Lincoln was there in that room when that speech was given, and he later united the people of the United States with that thought from that man, that freedom fighter overseas.

There are people who are struggling for their freedom. There are people who are buying their existence. We do not have to send American military boys to fight the fight that they should be fighting for themselves. But at the very least, we must give them the support they need to defeat the evil forces in the world. We would stick up for them, slaughter their families, and come after us next.

That is what the war with radical Islam terrorism is all about. They are at war with us, and they mean to kill our families and they mean to push Western civilization out of the history books of the world in the future. They want it to be a radical Islamic world, and they will kill all of us to get it.

Now, that is not all of the Muslims. I agree with our President that we should not say all Muslims are this way. After all, General el-Sisi is a Muslim; Abdullah of Jordan is a Muslim.

The people that we need on our side to defeat radical Islam are the moderate Muslims of the world. I think at least 80 percent of the Muslims of the world are moderate and would want to be our friends. We need now to recognize that that segment of Islam is now a threat to our safety, our well-being.

This is an historic moment. We can either rise to the challenge or we can lose. But the most important thing, no matter what we do, if our President doesn’t want to send troops there, fine, but at least let us ensure that history will record that we saved those Christians who were targeted for the genocide of this evil force that was expanding in that part of the world. Shame on us if we do not.

I ask my colleagues to join me in support of H.R. 4017. I ask the people of the United States to let their Congressmen know they expect them to support honorable and noble and moral stands like this. It is not discrimination. It is prioritizing towards those people who have been targeted for genocide. Nothing could be better for our soul than to help those who have been so targeted.

I ask that my colleagues join me in supporting this legislation.

Mr. Speaker, I yield back the balance of my time.

SENATE BILL REFERRED

A Bill of the Senate of the following title was taken from the Speaker’s table and, under the rule, referred as follows:

S. 2306. An act to require the Secretary of the Army, acting through the Chief of Engineers, to undertake re-mediation oversight of the West Lake Landfill located in Bridgeport, Missouri; to the Committee on Energy and Commerce, in addition, to the Committee on Transportation and Infrastructure for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ENROLLED BILLS SIGNED

Karen L. Haas, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 515. An act to protect children and others from sexual abuse and exploitation, including sex trafficking and sex tourism, by providing advance notice of intended travel by registered sex offenders outside the United States to the government of the country of destination, requesting foreign governments to notify the United States when a known sex offender is seeking to enter the United States, and for other purposes.

H.R. 4188. An act to authorize appropriations for the Coast Guard for fiscal years 2016 and 2017, and for other purposes.

SENATE ENROLLED BILL SIGNED

The Speaker announced his signature to an enrolled bill of the Senate of the following title:

S. 2152. An act to establish a comprehensive United States Government policy to encourage the efforts of countries in Sub-Saharan Africa to develop an appropriate mix of power solutions, including renewable energy, for more broadly distributed electricity access in Africa, to reduce, promote development outcomes, and drive economic growth, and for other purposes.

ADJOURNMENT

Mr. ROHRABACHER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o’clock and 40 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, February 4, 2016, at 10 a.m.

NOTICE OF PROPOSED RULEMAKING

The Board of Directors, Office of Compliance, has adopted the same regulations as published in the Federal Register, has adopted, and is submitting for approval by the Congress, final regulations implementing Sections II and III (sections 201 through 210, 230, 203, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12121–12138, 12182, 12183, and 12189 (‘‘ADA’’) shall apply to legislative branch entities covered by the CAA. The above provisions of section 210 became effective on January 26, 2016.

The Board of Directors, Office of Compliance, after considering comments to its Notice of Proposed Rulemaking (‘‘NPRM’’) published on September 9, 2014 in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations implementing section 210 of the CAA.


