

NOTICE OF FINAL RULEMAKING

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW  
CIVIL RIGHTS DIVISION

*Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2698.)*

[R11-206]

**PREAMBLE**

**1. Sections Affected**

R10-3-401  
R10-3-402  
R10-3-403  
R10-3-404

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 41-192(B)(2), 41-1492.06

Implementing statutes: A.R.S. §§ 41-1492 through 41-1492.12

**3. The effective date of the rules:**

February 7, 2012

**4. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 1952, September 30, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1906, September 30, 2011

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ann Hobart, Civil Rights Division, Litigation Section Chief Counsel

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**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

In enacting the Arizonans with Disabilities Act (AzDA), the Legislature intended to provide "a uniform accessibility code" for Arizona that is "consistent" with the Americans with Disabilities Act (ADA) and its implementing regulations. Laws 1992, Ch. 224, § 1(B)(4) and (C). It thus mandated that compliance with Titles II and III of the ADA and its implementing regulations be deemed compliance with the AzDA. A.R.S. § 41-1492.06(B). The Legislature granted the Attorney General authority to adopt rules to carry out the AzDA. A.R.S. § 41-1492.06(A). It required, however, that such rules not exceed the regulations, guidelines and standards issued by the U.S. Department of Transportation and the U.S. Department of Justice relating to Titles II and III of the ADA. A.R.S. § 41-1492.06(B). It also required the Attorney General to periodically review and amend its rules to achieve consistency with regulations promulgated pursuant to the ADA. A.R.S. § 41-1492.06(C). The Attorney General has general authority to "adopt rules for the orderly conduct of the business" of the Department of Law pursuant to A.R.S. § 41-192(B)(2).

On September 15, 2010, a final rule amending the U.S. Department of Justice's regulations relating to Titles II and III of the ADA was published in the *Federal Register*. The amended regulations, which include changes to 28 CFR 35 and 36 and the 2010 Standards for Accessible Design (2010 Standards), which are comprised of 28 CFR 35.151, 36.401 through 36.406, and appendices B and D to 36 CFR 1191, went into effect on March 15, 2011. Compliance with the 2010 Standards was permitted as of September 15, 2010, and will be required as of March 15, 2012.

In addition, despite two efforts to amend A.A.C. R10-3-402 in 1996 and 1997, the Arizona Attorney General has never adopted the ADA regulations promulgated by the U.S. Department of Transportation. *See* 3 A.A.R. 1258, May 9, 1997, 2 A.A.R. 4865, December 6, 1996. Because the relevant federal rules were last amended in 2006, it is now necessary for the Attorney General to adopt certain parts of them and incorporate them by reference into the state rules.

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To achieve consistency with the revised federal ADA regulations as required by A.R.S. § 41-1492.06(C), the Attorney General must amend A.A.C. R10-3-401, R10-3-402, R10-3-403, and R10-3-404 to reflect the amendments to 28 CFR 35 and 36 and 36 CFR 1191, to incorporate the 2010 Standards, and to incorporate the relevant Department of Transportation regulations.

**7. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study relevant to the rules.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The proposed rules will impact public entities, places of public accommodation, commercial facilities, and private owners and operators of specified public transportation. However, because the proposed amendments simply achieve consistency between state and federal law and create no new legal obligations, the Office of the Attorney General anticipates minimal economic impact as a result of the rule changes. It is also anticipated that the proposed rule changes will provide enhanced clarity for the business community because state and federal regulations regarding accessibility issues will be consistent.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Office of the Attorney General discovered an inconsistency between Item 12 and Item 13 of the Notice of Proposed Rulemaking in which 49 CFR 37.3 was inadvertently included in the text of R10-3-402. To correct this error and effect the Office of the Attorney General's intention as stated in Item 12 of the Notice of Proposed Rulemaking, 49 CFR 37.3 has been deleted from the final rules. 49 CFR 38.3, which incorporates 49 CFR 37.3 by reference, also has been deleted.

R10-3-402 has been amended to distinguish between Department of Justice and Department of Transportation regulations incorporated into the rule.

**11. A summary of the comments made regarding the rules and the agency response to them:**

The Office of the Attorney General did not receive any comments regarding the rules during the period designated for written comments or at the public hearing that took place on November 1, 2011.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**13. Incorporations by reference and their location in the rules:**

Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), 49 CFR 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 37.23(b) and (d), 37.25(a), 37.27-37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010) are incorporated in R10-3-402. Appendices B and D to 36 CFR 1191 (2009) and the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, 35.151 and 35.163 (2011) are incorporated in R10-3-403. Appendices B and D to 36 CFR 1191 (2009) and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, 36.401 through 36.406, and 36.507 (2011) are incorporated in R10-3-404.

**14. Were these rules previously made as emergency rules?**

No

**15. The full text of the rules follows:**

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW  
CIVIL RIGHTS DIVISION

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

Section  
R10-3-401. Definitions

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- R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation
- R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities
- R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

**R10-3-401. Definitions**

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. "2010 Standards" means for:
  - a. Public entities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 35.151 (2011).
  - b. Places of public accommodation and commercial facilities, appendices B and D to 36 CFR 1191 (2009) and 28 CFR 36.401 through 36.406 (2011).
- ~~2.~~ "Act" or "the Act" No change
2. "ADAAG" means Appendix A to 28 CFR 36, referred to as the "Americans with Disabilities Act Accessibility Guidelines."
3. "Assistant Attorney General" No change
4. "Attorney General" No change
5. "National" No change
6. "Respondent" No change

**R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation**

~~Private entities that are Owners owners and operators of specified public transportation shall comply with the provisions of 36 CFR 1191 and accompanying appendix, adopted September 6, 1991 and no further amendments, relating to specified public transportation services by a private entity, which are adopted, incorporated by reference and Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530. Private entities that are owners and operators of specified public transportation also shall comply with the provisions of 49 CFR 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 37.23(b) and (d), 37.25(a), 37.27 through 37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division and the United States Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.~~

**R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities**

~~A. Public entities shall comply with the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163, and Appendix A to 28 CFR 36, adopted July 26, 1991, and no further amendments, which are adopted, incorporated by reference and the 2010 Standards and the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, and 35.163 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.~~

~~B. 28 CFR 35.150(e), as incorporated by this Section, is amended as follows:~~

- ~~1. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving state and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 1997, but in any event as expeditiously as possible.~~
- ~~2. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to subsection (B)(1) no later than January 26, 1997, but in any event as expeditiously as possible.~~
- ~~3. If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of subsections (B)(1) and (2).~~

**R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities**

Places of public accommodations and commercial facilities shall comply with the provisions of 28 CFR 36 and accompanying

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Appendix A (referred to as the “Americans with Disabilities Act Accessibility Guidelines” or “ADAAG”), adopted July 26, 1991, and no further amendments, with the exception of 28 CFR §§ 36.207, 36.209, 36.210 through 36.214, 36.306 through 36.307, 36.501 through 36.506, 36.508, and 36.601 through 36.608, which are adopted, incorporated by reference and 2010 Standards and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, and 36.507 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.