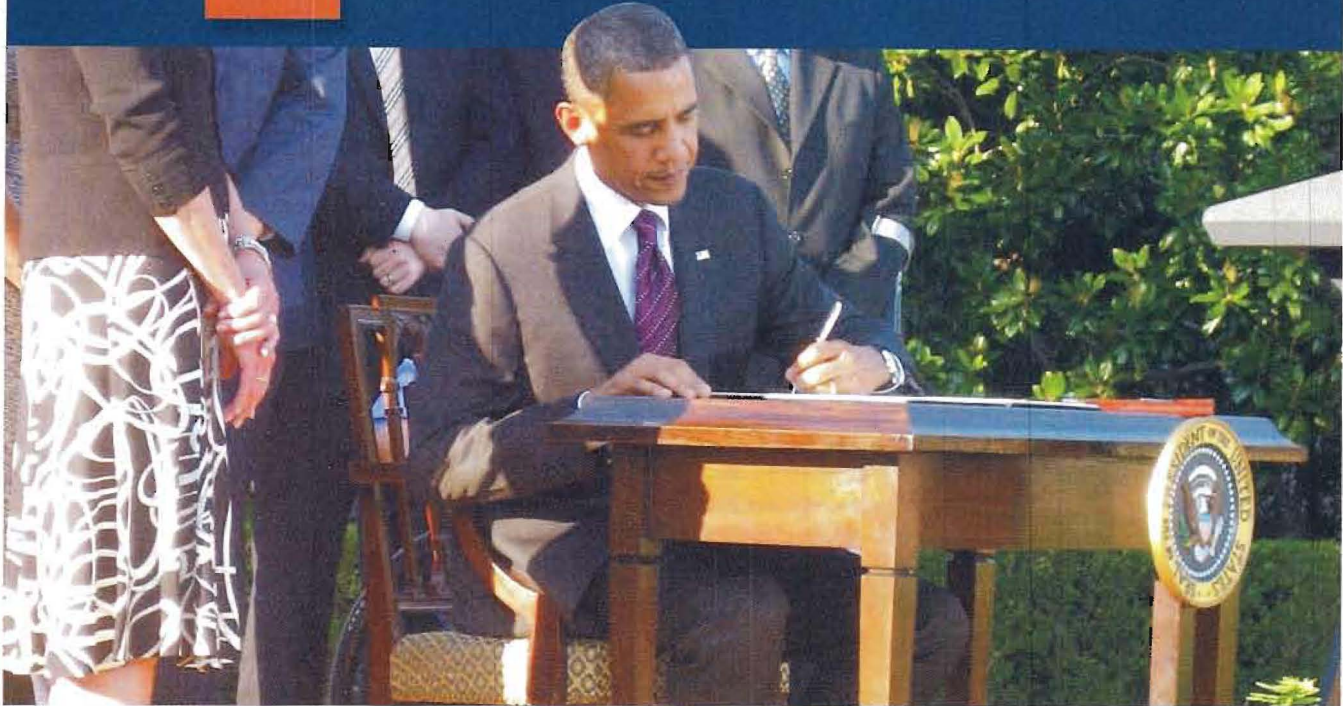


# operations



NEW ADA REGULATIONS

## Americans with Disabilities Act The Justice Department releases new regulations

By John N. McGovern, J.D.

**I**n a long-awaited move, the U.S. Department of Justice (DOJ) released new regulations to implement the Americans with Disabilities Act (ADA) on Monday, July 26, 2010. The new regulations are to be published in late July or early August in the Federal Register (see 28 CFR Part 35). These add new regulations regarding recreation environments to other long-standing building access requirements and cap a two-decades long process.

The previous regulation, published July 26, 1991, is amended by this new release. Parks and recreation officials know it as the title II regulation. Title II is the portion of the ADA that applies to states, counties, cities, and special purpose districts. This article highlights some of the key points of the new regulation, and what the regulation means for the future.

### When are the new regulations effective?

As we saw in 1991, the DOJ believes states and local governments need some time to digest the new regulation. Therefore it becomes effective six months after publication in the Federal Register, or

sometime in February of 2011. Design and construction requirements become effective one year later, in February of 2012.

### What new requirements are in the regulation?

There are several new requirements, and many have been in the works since 1993. The new requirements address design and construction, as well as policy. NRPA has been an integral part of this process since the very beginning.

From a design and construction perspective, some of the much anticipated recreation design requirements are now final and enforceable. These include requirements for boating and fishing areas, playgrounds, fitness centers, golf courses, swimming pools, shooting ranges, bowling alleys, and miniature golf. In somewhat of a surprise, DOJ adopted virtually word-for-word the work of the U.S. Access Board in developing these design guidelines.

This is accomplished by amending section 35.151 of the title II regulation. In response to comments, DOJ acknowledged that a six-month period to learn the 2010 Standard is too short.

