

DEPARTMENT OF JUSTICE**Office of the Attorney General****28 CFR Part 36**

[A.G. Order No. 2148-98]

**ARCHITECTURAL AND
TRANSPORTATION BARRIERS
COMPLIANCE BOARD****36 CFR Part 1191**

RIN 3014-AA24

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 37****Americans With Disabilities Act
Accessibility Guidelines; Detectable
Warnings**

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the departments of Justice and Transportation propose to continue the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) from July 26, 1998 to July 26, 2000. The Access Board plans to issue a separate notice of proposed rulemaking later this year to revise and update ADAAG. The departments of Justice and Transportation will also issue separate notices of proposed rulemaking to revise and update the Standards for Accessible Design, which must be consistent with the guidelines published by the Access Board. Continuing the suspension of the detectable warning requirements will allow the Access Board, and the departments of Justice and Transportation to address those requirements in the rulemaking to revise and update ADAAG, and the Standards for Accessible Design.

DATES: Comments should be received by July 1, 1998. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC

20004-1111. The Access Board will provide copies of all comments received to the departments of Justice and Transportation.

Comments will be available for inspection at the above address from 9:00 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT:

Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone (202) 272-5434 extension 16 or (800) 872-2253 extension 16 (voice), and (202) 272-5449 (TTY) or (800) 993-2822 (TTY).

Department of Justice: John L. Wodatch, The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington DC 20530. Telephone (800) 514-0301 (voice) or (800) 514-0383 (TTY).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. Telephone (202) 366-9306 (voice) or (202) 755-7687 (TTY).

SUPPLEMENTARY INFORMATION:**Availability of Copies and Electronic Access**

Copies of this proposed rule are available in the following formats: standard print, large print, Braille, audio cassette tape, and computer disk. Single copies may be obtained at no cost by calling the Access Board's automated publications order line (202) 272-5434 or (800) 872-2253, pressing 1 on the telephone keypad, then 1 again, and requesting publication S40 (Detectable Warnings Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272-5449 or (800) 993-2822. Please record your name, address, and telephone number when ordering publications. Persons who want a copy in large print, Braille, audio cassette tape, or computer disk should specify the type of format they want.

The proposed rule is available on the Access Board's web site (<http://www.access-board.gov/rules/dw.htm>) or the Department of Justice's web site (<http://www.usdoj.gov/crt/ada/adahom1.htm>). The proposed rule is also available on electronic bulletin board at (202) 514-6193 (Department of Justice). This telephone number is not toll-free.

Background

The Access Board is responsible for issuing guidelines to assist the departments of Justice and Transportation in establishing accessibility standards for newly constructed and altered facilities under the Americans with Disabilities Act. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines (36 CFR part 1191), which is commonly referred to as ADAAG. Sections 1 through 10 of ADAAG have been adopted as the Standards for Accessible Design by the departments of Justice (28 CFR part 36) and Transportation (49 CFR part 37) for the Americans with Disabilities Act.

As issued in 1991, ADAAG required that a pattern of raised truncated domes be built in or applied to walking surfaces at certain locations within a site to warn pedestrians who are blind or visually impaired of hazards on a circulation path. The detectable warnings were required at:

- Curb ramps (ADAAG 4.7.7);
- Hazardous vehicular areas where pedestrian ways adjoin vehicular ways and there are no curbs, railings, or other elements separating the pedestrian and vehicular ways (ADAAG 4.29.5);
- Reflecting pool edges that are not protected by railings, walls, or curbs (ADAAG 4.29.6); and
- Platform edges in transportation facilities that are not protected by platform screens or guard rails (ADAAG 10.3.1 (8)).

In 1994, the Access Board and the departments of Justice and Transportation initially suspended the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until July 26, 1996, pending the results of a research project on the need for detectable warnings at vehicular-pedestrian intersections in the public right-of-way. 59 FR 17442 (April 12, 1994).¹ The research project showed that vehicular-pedestrian intersections are very complex environments and that pedestrians who are blind or visually impaired use a combination of cues to detect intersections. The research project found that detectable warnings helped some pedestrians who are blind or visually impaired locate and identify curb ramps. However, the detectable warnings had only a modest impact on overall performance because, in their absence, pedestrians who are blind or visually impaired used other cues that might be available to detect the intersection. The research project

¹ The requirement for detectable warnings at platform edges in transportation facilities was not suspended.

indicated that there may be a need for additional cues at some types of intersections. The research project did not identify the specific conditions where such cues should be provided. The research project suggested that other technologies, which may be less costly and equally or more effective than detectable warnings, be explored for providing information about intersections.

In 1996, the Access Board and the departments of Justice and Transportation extended the suspension of the detectable warning requirements to July 26, 1998, to allow an advisory committee to conduct a comprehensive review of ADAAG and make recommendations for revising and updating the document. 61 FR 39323 (July 29, 1996). The advisory committee has completed its work and has recommended that the requirement for detectable warnings at platform edges in transportation facilities be retained. The advisory committee also made specific recommendations for permitting equivalent tactile surfaces, and technology or other means to provide equivalent detectability of the platform edge as an alternative to the truncated dome surface. The advisory committee did not make any recommendations regarding the provision of detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing detectable warnings at vehicular-pedestrian intersections in the public right-of-way should be established first, and the application to other locations within a site should be considered afterwards.

The Access Board is preparing a separate notice of proposed rulemaking (NPRM) to revise and update ADAAG based on the recommendations of the advisory committee, as well as research and other available information. The Access Board plans to issue the NPRM to revise and update ADAAG later this year. Because the Standards for Accessible Design issued by the departments of Justice and Transportation must be consistent with the guidelines published by the Access Board, the Access Board and the departments of Justice and Transportation will propose to extend the suspension of the requirement for detectable warnings until July 26, 2000, by which time it is expected that the regulatory process by which ADAAG and the Standards for Accessible Design are to be revised will be complete.

Regulatory Process Matters

The Access Board and the departments of Justice and

Transportation have independently determined that this proposed rule is not a significant regulatory action under Executive Order 12866. It is not a significant rule under the Department of Transportation's regulatory policies and procedures. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the departments of Justice and Transportation also independently certify under section 605(b) of the Regulatory Flexibility Act that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities because it continues the suspension of an existing regulatory requirement and does not impose any new requirement.

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

Text of Proposed Common Rule

The text of the common rule is revised to read as follows:

§ _____. Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2000.

Adoption of Proposed Common Rule

The agency specific proposals to adopt the proposed common rule, which appears at the end of the common preamble, are set forth below.

Department of Justice

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, HIV/AIDS, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186, and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

§ 36.407 [Revised]

2. Section 36.407 is revised to read as set forth at the end of the common preamble.

Dated: April 23, 1998.

Janet Reno,

Attorney General.

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

2. Section 1191.2 is revised to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on January 28, 1998.

Patrick D. Cannon,

Chair, Architectural and Transportation Barriers Compliance Board.

Department of Transportation

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads,

Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 37—TRANSPORTATION
SERVICES FOR INDIVIDUALS WITH
DISABILITIES (ADA)**

1. The authority citation for 49 CFR part 37 is revised to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.15 [Revised]

2. Section 37.15 is revised to read as set forth at the end of the common preamble.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–14443 Filed 5–29–98; 8:45 am]

BILLING CODE 4410–13–P, 8150–01–P, 4910–62–P