March 1, 1996; DOJ has not issued a final rule.

Transportation planners should note that existing key stations in certain transportation facilities must be made accessible in accordance with requirements outlined in ADAAG 10.3.2 (see also Subpart C of the DOT rule).

How does barrier removal affect existing facilities?

Barrier removal is the private sector (title III) obligation for existing facilities. *Only those commercial facilities that are places of public accommodation must comply with this requirement* to remove physical and communications barriers to the use of existing facilities by persons with disabilities. The regulation limits barrier removal to actions that are readily achievable, that is, projects that are relatively easy and inexpensive to accomplish. The DOJ rule provides both examples of and priorities for barrier removal and specifies criteria for assessing what is readily achievable. When a public accommodation can show that barrier removal is not readily achievable, as, for instance, the addition of an elevator to serve an inaccessible story, the public accommodation must make its goods and services available by other (readily achievable) means. Such alternatives to barrier removal might include assigning assistance or providing home delivery.

Because the barrier removal obligation is a continuing one, no compliance date is set. It is anticipated that covered public accommodations will work steadily to improve access over time until the facility meets ADAAG standards for alterations.

Barrier removal is also required of public accommodations that provide

Section 36.304 Removal of Barriers [...]

In striking a balance between guaranteeing access to individuals with disabilities and recognizing the legitimate cost concerns of businesses and other private entities, the ADA establishes different standards for existing facilities and new construction.

[...]The requirement to remove architectural barriers includes the removal of physical barriers of any kind [...] when readily achievable, [including] barriers caused by the location of temporary or movable structures, such as furniture, equipment, and display racks [...]

Because the purpose of title III of the ADA is to ensure that public accommodations are accessible to their customers, clients, or patrons (as opposed to their employees, who are the focus of title I), the obligation to remove barriers under 36.304 does not extend to areas of a facility that are used exclusively as employee work areas [...]

Section 36.304(b) provides a wide-ranging list of the types of modest measures that may be taken to remove barriers and that are likely to be readily achievable...It is not an exhaustive list, but merely an illustrative one [...]

The obligation to engage in readily achievable barrier removal is a continuing one. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances.

[Department of Justice title III regulation [PREAMBLE]: Subpart E--Enforcement [...]

Section 36.501 describes the procedures for private suits by individuals and the judicial

transportation service, such as hotel shuttles, college and university campus transport, and van services provided by automobile dealers. However, lift retrofit of vehicles is not required.

What about obligations to employees?

Reasonable accommodation for employees with disabilities is covered under title I by regulations issued by the Equal Employment Opportunity Commission (EEOC); this includes employee transportation provided by public accommodations. Employee accommodations are not subject to ADAAG criteria.

Since employers must provide a reasonable accommodation to an applicant or employee with a disability, commercial facilities that are not places of public accommodation need not make general accessibility improvements to existing facilities until planned alterations or additions provide an opportunity to do so.

Who enforces ADAAG provisions?

Because the ADA is civil rights law, compliance with and enforcement of its implementing regulations, including its guidelines for new construction and alterations, is not overseen by a local building code official but is exercised through private suit or by specified Federal agencies when discrimination - or the probability of discrimination on the basis of disability - is alleged.

Most new construction and alterations projects - and work undertaken as barrier removal or to provide program accessibility, where a local building department requires a permit - will be subject to state accessibility requirements as well as those of the ADA. Almost half of US states reference the ANSI A117.1 accessibility standard in their building code. Others have developed unique codes, while a few reference UFAS. The balance have adopted ADAAG as their accessibility code and implement its requirements through state and local building code officials in the same way as other applicable building regulations are applied, reviewed, and enforced.

Several jurisdictions have submitted their building codes for review by the Department of Justice. Standards that meet or exceed the minimum accessibility requirements of title III of the ADA will be certified. To date, Washington, Texas, Maine, and Florida state building codes have been certified.

ADA/ADAAG compliance does not relieve the designer from complying with the provisions of a state or local access code or other accessibility regulation. Where such a code or document contains more stringent requirements, they must be incorporated. Conversely, adoption of ADAAG or certification of the equivalency of a state/local code will not relieve covered entities of their responsibilities to meet the accessibility standards of the ADA (or other accessibility requirements).

What about other accessibility regulations?

Most Federal buildings and federally-funded or -assisted construction are covered by the Architectural Barriers Act of 1968 (ABA), for which UFAS is the current accessibility standard. The Access Board is the compliance and enforcement agency for the ABA and provides technical assistance to Federal agencies on the application of ADAAG. Federally-funded or -assisted programs and services must also meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, for which UFAS is the referenced standard. The concept of program accessibility applied under the ADA to title II entities was first applied in regulations implementing the Rehabilitation Act.