Supplementary Information:

Background and Summary

Section 210(b) of the CAA provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Titles II and III (sections 201 through 230, 203, 303, and 309) of the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12121–12150, 12182, 12183, and 12189 (‘‘ADA’’) shall apply to specified legislative branch offices, 2 U.S.C. §1331(b). Title II of the ADA prohibits discrimination by ‘‘public entities’’ in the provision of programs, services, or activities, or by any ‘‘public entity.’’ Section 210(b)(2) of the CAA defines the term ‘‘public entity’’ for Title II purposes as any of the listed legislative branch offices that provide public services, programs, or activities, 2 U.S.C. §1331(b)(2). Title III of the ADA prohibits discrimination by ‘‘public entities’’ in the provision of programs, services, or activities, 2 U.S.C. §1331(b)(2).
the same as substantive regulations promul-
gated by the Attorney General and the Secre-
tary of Transportation to implement the statu-
tory provisions referred to in subsection (b) in bar-
rier free fashion except that the Board may determine, for good 
cause shown and stated together with the regulation, that a modification of such regu-
lations is effective for the implementation of the rights and protections under this section.” Id. Section 210(e) further 
provides that the regulations shall include a method of incorporating, for purposes of this 
section and for different categories of viola-
tions of subsection (b), the entity responsible for 
correction of a particular violation. 2 U.S.C. § 1331(b).

Rec. S5437 (daily ed., Sept. 9, 2014). In re-
response to the NPRM, the Board received four 
sets of written comments. After due consid-
eration of the comments received in response 
to the proposed regulations, the Board has 
adopted and is submitting these final regula-
tions for approval by Congress.

Summary of Comments and Board’s Adopted Rules

A. Request for additional rulemaking pro-

One commenter requested that the Board withdraw its proposed regulations and “cre-
ate” new regulations. The commenter sug-
gested that the Board’s authority to adopt regulations under the CAA permits the Board to incorporate existing regulations by reference and also suggested that the Board would be adopting future changes to the incorporated regulations unless it specified that the regu-
lations in existence on the adoption date were the ones being incorporated rather than the regulations on the issuance date, which was proposed in the NPRM and occurs after Congress has approved the regu-
lations. The Board has determined that fur-
ther rulemaking proceedings are not required because the publication requirements of Section 308(b)(1) of the CAA, which requires compliance with 5 U.S.C. §553(b), is satisfied by incorporating “material readily available to the class of persons affected by the proposed regulation. See, 5 U.S.C. §552(a)(1)(E). Nonetheless, in response to this comment, the Board has modified its proposed regulation to incorporate the regulations in existence on the adoption date rath-
er than the issuance date. In addition, to fur-
ther address the commenter’s concerns, the adopted regulations require that the full text of the in-
corporated regulations be published on the Office of Compliance website.

B. General comments regarding proposed regu-
lations

1. Compliance with both Titles II and III of the ADA

Several commenters questioned whether it was necessary to adopt regulations under both Title II and Title III when Title II typi-
cally applies only to public entities and Title III applies only to private entities. Section 210 of the CAA can be confusing be-
cause it requires legislative branch offices (which are “public entities”) to comply with sections of the ADA that are part of both Title II and Title III. Ordinarily, as the com-
commenters stated, the applicable provisions differ between Title II and Title III of the ADA

Title II of the ADA, the term “public entity” means any of these legislative branch of-
ices, 42 U.S.C. §1331(b)(2). For the purposes of Title III of the ADA, the CAA does not in-
clude all barriers except those identified in Sec-
tion 301 of Title III, which limits the applica-
tion of Title III to private entities which own, operate, lease or lease to places of pub-
lic accommodation. The DOJ’s Title II regulation expresses Title II applies to public entities and Title III applies to public entities and Title

Both Title II and Title III when Title II typi-
cally applies only to public entities and Title

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cally applies only to public entities and Title III applies only to private entities. Section 210 of the CAA can be confusing be-
cause it requires legislative branch offices (which are “public entities”) to comply with sections of the ADA that are part of both Title II and Title III. Ordinarily, as the com-
commenters stated, the applicable provisions differ between Title II and Title III of the ADA

III. For this reason, and to eliminate the po-
tential confusion expressed by the com-
menters, the Board has adopted only the DOJ’s Title II regulation when the DOJ’s Title II and Title III regulations address the same subject.

2. Providing services, programs, activities or 
accommodations directly to the public 
out of a leased space

Several commenters raised questions re-
garding what assistance can be provided by 
entities in strict compliance with the appli-
cable ADA Standards for Accessible Design (ADA Standards) if they were constructed after January 26, 1992. This means that both landlords and tenants are legally obligated to provide access to such leased facilities caused by noncompliance with the applicable ADA Standards. Alter-
tations made after January 26, 1992 to facili-
ties must meet the applicable requirements; both Title II and Title III regulations, subject to enforcement by the DOJ or by an indi-
vidual with a disability through legal action.

