

ADA and the Attractions Industry

Stephanie See

Manager, Government Relations & Safety, IAAPA

Legal Disclaimer

This presentation does not constitute legal advice. IAAPA strongly encourages its members to consult legal counsel and/or accessibility consultants when developing their compliance strategies for these and other regulations.

Brief History

- * 1991 – President George H.W. Bush signs Americans with Disabilities Act into law. U.S. Access Board creates accessibility guidelines (1991 ADAAG), which the Dept. of Justice adopts (1991 Standards). Recreational facilities are not addressed in the regulatory process.
- * 2004 – U.S. Access Board creates accessibility guidelines for recreational facilities. IAAPA and its members are heavily involved in the guidelines for miniature golf courses and amusement rides.
- * 2005 – U.S. Dept. of Justice issues Advanced Notice of Proposed Rulemaking for recreational facilities rule. IAAPA and its members submit comments.
- * 2008 – U.S. Dept. of Justice issues Notice of Proposed Rulemaking for recreational facilities rule. IAAPA and its members submit comments.
- * 2010 – U.S. Dept. of Justice issues final rule for recreational facilities.

Effective Dates

- * The rule became effective on March 15, 2011.
 - * Starting on March 15, 2011, businesses must comply with the ADA's general non-discrimination requirements, including provisions related to service animals and mobility devices.
- * On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations and barrier removal.
 - * In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards and the 2010 Standards.
 - * 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 by March 15, 2012, must comply with the 2010 Standards.

Service Animals

A dog that is trained to do work or perform tasks for an individual with a disability.



The rule permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations.

Mobility Devices

- * Two-tiered approach to mobility devices:
 - * Wheelchairs must be permitted in all areas open to pedestrian use.
 - * “Other power-driven mobility devices” must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard. The rule lists factors to consider in making this determination.

Barrier Removal

- * Required to the extent “readily achievable”
 - * Meaning “easily accomplishable without much difficulty or expense”
- * Deadlines:
 - * Until March 15, 2012 to the 1991 or 2010 Standards
 - * On or after March 15, 2012 to the 2010 Standards
- * Priorities (established by the ADA)
 1. Providing access to your business from sidewalks, parking areas, and public transportation
 2. Providing access to the goods and services your business offers
 3. Providing access to public restrooms
 4. Removing barriers to other amenities offered to the public, such as drinking fountains.

Safe Harbor

- * Facilities that are in compliance with the 1991 requirements are within the Safe Harbor provided in the 2010 rule.
- * Safe Harbored facilities are still obligated to complete barrier removal to the extent readily achievable.
- * Recreational facilities, including miniature golf courses and amusement rides were not covered in the 1991 Standard, and therefore are not eligible for Safe Harbor.

Amusement Rides

- * Many newly designed or newly constructed amusement rides must be accessible and located on an accessible route to the ride.
 - * Accessibility can be achieved through transfer seat or device OR direct wheelchair roll-on.
 - * The type of accessibility must be specified on signage at the entrance to the queue.
- * Amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider (e.g., bumper cars), and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats, or transfer systems, and need not meet signage requirements. That said, these rides must be on an accessible route and must provide appropriate clear space.
- * Portable or mobile rides are not included in the 2010 Standard.

Miniature Golf

- * New courses must be built to the 2010 Standard
- * Alterations must be done to the 2010 Standard
 - * Additionally, 20 percent of alteration budget must be set aside to make the path of travel to the altered element accessible
- * When it is readily achievable, the removal of architectural barriers is required on existing miniature golf courses.
 - * No easy measure of “readily achievable”.
 - * Operators of existing miniature golf courses should:
 1. Survey the accessibility of the course
 2. Develop a response plan to remove barriers on the course

Waterparks

- * Accessible means of entry/exit are required for swimming pools.
 - * Such accessible means of entry include a pool lift or sloped entry, and either a transfer wall, transfer system, or pool stairs.
- * Wave action pools, leisure rivers, and sand bottom pools where user access is limited to one area shall not be required to provide more than one accessible means of entry, either a pool lift, sloped entry, or a transfer system.
- * Waterslides are excluded from the 2010 Standard, however, the base of the tower and the catch pool must be on an accessible route.
- * Water play structures follow the same requirements as land-based play structures.

Children's Play Areas

(including children's aquatic play structures)

- * Defined as elements specifically designed for use primarily by individuals 12 and younger.
- * Must comply with section 240 of the 2010 Standard.
 - * “Accessible ground and elevated play components, accessible routes, ramps and transfer systems (typically a platform or transfer step), and accessible ground surfaces must be provided.”
- * If on a wet deck, entry points to the structure and wet deck must be on an accessible route
- * If in a wading pool, a 2010 ADA Standard 1009.3 sloped entry is required to the pool, but hand rails are not required on the sloped entry.
- * Ground surfaces must comply with ASTM F1487 and ASTM 1951 impact attenuation (fall protection) material (no concrete)
- * **ADVISORY:** Personal wheelchairs/mobility devices may not be appropriate for submerging in water. Suggest providing aquatic wheelchairs.
- * In some jurisdictions, regulations may require this equipment to comply with ASTM F 1487 Play Equipment Standard and will fall under CPSC jurisdiction for accident reporting.

Family Play Areas

(including family aquatic play structures)

- * Defined as elements **not** designed specifically for use primarily by individuals 12 and younger (therefore, not a “Children’s Play Area”). May be designed for family use.
- * Treated as amusement attraction and not required to comply with Section 240 of the 2010 Standard, however, appropriate technical provisions apply where applicable for elements such as entrances, stairs, handrails, protruding objects, reach ranges, operable controls
- * **ADVISORY:** if the family play area has unique features for which no scoping provisions exist, then a “reasonable number”, but at least one feature must be on an accessible route. A minimum of one of each type is recommended in the rule.
- * **Water slides are exempt from this requirement, and are not required to be on an accessible route.**
- * If on a wet deck, entry points to the structure and wet deck need to be on an accessible route.
- * If in a wading pool, a 2010 ADA Standard 1009.3 sloped entry is required to the pool, but hand rails are not required on the sloped entry.

Other changes in the 2010 Standard

- * Parking lots
- * Accessible routes on sites
- * Entries
- * Transaction Counters
- * Toilet Facilities

Enforcement and Penalties

- * Dept. of Justice Enforcement Lawsuits
 - * Require that facilities be made readily accessible to and usable by individuals with disabilities;
 - * Modify policy, practice, or procedure;
 - * Assess civil penalties up to \$50,000 for first violation; \$100,000 for subsequent violations.
 - * Award other relief including monetary damages to persons aggrieved.
- * Civil Action
 - * Consent and settlement with DOJ does not prohibit private suits by individuals or disability groups.
 - * Private persons can sue for actual damages and punitive damages.

Looking Forward

- * Proposed regulations on accessible websites, captioning, and self-service equipment were released in July 2010.
- * IAAPA filed comment on these regulations on behalf of the industry.
- * Final rule could be published later in 2011.

Questions?

Stephanie See

ssee@IAAPA.org

703.836.4800 ext. 755