

BILLING CODE: 4410-13

DEPARTMENT OF JUSTICE

28 CFR Parts 35 and 36

[CRT Docket No. 122; AG Order No.]

RIN 1190-NYD

**Nondiscrimination on the Basis of Disability by Public Accommodations
and in Commercial Facilities; Swimming Pools**

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Justice is extending the date for compliance with certain requirements in the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (2010 Standards) that relate to provision of accessible entry and exit for swimming pools, wading pools, and spas. This final rule, effective upon publication based on a finding of good cause, changes the date for compliance from March 15, 2012, to [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] in order to allow additional time to address misunderstandings regarding compliance with these ADA requirements. Some pool owners and operators believed that taking certain steps would always satisfy their obligations under the ADA when in fact those steps would not necessarily result in compliance with the ADA regulations.

DATES: Effective on [Insert date of display at the *Federal Register*], the compliance date for 28 CFR 35.150(b)(1), (b)(2)(ii), and 36.304 (d)(2)(iii) for sections 242 and 1009 of the 2010 Standards is delayed to [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] .

FOR FURTHER INFORMATION CONTACT: Allison Nichol, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY). This rule is also available in an accessible format on the ADA Home Page at <http://www.ada.gov>. You may obtain copies of this rule in large print or on computer disk by calling the ADA Information Line listed above.

SUPPLEMENTARY INFORMATION:

The Department of Justice published its revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010. See 75 FR 56163. The revised ADA rules were the result of a six-year process to update the Department's regulations. As part of this process, the Department sought extensive public comment, issuing an Advance Notice of Proposed Rulemaking (ANPRM) on September 30, 2004, 69 FR 58768, and two Notices of Proposed Rulemaking (NPRM) on June 17, 2008, 73 FR 34466 (title II), and 73 FR 34508 (title III). The Department also held a public hearing on the NPRMs and received over 4,435 written public comments. On September 15, 2010, the Department published a final rule revising the regulations implementing titles II and III of the ADA. As part of this revision, the Department adopted the 2010 ADA Standards for Accessible Design ("2010 Standards"), which are based in large part on the 2004 ADA Accessibility Guidelines adopted by the United States Access Board in 2004. See 69 FR 44083 (July 23, 2004). With limited exception, the Department's revised regulations went into effect on March 15, 2011.

With a compliance deadline of March 15, 2012, the 2010 Standards set minimum scoping and technical requirements for accessible entry and exit for new construction and alteration of swimming pools, wading pools, and spas (collectively, “pools”). In addition, the title III regulation provides that as of March 15, 2012, public accommodations’ barrier removal efforts must comply with the 2010 Standards to the extent readily achievable, including with respect to barriers to accessing pools. 28 CFR 36.304 (d)(2)(iii). The title II regulation provides that the 2010 Standards apply where public entities choose to meet their title II ADA program access obligations by making structural changes to their pools. 28 CFR 35.150(b)(1), (b)(2)(ii).

REGULATORY CERTIFICATIONS

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule with an immediate effective date because proceeding via ordinary Administrative Procedure Act process would be impracticable and contrary to the public interest. See 5 U.S.C. 553(b). The Department promulgated a Final Rule on September 15, 2010 (the 2010 Final Rule), adopting the 2010 ADA Standards for Accessible Design and implementing ADA title II requirements for program accessibility and the title III requirements for readily achievable barrier removal as applied to existing swimming programs and swimming pools. As the March 15, 2012, date for compliance approached, the Department received a large number of inquiries regarding the obligations of owners and operators of existing pools under the 2010 Final Rule. On January 31, 2012, the Department of Justice Civil Rights Division published a technical assistance document entitled “ADA 2010 Revised Requirements: Accessible Pools—Means of Entry and Exit” (the “TA Document”). The Civil Rights Division issued the TA document to

educate public entities and public accommodations about their obligations under the ADA regulations as revised by the 2010 Final Rule.

Both the inquiries received by the Department prior to the TA Document's publication and the pool owners and operators' response to the TA Document reveal that there were misunderstandings among a substantial number of pool owners and operators concerning the obligations imposed by the ADA as implemented in the 2010 Final Rule as to their obligations with respect to existing pools and their options with respect to the provision of pool lifts. Some pool owners and operators believed that taking certain steps would always satisfy their obligations when in fact those steps would not necessarily result in compliance with the ADA regulations. Recognizing that pool owners and operators face challenges in correcting their misunderstandings and determining appropriate compliance when faced with what is now an immediate compliance date, the Department determined that it would be impracticable and contrary to the public interest to retain the existing compliance date, and that a brief 60-day extension of that date is necessary to provide an opportunity for pool owners and operators to assess their obligations under the Final Rule and determine how best to comply. Further, the Department is contemporaneously issuing a Notice of Proposed Rulemaking seeking public comment on whether an even longer period of time to allow pool owners and operators to meet their compliance obligations would be appropriate. Accordingly, this 60-day extension of the compliance date is intended to avoid economic effects and disruption of the existing status quo while enabling public comment and meaningful review of those comments on the question of whether a longer extension of the compliance date is warranted. Thus, the government concludes that the requisite good cause for issuance of this final rule exists, and the requirements

for notice and comment are not applicable to this brief extension of the compliance date set forth in the 2010 Final Rule. 5 U.S.C. 553(b).

Additionally, this rule is effective immediately upon publication in the Federal Register. Section 553(d) of the Administrative Procedures Act requires 30-days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Because this final rule relieves a restriction, in the form of an existing date for compliance with a regulatory requirement, the Department invokes section 553(d)(1) to allow an immediate effective date.

Executive Order 12866 - Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988 - Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132 - Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this regulation, and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely extends for 60 days the compliance date of the specified provisions of the title II and title III ADA rules to avoid economic effects and disruption of the existing status quo while enabling public comment and meaningful review of those comments on the question of whether a longer extension of the compliance date is warranted.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

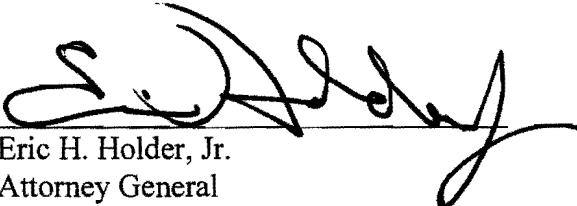
Unfunded Mandates Reform Act of 1995

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that “establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.” Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

March 15, 2012
Date


Eric H. Holder, Jr.
Attorney General