Under the DOJ regulations that are incor-
porated by reference, the obligations imposed by Title II and Title III differ-
ding upon when the leased facility was constructed. Entities covered by either Title II or Title III (or both) must have designed and constructed their fa-
cilities in strict compliance with the appli-
cable ADA Standards for Accessible Design (ADA Standards) if they were constructed after January 26, 1992. This means that both landlords and tenants are legally obligated to provide access to such leased facilities caused by noncompliance with the applicable ADA Standards. Alter-
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tations made after January 26, 1992 to facili-
ties must meet the applicable requirements; both Title II and Title III regulations, subject to enforcement by the DOJ or by an indi-
vidual with a disability through legal action.
find that each of the office’s services, programs or activities, when viewed in its entirety, is readily accessible or usable by them. Offices are usually placed in a locality so that they can be personally participated in by individuals with disabilities living in those areas, and should therefore adopt regulations that recognize this distinction. The ADA is a civil rights statute and not a building code, although it is sometimes mistakenly viewed as one. While alterations and construction in rural areas may not be regulated by local building codes, under the ADA, the accessibility of public accommodations and facilities is required to the extent compelled by the DOJ in 28 C.F.R. Part 39. 42 U.S.C. § 12134. Under the ADA, the DOJ found good cause to propose adoption of the Access Board’s regulation formerly known as 36 C.F.R. § 1190.24 (2004) and now as § F202.B.1, entitled the ABAAS. Because, under CAA § 210(e)(2), the OOC Board of Directors (“the Board”) is authorized to propose a regulation that does not necessarily require the approval of the DOJ, the Board determines “for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the purpose of promoting the rights and protections under this section,” the Board has decided to require the leasing of accessible spaces as required in § F202.6 of the ABAAS.

5. Regulations regarding the investigation and prosecution of charges of discrimination and regarding periodic inspections and reporting

Several commenters suggested that the regulations in Part 2, regarding the investigation and prosecution of discrimination, and in Part 3, regarding periodic inspections and reporting, describe powers of the General Counsel that are beyond what was previously provided and which are not required. The Board notes that Section 204(d) of the CAA requires the General Counsel to accept and investigate charges of discrimination filed by qualified complainants. The General Counsel is authorized to propose a regulation that does not necessarily require the approval of the DOJ, the Board determines “for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the purpose of promoting the rights and protections under this section,” the Board has decided to require the leasing of accessible spaces as required in § F202.6 of the ABAAS.
Section 210 provides. Section 210 directs the General Counsel to conduct investigations and inspections in a manner that is broader than what the General Counsel's investigatory authority has provided. The OOC General Counsel has been investigating charges of discrimination since January 1, 1997, the effective date of Section 210(d). Since the creation of the OOC General Counsel, it has endeavored to conduct these inspections and investigations in a manner that is not disruptive to the offices involved and has not received comments from any affected office that its ADA investigations or inspections have ever been disruptive. The regulations merely propose that the General Counsel conduct investigations and inspections in the manner that they have always been conducted.

Due to the lack of inspection resources, the General Counsel is unable to conduct ADA inspections of all facilities used by the covered entities at least once each Congress. The General Counsel is unable to inspect all of the facilities located in the Washington, D.C. area, much less all of the facilities used by the district and state offices that are also covered by the CAA. In light of the General Counsel's limited resources and the large number of facilities that are covered by the CAA, the General Counsel must prioritize its ADA inspections. The proposed regulations allow the General Counsel to continue its practice of giving priority to inspection of areas that have raised concerns from requestors, allowing a requestor to file a request for inspection and by allowing requestors to remain anonymous to the covered entity. To further clarify this distinction, the Board has added the word “covered” before “entity” in Section 1.104(d) of the adopted regulation. Another commenter requested that the regulations be clarified so that only violations of the sections of the ADA incorporated by reference into the CAA are regulated. In response, the Board notes that the ADA is incorporated by reference into the CAA; Section 204 of the ADA, 42 U.S.C. § 12134, which is incorporated by reference into the CAA; and Title III regulations address the same subject matter. The Board has adopted this suggestion in the Title II regulation.

