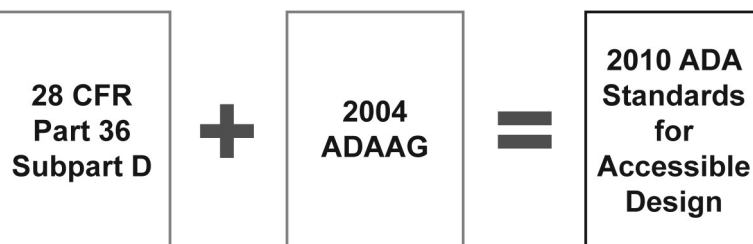


2010 Standards for Public Accommodations and Commercial Facilities: Title III

Public accommodations and commercial facilities must follow the requirements of the 2010 Standards, including both the Title III regulations at 28 CFR part 36, subpart D; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D.



In the few places where requirements between the two differ, the requirements of 28 CFR part 36, subpart D, prevail.

Compliance Date for Title III

The compliance date for the 2010 Standards for new construction and alterations is determined by:

- the date the last application for a building permit or permit extension is certified to be complete by a State, county, or local government;
- the date the last application for a building permit or permit extension is received by a State, county, or local government, where the government does not certify the completion applications; or
- the start of physical construction or alteration, if no permit is required.

If that date is on or after March 15, 2012, then new construction and alterations must comply with the 2010 Standards. If that date is on or after September 15, 2010, and before March 15, 2012, then new construction and alterations must comply with either the 1991 or the 2010 Standards.

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§ 36.401 New construction.

(a) General.

- (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities.
- (2) For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only—
 - (i) If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 26, 1992); and
 - (ii) If the first certificate of occupancy for the facility is issued after January 26, 1993.

(b) Commercial facilities located in private residences.

- (1) When a commercial facility is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used exclusively in the operation of the commercial facility or that portion used both for the commercial facility and for residential purposes is covered by the new construction and alterations requirements of this subpart.
- (2) The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the commercial facility, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by employees or visitors of the commercial facility, including restrooms.

(c) Exception for structural impracticability.

- (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

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- (2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
- (3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(d) Elevator exemption.

- (1) For purposes of this paragraph (d)—

- (i) **Professional office of a health care provider** means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the “professional office of a health care provider” only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

- (ii) **Shopping center or shopping mall** means—

- (A) A building housing five or more sales or rental establishments; or

- (B) A series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of “place of public accommodation” in section § 36.104 are considered sales or rental establishments. The facility housing a “shopping center or shopping mall” only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

- (2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:
 - (i) A shopping center or shopping mall, or a professional office of a health care provider.

- (ii) A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.
- (3) The elevator exemption set forth in this paragraph (d) does not obviate or limit, in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a shopping center or shopping mall, or a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house sales or rental establishments or a professional office of a health care provider, must meet the requirements of this section but for the elevator.

§ 36.402 Alterations.

(a) General.

- (1) Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (2) An alteration is deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date.

(b) Alteration. For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

- (1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.
- (2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) To the maximum extent feasible. The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

§ 36.403 Alterations: Path of travel.

(a) General.

- (1) An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.
- (2) If a private entity has constructed or altered required elements of a path of travel at a place of public accommodation or commercial facility in accordance with the specifications in the 1991 Standards, the private entity is not required to retrofit such elements to reflect the incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

(b) Primary function. A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

(c) Alterations to an area containing a primary function.

- (1) Alterations that affect the usability of or access to an area containing a primary

function include, but are not limited to—

- (i) Remodeling merchandise display areas or employee work areas in a department store;
- (ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;
- (iii) Redesigning the assembly line area of a factory; or
- (iv) Installing a computer center in an accounting firm.

- (2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) Landlord/tenant: If a tenant is making alterations as defined in § 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord's authority, if those areas are not otherwise being altered.

(e) Path of travel.

- (1) A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.
- (2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.
- (3) For the purposes of this part, the term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.

(f) Disproportionality.

- (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

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- (2) Costs that may be counted as expenditures required to provide an accessible path of travel may include:
 - (i) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
 - (ii) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
 - (iii) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY).
 - (iv) Costs associated with relocating an inaccessible drinking fountain.

(g) Duty to provide accessible features in the event of disproportionality.

- (1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.
- (2) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:
 - (i) An accessible entrance;
 - (ii) An accessible route to the altered area;
 - (iii) At least one accessible restroom for each sex or a single unisex restroom;
 - (iv) Accessible telephones;
 - (v) Accessible drinking fountains; and
 - (vi) When possible, additional accessible elements such as parking, storage, and alarms.

(h) Series of smaller alterations.

- (1) The obligation to provide an accessible path of travel may not be evaded by

performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2)

(i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

§ 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal.

(1) For the purposes of this section, professional office of a health care provider means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a professional office of a health care provider only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) For the purposes of this section, shopping center or shopping mall means—

(i) A building housing five or more sales or rental establishments; or

(ii) A series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of place of public accommodation in § 36.104 are

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considered sales or rental establishments. The facility housing a shopping center or shopping mall only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

- (b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

§ 36.405 Alterations: Historic preservation.

- (a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part.
- (b) If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

§ 36.406 Standards for new construction and alterations.

(a) Accessibility standards and compliance date.

- (1) New construction and alterations subject to §§ 36.401 or 36.402 shall comply with the 1991 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is before September 15, 2010, or if no permit is required, if the start of physical construction or alterations occurs before September 15, 2010.
- (2) New construction and alterations subject to §§ 36.401 or 36.402 shall comply either with the 1991 Standards or with the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010, and before March 15, 2012,

or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010, and before March 15, 2012.