It therefore sets it at 18 months from the date the new regulation is published in the Federal Register. That means new construction must adhere to the new 2010 Standard as of February of 2012.

Regarding typical building elements, the U.S. Access Board has reformatted old ADAAG and made it into a more user friendly (and technologically current) standard. This is now known as the 2010 Standard and must be followed in regards to design and construction.

From a policy perspective, there are several new requirements. These include a requirement in regard to power driven mobility devices, such as Segways. States and local governments cannot flatly prohibit their use and are required to adopt policies regarding any limitations on their use. Other requirements relate to service animals, and clarify the restrictions a title II entity can place on same. The regulation also permits a local government to bar certain aggressive species as service animals. Another new area is extensive discussion about ticketing of accessible seats in performance venues operated by states and local governments. These address basic sales, transfers, release of tickets, and more.

Finally, some clarification is available regarding the treatment of existing recreation facilities under the previous program access test. DOJ believes the test works fine as is, and the test remains unchanged.

## **Are any of the old requirements eliminated?**

DOJ made a point of reaffirming its satisfaction with some of the old requirements, such as the program access test. But some change did occur. In the 1991 title II regulation, every administrative complaint filed with a designated federal agency (such as complaints about a recreation agency going to the Department of Interior) was required to be investigated. DOJ now reports that due to the volume of complaints, that to investigate every complaint would have a "deleterious" impact on enforcement. The new enforcement provisions at 35.172 give

designated federal agencies such as the Department of Interior some discretion in deciding which complaints against a park district it will investigate. Additionally, look for some systemic efforts to improve compliance in targeted areas, such as parks and recreation, schools, and other municipal services. DOJ reaffirmed its intention to be aggressive about enforcement. And remember that this is a Department of Justice Civil Rights Division that saw an 18 percent budget increase this year, and added 102 new employees.

## **On the Horizon**

Design requirements for campsites, picnic areas, trails, trailheads, beaches, and viewing areas remain to be completed by the U.S. Access Board, and then adopted by the Department of Justice. There is talk of a separate requirement for multi-user trails as well. NRPA remains active, having hosted a public forum at the 2007 Congress in Indianapolis and providing extensive remarks to the U.S. Access Board.

Additionally, DOJ published an Advance Notice of Proposed Rulemaking (ANPRM) July 26. It asks about the characteristics of single rider cars and how many should be at each golf facility. The wording of this question is important, as it appears to ask about how many are necessary, not whether they are necessary. Bear in mind that the timeframe for the typical idea to NPRM-to public comment-to final regulation is a five to 10-year span. The ANPRM also asks about exercise equipment and whether a fitness studio should have some equipment specifically designed for a person with a disability. If your agency has beaches, trails, campsites, picnic areas, fitness areas, and golf, prepare to comment.

## **Political Action**

This release by DOJ responds to a 2008 Notice of Proposed Rulemaking (NPRM), which followed a 2004 Advance Notice of Proposed Rulemaking (ANPRM). The DOJ release adopts with virtually no exceptions the earlier work of the U.S. Access Board (playgrounds in 2000, other

recreation facilities in 2002, and a revised and reformatted ADAAG in 2004).

In 2008 a more conservative Presidential administration issued the NPRM. It posed some questions that made it appear as if a watering down of some ADA requirements was the likely outcome. However, with change in Presidential administrations, the proposed final regulation drafted after the 2008 NPRM was withdrawn within days of the inauguration of President Barack Obama.

## **Taking Action**

Assign someone on staff to follow, interpret, and navigate through these changes. In the freshly minted title II regulation, we are reminded that compliance is an ongoing burden. It is not sufficient to make it accessible once. This must be an ongoing activity of the highest priority. NRPA can help. Our flagship school on inclusion and access, the National Institute on Recreation Inclusion (NIRI), is three days of nothing but access and inclusion. Speakers include the best and the brightest in our field, from the Department of Justice, and from the U.S. Access Board. The 2010 NIRI is set for the Chicago suburb of Schaumburg this fall, November 8 to 10. The sessions will obviously include key elements of this new regulation.

## **Information and Support**

NRPA will conduct webinars on September 2, 16, and 30. To attend these webinars, visit [www.nrpa.org](http://www.nrpa.org). Go to [www.ada.gov](http://www.ada.gov) and click the link to receive news. You'll be emailed about new proposed regulations, new settlement agreements, new technical assistance papers, and more. More resources include DOJ at 202/514-0301 or [www.ada.gov](http://www.ada.gov); the U.S. Access Board at 202/272-0080 or [www.access-board.gov](http://www.access-board.gov); and Recreation Accessibility Consultants LLC at 224/293-6451 or [john.mcgovern@rac-llc.com](mailto:john.mcgovern@rac-llc.com). ☀

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