2. Comments from requestors. In response to the suggestion, the Board has made this change in the adopted regulations. One commenter suggested that, when describing how the CAA incorporates sections of Title II and III of the ADA, the regulation should use the language contained in the incorporated statutory sections. The Board has made this change in the adopted regulations. The same commenter suggested that the definition of “place of public accommodation” within the meaning of Title III should be modified to include “property” such as properties designated as historic under State or local law. In response, the Board notes that Section 35.104 of the ADA, 42 U.S.C. § 12110, which is incorporated by reference into the CAA; and Title III regulations address the same subject matter. The Board has adopted this suggestion in the Title II regulation.

2. Comments from requestors. In response to the suggestion, the Board has made this change in the adopted regulations. One commenter suggested that, when describing how the CAA incorporates sections of Title II and III of the ADA, the regulation should use the language contained in the incorporated statutory sections. The Board has made this change in the adopted regulations. The same commenter suggested that the definition of “place of public accommodation” within the meaning of Title III should be modified to include “property” such as properties designated as historic under State or local law. In response, the Board notes that Section 35.104 of the ADA, 42 U.S.C. § 12110, which is incorporated by reference into the CAA; and Title III regulations address the same subject matter. The Board has adopted this suggestion in the Title II regulation.

6. Request to create new regulations relating to inspection process. One commenter suggested that the Board use these regulations to recognize the Capito/Patolino Board’s statutory authority relating to safety and security and create new regulations defining this authority with respect to Section 210 of the CAA. In response, the Board has not made any changes in the adopted regulations in response to these comments.

7. Comments to specific regulations.

a. Sec. 1.103—Authority of the Board. One commenter suggested that, when describing how the CAA incorporates sections of Title II and III of the ADA, the regulation should use the language contained in the incorporated statutory sections. The Board has made this change in the adopted regulations. The same commenter suggested that the definition of “place of public accommodation” within the meaning of Title III should be modified to include “property” such as properties designated as historic under State or local law. In response, the Board notes that Section 35.104 of the ADA, 42 U.S.C. § 12110, which is incorporated by reference into the CAA; and Title III regulations address the same subject matter. The Board has adopted this suggestion in the Title II regulation.

b. Sec. 1.102—Definitions. One commenter suggested that the incorporated definition of the “Act” should be reconciled with the definition of “ADA” provided in the proposed definitions. The Board has added “or Americans with Disabilities Act” after “ADA” in the definition section of the adopted regulations. This will clarify that references to the “Americans with Disabilities Act” or the “Act” in the proposed definitions of the ADA that are applied to the legislative branch by the CAA. One commenter suggested that there should be some discussion of other covered entities outside the DOT. To further clarify this point, the Board has added the word “also” to the definition in the adopted regulation.

c. Sec. 1.103—Authority of the Board. One commenter suggested that this section be modified to allow the Board to adopt the Pedestrian Right of Way Accessible Guidelines ("PROWAG") as a standard. Because the PROWAG are only incorporated by reference into the DOT regulations, the Board notes that they are not among the current DOT regulations that the Board can adopt under Section 1.103(a) of the adopted regulations. For this reason, the Board has not acted upon this suggestion.

d. Sec. 1.104—Method for identifying entity or requestors. One commenter noted that the term “this section” refers to both the statutory and regulatory language at different times. In response to this suggestion, the Board proposes that requestors reference to “this section” to “Section 210 of the CAA” in the adopted regulations. A commenter has also suggested that the regulation refers to allocating responsibility between covered entities rather than identifying the entity responsible and notes that there may be instances where a private landlord has failed to comply with the lease with the covered entity and the General Counsel would be unable to allocate responsibility between the covered entity and the private landlord. In response, the Board notes that Section 1.104(c) describes how the entities responsible for certain inspections are determined. The Board notes that Section 1.104(d) describes how responsibility is allocated when more than one covered entity is involved in the lease. For example, if a private landlord is not a “covered entity” within the meaning of the CAA, Section 1.104(d) would not be applicable when deciding how responsibility is allocated.

(2) Section 35.104. A comment suggested that this regulation should be deleted because it refers to Title V of the Rehabilitation Act which includes employment discrimination issues. The Board notes that Section 35.103(a) is based on Section 204 of the ADA, 42 U.S.C. § 12134, which is incorporated by reference into the CAA; consequently, this provision remains in the adopted regulations.