Accessibility in multifamily residential facilities generally is covered by the Fair Housing Amendments Act of 1988 (FHAA) and its related regulations and standards; for more information, contact the Department of Housing and Urban Development at (888) 341-7781 (voice/TTY) or visit its website at www.hud.gov.

remedies available. In addition to the language in section 308(a)(1) of the Act, 36.501(a) of this part includes the language from section 204(a) of the Civil Rights Act of 1964 ...which is incorporated by reference in the ADA [...]

Section 36.501(b) ...states that injunctive relief for the failure to remove architectural barriers in existing facilities or the failure to make new construction and alterations accessible...shall include...an order to alter these facilities to make them readily accessible to and usable by persons with disabilities to the extent required by title III [...]

Section 36.503 describes the procedures for suits by the Attorney General[...]

Section 36.504 describes the relief that may be granted in a suit by the Attorney General [...]

Section 36.506...encourages use of alternative means of dispute resolution.

**[re: title II of the ADA]
Report of the House
Committee on Education and
Labor
101st Congress, 1st Session**

"It is the Committee' intent that administrative enforcement of section 202 of the [ADA] should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1073. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal

All housing constructed or altered by or on behalf of state and local governments - including single-family residences - must meet title II requirements. Since ADAAG does not yet include scoping or technical provisions for residential units, public entities should use UFAS as the accessibility standard until the Access Board completes work on title II housing guidelines. Residential design, construction, and alterations supported by Federal funds are covered by the ABA; Federally-assisted or -conducted housing programs and services are covered by the Rehabilitation Act. Both thus require conformance to UFAS accessibility provisions in new construction and alterations. Some housing projects constructed by or for state or local governments may in fact be covered by the ABA, the Rehabilitation Act, the FHAA, and the ADA; by applying the most stringent of the UFAS/FHAAG/ADAAG scoping and technical provisions, developers can satisfy new construction and alterations requirements.

Although publicly-operated airports are not subject to DOT's transportation regulation, they are covered by the DOJ title II rule. Additionally, airports that receive Federal financial assistance are covered by the ABA (for facilities designed, constructed, or altered with Federal funds) and Section 504 of the Rehabilitation Act (for Federally-assisted or -conducted programs and services). As with housing, UFAS is the generally referenced standard. Privately-operated airports are covered by subpart A of DOT's transportation regulation and by the Department of Justice title III rule as commercial facilities. Most airports also contain places of public accommodation in shops, restaurants, and similar uses. Airline operations are subject to the Air Carrier Access Act of 1986 and its implementing regulations, which include some facility provisions.

The Access Board is a member of the ANSI A117.1 Committee and shares its interest in more uniform national accessibility specifications. As ADAAG, ANSI A117.1, and state and model codes are periodically reviewed and revised, it will be possible to achieve greater consistency in provisions among the several documents a design professional must apply to new construction and alterations.

Design professionals can track regulatory actions of the Board through their professional membership organizations, trade publications, and the toll-free Access Board technical assistance line, which includes a monthly update of Board activities (see below). The Access Board also publishes a bi-monthly newsletter highlighting its research, training, technical assistance, rulemaking, and ABA enforcement activities.

Where can I get more specific assistance?

Questions about new construction and alterations under ADAAG or UFAS should be addressed to the Access Board technical assistance line at (800) 872-2253 (voice) or (800) 993-2822 (TTY). Questions may also be submitted by e-mail to ta@access-board.gov or by fax at (202) 272-0081. Information is also available on the Board's website at www.access-board.gov.

Questions about program accessibility (a title II requirement) and barrier removal (a title III obligation) in existing facilities should be directed to the Department of Justice (DOJ) ADA information line at (800) 514-0301 (voice) or (800) 514-0381 (TTY). DOJ regulations also cover other ADA obligations, including those for alternatives to barrier removal, auxiliary aids and services, modifications in policies and procedures, maintenance of accessible features, communications, and similar requirements. The Department of Justice has also published guidance material on these and other requirements of the ADA which, along with the regulations, are available on DOJ's website at www.ada.gov.

Information about and copies of the transportation regulation governing both title II and title III entities may be obtained from the Department of Transportation (DOT) at (866) 446-4511 (voice/relay) or through DOT's website at www.fta.dot.gov. For information about the requirements of the Air Carrier

agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and, where possible, resolve complaints of discrimination.

Access Act, contact DOT at (800) 778-4838 (voice) or (800) 455-9880 (TTY) or visit its website at www.dot.gov/airconsumer.

Title I (employment) issues involving reasonable accommodation and other obligations should be raised with the Equal Employment Opportunity Commission (EEOC) at (800) 669-4000 (voice) or (800) 800-3302 (TTY). Information is also available on EEOC's website at www.eeoc.gov.

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**Architectural Barriers Act of 1968 (ABA)
4152 Standards for design, construction, and alteration of buildings...**



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The Administrator of General Services, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of [federal] buildings...to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

This technical assistance is intended solely as informal guidance; it is not a determination of the legal rights or responsibilities of entities subject to the ADA.