

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW

CIVIL RIGHTS DIVISION

PREAMBLE

1. Sections Affected

Article 4.
R10-3-401
R10-3-402
R10-3-403
R10-3-404
R10-3-405
R10-3-406
R10-3-407
R10-3-408
R10-3-409
R10-3-410
R10-3-411
R10-3-412

Rulemaking Action

New Article
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: The authority of the Attorney General to adopt rules is set forth in A.R.S. §§ 41-192(B)(2) and 41-1492.06. Under the Arizonans with Disabilities Act of 1992, the Attorney General is required to adopt rules which do not exceed Titles II and III of the federal Americans with Disabilities Act, 42 USC §§ 12101 through 12213, and its implementing regulations, 28 CFR 35 and 36 and 36 CFR 1191.

Implementing statutes: A.R.S. §§ 41-1492 through 41-1492.12.

3. Effective date if other than prescribed by law:

September 3, 1996.

4. Citations of previous notices about the rule:

Notice of Rulemaking Docket Opening:

1 A.A.R. 1398, August 18, 1995

Notice of Proposed Rulemaking:

1 A.A.R. 1646, September 22, 1995

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Robbin M. Coulon, Assistant Attorney General, Civil Rights Division

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The current rulemaking process began in July 1995. This Article was promulgated by the Attorney General's Civil Rights Division and has been adopted to implement the provisions of the Arizonans with Disabilities Act, A.R.S. §§ 41-1492 through 41-1492.12. R10-3-402 through R10-3-404 incorporate by reference the federal regulations and accessibility guidelines enacted to enforce the

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federal Americans with Disabilities Act. This was done to ensure that enforcement under Arizona state law would be consistent with enforcement under federal law. The Attorney General adopted applicable federal regulations by reference, with only 2 exceptions.

The 1st exception, which appears in R10-3-401, adopts more applicable definitions. The 2nd exception, which appears in R10-3-403, is an amendment to 28 CFR 35.150(c) regarding the time period in which public entities must provide curb ramps. This amendment is consistent with a proposed federal rule.

The following sets forth the specific reasons for adopting each Section, including the legal authority and the factual and policy reasons for choosing the specific provisions.

The legal authority of the Attorney General to adopt this Article is based upon A.R.S. §§ 41-1492.06 and 41-192.

A.R.S. § 41-1492.06 states that the Attorney General has express statutory authority to adopt rules to carry out the intent of the Arizonans with Disabilities Act ("AzDA"). A.R.S. § 41-192(A) provides that the Attorney General has the authority to adopt rules for the orderly conduct of business of the Department of Law; organize the Civil Rights Division within the Department of Law and administer the Civil Rights Division pursuant to A.R.S. § 41-1401 *et seq.*; and establish administrative and operational policies and procedures within the Department of Law.

R10-3-401 is the definitional Section. It adopts and incorporates by reference 28 CFR 35.104 and 36.104, which set forth the definitions of words and phrases used throughout the federal regulations and this Article. There are amendments to several definitions, including the definitions for Act, ADAAG, Attorney General, National and Respondent, because of their different application under this Article. The amendments are definitions of words and phrases that would have a different meaning under the federal regulations and words and phrases that are not defined in A.R.S. § 41-1492. The purpose of this Section is to adopt and incorporate the terms to be used in implementing this Article.

R10-3-402 establishes the requirements for nondiscrimination by specified public transportation on the basis of disability in accordance with A.R.S. § 41-1492.05. This Section adopts and incorporates by reference provisions of 36 CFR 1191 and its accompanying appendix, which relate to specified public transportation services by a private entity. The purpose of this Section is to adopt and incorporate the federal regulations that implement Title III of the ADA.

R10-3-403 establishes the requirements for nondiscrimination by public entities on the basis of disability in accordance with A.R.S. § 41-1492.01. This Section adopts and incorporates by reference 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163, and Appendix A to 28 CFR 36 (the "Americans with Disabilities Act Accessibility Guidelines" or "ADAAG"), which pertain to the accessibility requirements for all buildings and facilities that are used by public entities and that are leased or constructed with the use of state or local monies under Title II of the ADA and ADAAG.

R10-3-404 establishes the requirements for nondiscrimination by places of public accommodation and commercial facilities in accordance with A.R.S. § 41-1492.02. This Section adopts and incorporates by reference the provisions of 28 CFR 36 and accompanying Appendix A, which pertain to public accommodations and commercial facilities under the ADA.

R10-3-405 establishes the procedures for filing complaints of discrimination with the Attorney General Civil Rights Division under AzDA. The Attorney General has express statutory authority under A.R.S. § 41-1492.06 to adopt rules necessary to carry out the intent of AzDA. In addition, A.R.S. § 41-192(A) grants the Attorney General authority to adopt rules and to establish administrative and operational policies and procedures for the orderly conduct of business of the Civil Rights Division. The purpose of this Section is to set forth the operational procedures for filing complaints.