(3) Section 35.105 (Self-Evaluation) and Section 35.106 (Notice). A comment suggested...
that these regulations should not be adopted because they might require covered entities to report findings to the OOC and keep and maintain certain records. The Board does not find the existing regulation to be "good cause" for modifying the existing DOJ regulation. Unlike some of the other statutes incorporated by the ADA, the CAAA does not contain a specific section about recordkeeping that Congress declined to apply to legislative branch entities.

(4) Section 35.107 (Designation of responsible employee and adoption of grievance procedures). A comment suggested that this regulation should not be adopted because the CAA enforceability provisions. The Board does not find "good cause" for modifying the existing DOJ regulation. The DOJ placed these provisions in the regulations even though the ADA contains "as" for modifying the existing DOJ regulation. The entity or entities responsible for correcting violations are identified in accordance with Section 1.104(c) of the adopted regulations.

(11) Appendices to Part 35 Regulations. A commenter suggested correcting the titles of the Appendices to Parts 35 and 36. The titles have been corrected in the adopted regulations.

(2) Section 36.103 (Relationship with other laws). The Board finds that this regulation should be modified to exclude federal laws that are not used in the incorporated regulations. As noted earlier, although the ADA contains enforceable standard applied to the United States Government. Since 1976, when Congress amended the ABA, it has been a hall mark of Federal policy to provide services to persons with disabilities to require accessibility of buildings and facilities constructed or leased using federal funds.

(3) Section 36.209 (Illegal use of drugs). The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(4) Section 36.211 (Maintenance of accessible features). The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(5) Section 36.304 (Removal of Barriers). A comment suggested modifying this regulation to acknowledge that the General Counsel has no authority over private landlords. The Board does not find good cause for modifying this regulation. As noted earlier, there is nothing in the incorporated regulations that the CAA applies to private landlords. In many cases, barrier removal is the responsibility of the landlord and the tenant. If the tenant has a lease provision that places this responsibility on the landlord, it is up to the tenant to take appropriate action to enforce this provision.

(6) Section 36.406 (Standards for alterations: Path of travel). The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(7) Section 36.402 (Alterations). This commenter suggested deleting the term "illegal use of drugs" from the adopted regulation. As noted earlier, although the ADA contains enforceable standards, the Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(8) Section 36.403 (Alterations: Path of travel). The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(9) Section 36.405 (Alterations: Historic preservation). The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.

(10) Section 35.163 (Information and Signage). A comment suggested excluding offices that do not have direct control over signage in common areas from this regulation. In response, the Board notes that only those sections of Title II that are incorporated by reference and therefore not modified are excluded from the CAA. The titles have been corrected in the adopted regulations.

(11) Appendices to Part 35 Regulations. A commenter suggested modifying the titles of the Appendices to Parts 35 and 36. The titles have been corrected in the adopted regulations.

(2) Section 35.103 (Relationship with other laws). The Board finds that this regulation should be modified to exclude federal laws that are not used in the incorporated regulations. As noted earlier, although the ADA contains enforceable standards, the Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations.
listed in Section 210(a) and the language in Section 210(c) which provides for "such remedy as would be appropriate if awarded under section 303 or 308(a) of the American with Disabilities Act of 1990." These provisions, when read together, may very well constitute an express waiver of sovereign immunity for all damages that can be appropriated against a public entity, which would include compensatory damages.

i. Part 3—Matters Pertaining to Periodic Inspections and Reporting

(1) Section 3.05 (Definitions). Several commenters suggested that this regulation explain in more detail how the General Counsel will exercise statutory authority by procedural and substantive means. In response, the Board has deleted this sentence from the adopted regulation.

(2) Section 3.02 (Definitions). A commenter suggested that the definition of "facilities of a covered entity" be narrowed so that the General Counsel would only inspect spaces occupied solely by a legislative branch office and would not inspect common spaces, entrances or accessible pathways used to access the solely occupied spaces. The Board, such a narrower definition of "facilities of a covered entity" would be inconsistent with the DOJ regulations and the purpose of the statutory mandate to inspect sites for compliance with Titles II and III of the ADA; therefore, it has not modified this definition in the adopted regulations.

