

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, August 10, 2016

Justice Department Revises Regulations to Implement Requirements of ADA Amendments Act of 2008

A final rule revising the Justice Department's Americans with Disabilities Act (ADA) Title II and Title III regulations to implement the requirements of the ADA Amendments Act of 2008 (ADAAA) was made available for public inspection by the Federal Register today. The final rule will be published in the Federal Register tomorrow and will take effect 60 days after publication, which will be Oct. 11, 2016.

Congress passed the ADAAA in response to several Supreme Court decisions that narrowly interpreted the ADA's definition of disability, leading ultimately to the exclusion from coverage of individuals with cancer, diabetes, epilepsy, attention deficit hyperactivity disorder, learning disabilities and other disabilities. The ADAAA made a number of significant changes to the meaning and interpretation of the ADA definition of disability to ensure that the term would be broadly construed and applied without extensive analysis so that all individuals with disabilities could receive the law's protections.

Although the ADAAA is already in effect and applies to entities covered under Title II and III of the ADA, the department's changes to its Title II and III regulations will help clarify the interpretation and application of the ADAAA. These changes also satisfy the Attorney General's responsibility to publish regulations that are consistent with any congressional changes to the ADA.

"This final rule clarifies Congress's original mandate that eliminating discrimination against people with disabilities requires an expansive definition of what disability means and who the law covers," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department's Civil Rights Division. "The Justice Department's regulation sets forth clear new rules, new examples and detailed guidance to ensure that courts, covered entities and people with disabilities better understand the ADAAA."

The ADAAA's provisions addressing the definition of disability also apply to Title I of the ADA, for which the Equal Employment Opportunity Commission issued regulations in 2011. The publication of the Title II and Title III rule tomorrow will ensure that the definition of disability is interpreted consistently for these three titles of the ADA.

For more information about the ADAAA, please visit the department's [ADA website](#) or call the ADA Information Line (1-800-514-0301, 1-800-514-3083, TTY). A copy of the preview of the final rule posted by the Federal Register on its public inspection desk can be found today at: <https://www.federalregister.gov/articles/2016/08/11/2016-17417/amendment-of-americans-with-disabilities-act-regulations-to-implement-the-americans-with>.

Once the final rule is published in the Federal Register tomorrow, a copy will be available on the department's [ADA website](#).

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[Civil Rights Division](#)



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28 CFR Parts 35 and 36

Amendment of Americans With Disabilities Act Title II and Title III
Regulations To Implement ADA Amendments Act of 2008; Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 35 and 36

[CRT Docket No. 124; AG Order No. 3702–2016]

RIN 1190-AA59

Amendment of Americans With Disabilities Act Title II and Title III Regulations To Implement ADA Amendments Act of 2008

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (Department) is issuing this final rule to amend its Americans with Disabilities Act (ADA) regulations in order to incorporate the statutory changes to the ADA set forth in the ADA Amendments Act of 2008 (ADA Amendments Act or the Act), which took effect on January 1, 2009. In response to earlier Supreme Court decisions that significantly narrowed the application of the definition of “disability” under the ADA, Congress enacted the ADA Amendments Act to restore the understanding that the definition of “disability” shall be broadly construed and applied without extensive analysis. Congress intended that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their statutory obligations not to discriminate based on disability. In this final rule, the Department is adding new sections to its title II and title III ADA regulations to set forth the proper meaning and interpretation of the definition of “disability” and to make related changes required by the ADA Amendments Act in other sections of the regulations.

DATES: This rule will take effect October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Rebecca Bond, Section 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).

You may obtain copies of this final rule in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) and (800) 514–0383 (TTY). This final rule is also available on the ADA Home Page at www.ada.gov.

SUPPLEMENTARY INFORMATION: The meaning and interpretation of the

definitions of “disability” in the title II and title III regulations are identical, and the preamble will discuss the revisions to both regulations concurrently. Because the ADA Amendments Act’s revisions to the ADA have been codified into the U.S. Code, the final rule references the revised U.S. Code provisions except in those cases where the reference is to the Findings and Purposes of the ADA Amendments Act, in which case the citation is to section 2 of Public Law 110–325, September 25, 2008.¹

This final rule was submitted to the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs for review prior to publication in the Federal Register.

I. Executive Summary

Purpose

This rule is necessary in order to incorporate the ADA Amendments Act’s changes to titles II (nondiscrimination in State and local government services) and III (nondiscrimination by public accommodations and commercial facilities) of the ADA into the Department’s ADA regulations and to provide additional guidance on how to apply those changes.

Legal Authority

The ADA Amendments Act was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Public Law 110–325, sec. 8, 122 Stat. 3553, 3559 (2008). The Act authorizes the Attorney General to issue regulations under title II and title III of the ADA to implement sections 3 and 4 of the Act, including the rules of construction set forth in section 3. 42 U.S.C. 12205a.

Summary of Key Provisions of the Act and Rule

The ADA Amendments Act made important changes to the meaning and interpretation of the term “disability” in the ADA in order to effectuate Congress’s intent to restore the broad scope of the ADA by making it easier for an individual to establish that he or she has a disability. See Public Law 110–325, sec. 2(a)(3)–(7). The Department is making several major revisions to the meaning and interpretation of the term “disability” contained in the title II and title III ADA regulations in order to implement the ADA Amendments Act. These regulatory revisions are based on

specific provisions in the ADA Amendments Act or on specific language in the legislative history. The revised language clarifies that the term “disability” shall be interpreted broadly and explains that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations not to discriminate based on disability and that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis. The revised regulations expand the definition of “major life activities” by providing a non-exhaustive list of major life activities that specifically includes the operation of major bodily functions. The revisions also add rules of construction to be applied when determining whether an impairment substantially limits a major life activity. These rules of construction state the following:

- That the term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA;
- that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;
- that the primary issue in a case brought under the ADA should be whether an entity covered under the ADA has complied with its obligations and whether discrimination has occurred, not the extent to which the individual’s impairment substantially limits a major life activity;
- that in making the individualized assessment required by the ADA, the term “substantially limits” shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for “substantially limits” applied prior to the ADA Amendments Act;
- that the comparison of an individual’s performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence;
- that the ameliorative effects of mitigating measures other than “ordinary eyeglasses or contact lenses” shall not be considered in assessing whether an individual has a “disability”;
- that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and

¹ The Findings and Purposes of the ADA Amendments Act are also referenced in the codification of the ADA as a note to 42 U.S.C. 12101.