- (3) New construction and alterations subject to §§ 36.401 or 36.402 shall comply with the 2010 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after March 15, 2012.
- (4) For the purposes of this section, “start of physical construction or alterations” does not mean ceremonial groundbreaking or razing of structures prior to site preparation.

(5) Noncomplying new construction and alterations.

- (i) Newly constructed or altered facilities or elements covered by §§ 36.401 or 36.402 that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards shall, before March 15, 2012, be made accessible in accordance with either the 1991 Standards or the 2010 Standards.
- (ii) Newly constructed or altered facilities or elements covered by §§ 36.401 or 36.402 that were constructed or altered before March 15, 2012 and that do not comply with the 1991 Standards shall, on or after March 15, 2012, be made accessible in accordance with the 2010 Standards.

Appendix to § 36.406(a)

Compliance Dates for New Construction and Alterations	Applicable Standards
On or after January 26, 1993, and before September 15, 2010	1991 Standards
On or after September 15, 2010, and before March 15, 2012	1991 Standards or 2010 Standards
On or after March 15, 2012	2010 Standards

- (b) Scope of coverage.** The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Unless specifically stated otherwise, advisory notes,

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appendix notes, and figures contained in the 1991 Standards and 2010 Standards explain or illustrate the requirements of the rule; they do not establish enforceable requirements.

(c) Places of lodging. Places of lodging subject to this part shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 of the 2010 Standards (pp. 82 and 210).

(1) Guest rooms. Guest rooms with mobility features in places of lodging subject to the transient lodging requirements of 2010 Standards shall be provided as follows—

(i) Facilities that are subject to the same permit application on a common site that each have 50 or fewer guest rooms may be combined for the purposes of determining the required number of accessible rooms and type of accessible bathing facility in accordance with table 224.2 to section 224.2 of the 2010 Standards (pp 83).

(ii) Facilities with more than 50 guest rooms shall be treated separately for the purposes of determining the required number of accessible rooms and type of accessible bathing facility in accordance with table 224.2 to section 224.2 of the 2010 Standards (p. 83).

(2) Exception. Alterations to guest rooms in places of lodging where the guest rooms are not owned or substantially controlled by the entity that owns, leases, or operates the overall facility and the physical features of the guest room interiors are controlled by their individual owners are not required to comply with § 36.402 or the alterations requirements in section 224.1.1 of the 2010 Standards (p. 83).

(3) Facilities with residential units and transient lodging units. Residential dwelling units that are designed and constructed for residential use exclusively are not subject to the transient lodging standards.

(d) Social service center establishments. Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to this part shall comply with the provisions of the 2010 Standards applicable to residential facilities, including, but not limited to, the provisions in sections 233 and 809 (pp. 91 and 212) .

(1) In sleeping rooms with more than 25 beds covered by this part, a minimum of 5% of the beds shall have clear floor space complying with section 806.2.3 of the 2010 Standards (p. 210).

- (2) Facilities with more than 50 beds covered by this part that provide common use bathing facilities shall provide at least one roll-in shower with a seat that complies with the relevant provisions of section 608 of the 2010 Standards (p. 174). Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in sections 608.3 and 608.4 for residential dwelling units are not permitted. When separate shower facilities are provided for men and for women, at least one roll-in shower shall be provided for each group.

(e) Housing at a place of education. Housing at a place of education that is subject to this part shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 (pp. 82 and 210), subject to the following exceptions. For the purposes of the application of this section, the term “sleeping room” is intended to be used interchangeably with the term “guest room” as it is used in the transient lodging standards.

- (1) Kitchens within housing units containing accessible sleeping rooms with mobility features (including suites and clustered sleeping rooms) or on floors containing accessible sleeping rooms with mobility features shall provide turning spaces that comply with section 809.2.2 of the 2010 Standards (p. 213) and kitchen work surfaces that comply with section 804.3 of the 2010 Standards (p. 208).
- (2) Multi-bedroom housing units containing accessible sleeping rooms with mobility features shall have an accessible route throughout the unit in accordance with section 809.2 of the 2010 Standards (p. 212).
- (3) Apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty and do not contain any public use or common use areas available for educational programming, are not subject to the transient lodging standards and shall comply with the requirements for residential facilities in sections 233 and 809 of the 2010 Standards (pp. 91 and 212).

(f) Assembly areas. Assembly areas that are subject to this part shall comply with the provisions of the 2010 Standards applicable to assembly areas, including, but not limited to, sections 221 and 802 (p. 78 and 202). In addition, assembly areas shall ensure that—

- (1) In stadiums, arenas, and grandstands, wheelchair spaces and companion seats are dispersed to all levels that include seating served by an accessible route;
- (2) Assembly areas that are required to horizontally disperse wheelchair spaces and

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companion seats by section 221.2.3.1 of the 2010 Standards (p. 79) and that have seating encircling, in whole or in part, a field of play or performance, wheelchair spaces and companion seats are dispersed around that field of play or performance area;

- (3) Wheelchair spaces and companion seats are not located on (or obstructed by) temporary platforms or other movable structures, except that when an entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, wheelchair spaces and companion seats may be placed in that section. When wheelchair spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;
- (4) In stadium-style movie theaters, wheelchair spaces and companion seats are located on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria—
 - (i) It is located within the rear 60% of the seats provided in an auditorium; or
 - (ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).
- (g) **Medical care facilities.** Medical care facilities that are subject to this part shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805 (pp. 81 and 209). In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by section 223.2.1 of the 2010 Standards (p. 82) in a manner that is proportionate by type of medical specialty.

§§ 36.407—36.499 [Reserved]

The remaining text of the 2010 Standards for Title III start on page 31, under the heading 2010 Standards for Titles II and III: 2004 ADAAG.