(ii) Section 3.103 (Inspection Authority). Commenters suggested that the General Counsel not be allowed to conduct an inspection or investigation initiated by someone who wishes to remain anonymous. For the reasons stated earlier in response to the general comments, the Board rejects this suggestion and has therefore not changed this section of the adopted regulations. The Architect of the Capitol suggested that, in the interest of simplicity and timeliness, Section 3.103(b) be shortened to: "The Office of the Architect of the Capitol shall, within one year from the effective date of these regulations, develop a process with the General Counsel to identify potential barriers to access prior to the completion of alteration and construction projects." Because the language used in the NPRM more thoroughly describes what this preconstruction process should entail, the Board does not find good cause to modify this regulation in the manner suggested.

Adopted Regulations:

PART 1—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

§ 1.101 PURPOSE AND SCOPE

§ 1.102 DEFINITIONS

§ 1.103 AUTHORITY OF THE BOARD

§ 1.104 METHOD FOR IDENTIFYING THE ENTITIES RESPONSIBLE FOR CORRECTING VIOLATIONS OF SECTION 210

§ 1.105 REGULATIONS INCORPORATED BY REFERENCE

§ 1.106 PURPOSE AND SCOPE

(a) CAA. Enacted into law on January 23, 1995, the Congressional Accountability Act ("CAA") in Section 210(b) provides that the rights and remedies against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans with Disabilities Act of 1990, U.S.C. §§ 12111–12112, 12121, 12182, and 12189 ("ADA"), shall apply to the following entities:

(1) each office of the Senate, including each committee and each component;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the United States Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capit­ ol;

(8) the Office of the Attending Physician; and

(9) the Office of Compliance;

Title II of the ADA prohibits discrimina­tion on the basis of disability in the provi­sion of public services, programs, activities, and accommodations established by sections 201 and 230 of the ADA; Title III of the ADA prohibits discrimination on the basis of disability by public accommodation and commercial facilities to be designed, constructed, and altered in com­pliance with accessibility standards. Section 225(f) of the CAA provides that, "[e]ach Federal entity shall, in providing new or modified public services, programs, and activities, and in making modifications to existing public services, programs, and activities, ensure that the new or modified services, programs, and activities, and the modifications to existing services, programs, and activities, are accessible to and useable by individuals with disabilities unless the agency can demonstrate that making the modifications would fundamentally alter the nature orEssential parts of the document have been highlighted. This highlights the key points and important information, making it easier to understand.
and, when the violation involves a physical access barrier, the entities responsible for designing, maintaining, altering or constructing the facility in which the specific public service program, activity or accommodation is conducted or provided.

(d) Allocation of Responsibility for Correction of Title II and/or Title III Violations. When the entity is found to be an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for correcting the violations of Title II or Title III of the ADA may be determined by statute, contract, or other enforceable arrangement or relationship.

1.105 Regulations incorporated by reference.

(a) Technical and Nomenclature Changes to Regulations Incorporated by Reference. The definitions in the regulations incorporated by reference ("incorporated regulations") shall be used to interpret these regulations except: (1) when they differ from the definitions in §1.102 or the modifications listed below, in which case the definition in §1.102 or the modification listed below shall be used; or (2) when they define terms that are not used in the incorporated regulations. The incorporated regulations are hereby modified as follows:

(1) When the incorporated regulations refer to “Assistant Attorney General,” “Department of Justice,” “PTA Administrator,” “PTA regional office,” “Administrator,” “Secretaries of Labor or other executive branch office or officer,” “General Counsel” is hereby substituted.

(2) When the incorporated regulations refer to the date “January 26, 1992,” the date “January 1, 1997” is hereby substituted.

(3) When the incorporated regulations otherwise specify a date by which some action must be completed, the date that is three years from the effective date of these regulations is hereby substituted.

(4) When the incorporated regulations contain an exception for an “historic” property, building, or facility, that exception shall also apply to properties, buildings, or facilities of historic or heritage asset by the Office of the Architect of the Capitol in accordance with its preservation policy and standards and where, in accordance with its preservation policy and standards, the Office of the Architect of the Capitol determines that compliance with the requirements for accessible routes, entrances, or facility elements as defined in 28 C.F.R. Parts 35 and 36 would threaten or destroy the historic significance of the property, building or facility, the exceptions for alterations to historic property, buildings or facilities for that element shall be permitted to apply.

