

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

[A.G. Order No. 2191-98]

**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 final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board), the Department of Justice, and the Department of Transportation are continuing the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pool edges in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Standards for Accessible Design. The Access Board plans to issue a separate notice of proposed rulemaking to revise and update ADAAG and will address detectable warnings in that rulemaking. The Department of Justice and the Department of Transportation will issue separate notices of proposed rulemaking to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. The agencies are continuing the suspension of the detectable warning requirements to July 26, 2001, when it is expected that the rulemakings to revise and update ADAAG and the Standards for Accessible Design will be completed.

EFFECTIVE DATE: December 23, 1998.

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 final 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 Final Rule). Persons using a TTY should call (202) 272-5449 or (800) 993-2822. Please provide 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 final rule is available on the Access Board's web site (<http://www.access-board.gov/rules/dw.htm>), the Department of Justice's web site (<http://www.usdoj.gov/crt/ada/adahom1.htm>), and the Department of Transportation's web site (<http://dms.dot.gov>). The final rule is also available on electronic bulletin board at (202) 514-6193 (Department of Justice). This telephone number is not toll-free.

Background

On June 1, 1998, the Access Board, the Department of Justice, and the Department of Transportation published a joint notice of proposed rulemaking (NPRM) to continue the suspension of the requirements for detectable warnings at certain locations within sites in ADAAG and the Standards for Accessible Design from July 26, 1998 to July 26, 2000.¹ 63 FR 29924. The

¹ The Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of 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, which is commonly referred to as ADAAG. 36 CFR part 1191, appendix A. The

suspension applies to detectable warning requirements at curb ramps (4.7.7), hazardous vehicular areas (4.29.5), and reflecting pool edges (4.29.6). The suspension does not affect detectable warning requirements at platform edges in transportation facilities (10.3.1(8)).

As explained in the NPRM, the detectable warning requirements were suspended initially in 1994, pending review 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). 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 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.

The Access Board subsequently established an advisory committee to conduct a comprehensive review of ADAAG and make recommendations for revising and updating the guidelines. The suspension of the detectable warning requirements was continued in 1996, pending review of the advisory committee's recommendations. 61 FR 39323 (July 29, 1996). The advisory committee recommended that the detectable warning requirements at platform edges in transportation facilities be retained and that equivalent tactile surfaces or other means be permitted to provide equivalent detectability of platform edges. The advisory committee did not make any recommendations regarding detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing

Department of Justice and the Department of Transportation have adopted sections 1 through 10 of ADAAG as the Standards for Accessible Design for the Americans with Disabilities Act. 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

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 an NPRM to revise and update ADAAG based on the advisory committee's recommendations, as well as research and other available information, and will address provisions for detectable warnings within sites in that NPRM. The Department of Justice and the Department of Transportation will issue separate NPRMs to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. In the NPRM announcing the continuation of the suspension of the detectable warning requirements, the agencies noted that the rulemakings to revise and update ADAAG and the Standards for Accessible Design were expected to be completed by July 26, 2000, and the agencies proposed to continue the suspension through that date. The Access Board is also preparing an NPRM to revise and update the guidelines for the Architectural Barriers Act, which requires certain federally financed facilities to be accessible. The Access Board has recently decided to combine the rulemakings to update and revise ADAAG and the guidelines for the Architectural Barriers Act and to include provisions for housing in the rulemakings. This action is expected to extend the rulemakings for six to twelve months.

Three comments were received in response to the NPRM. One commenter expressed concern about the amount of time it is taking to revise and update ADAAG and the Standards for Accessible Design, and the resulting delay in addressing detectable warnings. The rulemaking process can be lengthy, especially when revising and updating major rules like ADAAG and the Standards for Accessible Design. There are many important issues that will be addressed in these rulemakings. It would not be efficient to address each issue through separate rulemakings. Another commenter identified himself as an individual who is blind and recommended that detectable warnings should be required at the locations covered by the suspension. When detectable warning provisions were initially proposed in ADAAG, a large number of individuals who are blind commented on the proposal. There was no consensus among the group regarding detectable warnings. The agencies expect to receive many comments on detectable warnings when the NPRMs to revise and update

ADAAG and the Standards for Accessible Design are issued and will consider all the comments before issuing final rules.

The other commenter recommended that the Access Board issue guidelines addressing public sidewalks and street crossings. The Access Board issued proposed and interim guidelines addressing public rights-of-way in 1992 and 1994. 57 FR 60612 (December 21, 1992); 59 FR 31676 (June 20, 1994). The Access Board received a large number of comments on the guidelines from public works agencies, transportation departments, and traffic consultants. The comments showed a disparate understanding of pedestrian accessibility criteria generally and the application of the guidelines in particular. Based on the comments, the Access Board decided to reserve the guidelines in favor of working with other governmental and private sector organizations in the transportation industry to promote the incorporation of pedestrian accessibility criteria into industry guidelines, standards, and recommended practices. 63 FR 2000 (January 13, 1998). The Access Board periodically reviews its rulemaking agenda and will evaluate the impact of its efforts in this area and whether further rulemaking is warranted.

As explained earlier, the Access Board, the Department of Justice, and the Department of Transportation will address the provisions for detectable warnings within sites in the rulemakings to update and revise ADAAG and the Standards for Accessible Design. Continuing the suspension of the requirements for detectable warnings at certain locations within sites to July 26, 2001 will maintain the status-quo until the planned rulemakings are completed.

Regulatory Process Matters

The Access Board, the Department of Justice, and the Department of Transportation have independently determined that this final 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, the Department of Justice, and the Department of Transportation also independently certify under section 605(b) of the Regulatory Flexibility Act that this final 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 final 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 Final 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, 2001.

Adoption of Final Common Rule

The agency specific proposals to adopt the final 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 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: November 2, 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 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.

§ 1191.2 [Revised]

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 July 15, 1998.

Thurman M. Davis,

*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 amended as follows:

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

1. The authority citation for 49 CFR part 37 continues 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. 98–31254 Filed 11–20–98; 8:45 am]

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