(b) Rules of Interpretation. When regulations conflict, the regulation providing the most access shall apply. The Board’s Notice of Adoption shall be used to interpret these regulations and shall be made part of these regulations as Appendix A. Incorporation by reference as though stated in detail herein:

§35.106 Notice.
§35.107 Designation of responsible employee and adoption of grievance procedures.
§35.130 General prohibitions against discrimination.
§35.131 Illegal use of drugs.
§35.132 Smoking.
§35.133 Maintenance of accessible features.
§35.135 Personal devices and services.
§35.136 Service animals.
§35.137 Mobility devices.
§35.138 Ticketing.
§35.139 Direct threat.
§35.149 Discrimination prohibited.
§35.150 Existence of public transportation programs and activities in existing facilities.
§35.151 New construction and alterations.
§35.152 Jails, detention and correctional facilities.
§35.160 General.
§35.161 Telecommunications.
§35.162 Telephone emergency services.
§35.163 Information and signage.
§35.164 Duties.

Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services.

Appendix B to Part 35—Guidance to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services.

§36.101 Purpose.
§36.102 Application.
§36.103 Relationship to other laws.
§36.104 Definitions.
§36.201 General.
§36.202 Activities.
§36.203 Integrated settings.
§36.204 Administrative methods.
§36.205 Association.
§36.206 Places of public accommodations located in private residences.
§36.208 Direct threat.
§36.210 Smoking.
§36.213 Relationship of subpart B to subparts C and D of this part.
§36.301 Eligibility criteria.
§36.302 Modifications in policies, practices, or procedures.
§36.304 Removal of barriers.
§36.305 Alternatives to barrier removal.
§36.307 Accessible parking or spaces.
§36.308 Seating in assembly areas.
§36.309 Examinations and courses.
§36.310 Transportation provided by public accommodations.
§36.402 Alterations.
§36.403 Alterations: Path of travel.
§36.404 Alterations: Elevator exemption.
§36.405 Alterations: Historic preservation.
§36.406 Standards for new construction and alterations.

Appendix A to Part 36—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities.

Appendix B to Part 36—Analysis and Commentary on the 2010 ADA Standards for Accessible Design.

(d) Incorporated Regulations from 49 C.F.R. Parts 37 and 38. The following regulations from 49 C.F.R. Parts 37 and 38 that are published in the Code of Federal Regulations on the date of the Board’s adoption of these regulations are hereby incorporated by reference as though stated in detail herein:

§37.1 Purpose.
§37.3 Definitions.
§37.5 Nondiscrimination.
§37.7 Standards for accessible vehicles.
§37.9 Standards for accessible transportation facilities.
§37.13 Effective date for certain vehicle specifications.
§37.21 Applicability: General.

§37.23 Service under contract.
§37.27 Transportation for elementary and secondary education systems.
§37.31 Vampools.
§37.37 Other applications.

§37.41 Construction of transportation facilities by public entities.
§37.45 Alteration of transportation facilities by private entities.
§37.47 Key stations in light and rapid rail systems.
§37.51 Existing public transportation programs and activities in existing facilities.
§37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
§37.73 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.

§37.77 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
§37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
§38.1 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

§38.3 Remanufacture of rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
§38.41 Disapproved plans.
§38.43 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.
§38.101 Purchase or lease of vehicles by private entities.
§38.105 Equivalent service standard.
§38.121 Requirement for comparable paratransit service.
§38.123 ADA paratransit eligibility: Standards.
§38.125 ADA paratransit eligibility: Process.
§38.127 Complementary paratransit service for visitors.
§38.129 Types of service.
§38.131 Service criteria for complementary paratransit.
§38.133 Subscriptions.
§38.135 Submission of paratransit plan.
§38.137 Paratransit plan development.
§38.139 Plan contents.

§38.141 Requirements for a joint paratransit plan.
§38.143 Paratransit plan implementation.
§38.145 Considerations during FTA review.
§38.151 Waiver for undue financial burden.
§38.153 FTA waiver determination.
§38.155 Factors in decision to grant an undue financial burden waiver.

§38.161 Maintenance of accessible features: General.
§38.163 Keeping vehicle lifts in operative condition: Public entities.

§38.165 Lift and securement use.
§38.167 Other service requirements.

§38.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.
§38.173 Training requirements.

Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities.

§ 2.107 Remedies and Compliance.  
(a) Remedy. The remedy for a violation of Section 210 of the CAAA shall be such remedy as would be appropriate if awarded under Section 203 or 308(a) of the ADA.  
(b) Compliance. The remedy for a violation of Section 210 of the CAAA shall take place as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

§ 2.108 Judicial Review.  
A charging individual who has intervened or anyone respondent to the complaint, if aggrieved by a final decision of the Board, may file a petition for review in the United States Court of Appeals for the Federal Circuit, pursuant to Section 407 of the CAAA.  

PART 3—MATTERS PERTAINING TO PERIODIC INSPECTIONS AND REPORTING.  

§ 3.101 PURPOSE AND SCOPE  
§ 3.102 DEFINITIONS  
§ 3.103 INSPECTION AUTHORITY  
§ 3.104 REPORTING, ESTIMATED COST & TIME, AND COMPLIANCE DATE  
§ 3.101 Purpose and scope.  
Section 210(f) of the CAAA requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections. The General Counsel may request any information or documents necessary to inspect the facilities and may issue any additional regulations as necessary to carry out the provisions of the CAAA.  

§ 3.102 Definitions.  
(a) The facilities of covered entities means all facilities used to provide public programs, activities, services or accommodations that are designed, maintained, altered or constructed by a covered entity and all facilities where covered entities provide public programs, activities, services or accommodations.  
(b) Violation means any barrier to access caused by noncompliance with the applicable standards.  
(c) Estimated cost and time needed for abatement means cost and time estimates that can be reported as falling within a range of dollar amounts and dates.  

§ 3.103 Inspection authority.  
(a) General scope of authority. On a regular basis, at least once each Congress, the General Counsel shall inspect the facilities of covered entities to ensure compliance with Titles II and III of the ADA. When conducting these inspections, the General Counsel has the discretion to decide which facilities will be inspected and how inspections will be conducted. The General Counsel may request information and documents necessary to carry out the provisions of the CAAA.  
(b) Review of information and documents. When conducting inspections under Section 210(f) of the CAAA, the General Counsel may request, obtain, and review any and all information or documents deemed by the General Counsel to be relevant to the investigation of whether the covered entity is in compliance with Section 210 of the CAAA.  
(c) Duty to cooperate. Covered entities shall cooperate with any inspection conducted by the General Counsel in the manner provided by 2(b).
(d) Pre-construction review of alteration and construction projects. Any project involving alteration or new construction of facilities of covered entities are subject to inspection by the General Counsel for compliance with Titles II and III of the ADA during the design, pre-construction, construction, and post construction phases of the project. The General Counsel shall cooperate with the General Counsel to identify potential barriers to access prior to the completion of any project. Any project involving alteration or new construction projects that may include the following provisions:

(1) Design review or approval;
(2) Construction of the ongoing alteration and construction projects;
(3) Training on the applicable ADA standards;
(4) Final inspections of completed projects for compliance; and
(5) Any other provision that would likely reduce the number of ADA barriers in alterations and new construction and the costs associated with correcting them.

§ 3.104 Reporting, estimating cost & time, and compliance date.

(a) Reporting duty. On a regular basis, at least once a fiscal year, the General Counsel shall prepare and submit a report to Congress containing the results of the periodic inspections conducted under § 3.103(a), describing the identification and correction of barriers to access and estimating associated costs with correcting them.

(b) Estimated cost & time. Covered entities shall cooperate with the General Counsel by providing information needed to provide the estimated cost and time needed for abatement in the manner provided by § 2.103(b).

(c) Barriers to access. All barriers to access identified by the General Counsel in its periodic reports shall be removed or otherwise corrected as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the report describing the barrier to access was issued by the General Counsel.

Recommended Method of Approval:

The Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, and therefore recommends that the adopted regulations be approved by concurrent resolution of the Congress.

Signed at Washington, D.C., on this 3rd day of February, 2016.

BARBARA L. CAMINS.

CHAIR OF THE BOARD, OFFICE OF COMPLIANCE.

ENDNOTES

1. 28 C.F.R. § 36.201(b) reads as follows: "Any project involving alteration or new construction of facilities of covered entities are subject to inspection by the General Counsel for compliance with Titles II and III of the ADA during the design, pre-construction, construction, and post construction phases of the project. The General Counsel shall cooperate with the General Counsel to identify potential barriers to access prior to the completion of any project. Any project involving alteration or new construction projects that may include the following provisions:

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