R10-3-406 establishes the criteria and procedures to amend a complaint.

R10-3-407 establishes the procedures for serving written notice upon the complaining person acknowledging the filing of their complaint, advising the complaining person of the time limits applicable to complaint processing and of their procedural rights and obligations, advising the complaining person of their right to commence a civil action under A.R.S. § 41-1492.08, and advising the complaining person that retaliation for filing a complaint is a discriminatory act prohibited by A.R.S. § 41-1492.10. The purpose of this Section is to set forth the operational procedures for notifying complaining persons of their rights under AzDA.

R10-3-408 establishes the procedures for serving written notice upon respondents, informing them of the complaint, identifying the alleged discriminatory act upon which the complaint is based, stating the date that the complaint was accepted for filing, advising respondents of the time limits to file a response and of their procedural rights and obligations, advising respondents of the complaining person's right to commence a civil action under AzDA, and advising respondents that retaliation against any person because the person made a complaint is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10. The purpose of this Section is to set forth the operational procedures for notifying respondents of their rights under AzDA.

R10-3-409 establishes the time limits and procedures respondents must follow to file an answer to a complaint.

R10-3-410 establishes the procedures to be followed by the Attorney General in the investigation of complaints under AzDA. The Attorney General shall issue interrogatories and obtain documentary and testimonial evidence to obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint, to document policies or practices of the respondent involved in the alleged discriminatory act or practice alleged in the complaint, and to develop factual data necessary to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur and prepare a final investigative report. The purpose of this Section is to set forth the policies and operational procedures for issuing, modifying, and revoking interrogatories, subpoenas compelling the attendance and testimony of witnesses, and subpoenas requiring the production for examination or copying of documents. This Section also authorizes the

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Attorney General to identify complaints of alleged discriminatory acts or practices that are pervasive or institutional in nature or that involve complex issues, novel questions of fact or law, or that will affect a large number of persons for systemic processing. This determination may be based on the information in the complaint or on information gathered in an investigation. Systemic processing shall focus not only on the facts alleged in the complaint but also on related policies, procedures, and matters under investigation, to make sure that they also comply with the nondiscrimination requirements of AzDA.

R10-3-411 is reserved.

R10-3-412. Subsection (A) was deleted as unnecessary and the remaining subsections were relettered. The phrase "and the prohibitions with respect to the disclosure of information can be observed" was deleted from R10-3-412(B) because it was confusing. The first sentence of subsection (C) was reworded for clarity. In subsection (D), the word "conciliation" was added before the word "agreement" for accuracy; the word "must" in subsection (D) was replaced with "shall" to use regulatory language. In subsection (F), the phrase "[t]he Chief Counsel" was replaced with the phrase "[t]he Attorney General" because who the Attorney General designates to file a civil action on his behalf is an internal management decision. In subsection (M), the "(B)" following A.R.S. § 41-1492.09 was deleted because all of A.R.S. § 41-1492.09 applies to an action by the Attorney General.

Procedural History

On July 28, 1995, a Notice of Rulemaking Docket Opening was filed with the Secretary of State. It was published in the Arizona Register on August 18, 1995. On August 3, 1995, a Notice of Proposed Rulemaking was filed with the Secretary of State. It was scheduled to be published by the Secretary of State in the Arizona Register on August 25, 1995, but due to an inadvertent error, it was not published until September 22, 1995.

Following publication of the Notice of Proposed Rulemaking, a public comment period was held. The Civil Rights Division conducted public hearings and written and oral comments were collected and evaluated.

A public hearing was held in Tucson on October 24, 1995, and in Phoenix, Yuma, and Flagstaff on October 27, 1995. Each of the public hearings was publicized through the Arizona Civil Rights Advisory Board by informational mailings and public announcements. All comments taken during the public comment period were either tape recorded or in writing.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business and consumer impact:

Identification of the Rulemaking:

This Article implements the Arizonans with Disabilities Act, pursuant to A.R.S. § 41-1492.06 which directs the Attorney General to adopt rules which do not exceed Titles II and III of the federal Americans with Disabilities Act and its implementing regulations. The purpose of this Article is to set forth the state accessibility standards for public entities, commercial buildings and facilities, places of public accommodation, and specified public transportation and to provide procedural guidelines for enforcement of AzDA by the Attorney General. The Attorney General incorporated the applicable federal regulations by reference to ensure that this Article complies with A.R.S. § 41-1492.06.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

The accessibility standards set forth in R10-3-401 through R10-3-404 impose no actual additional costs to individuals, public entities, commercial facilities, places of public accommodation, and providers of specified public transportation services who should have complied with Titles II and III of the ADA and their implementing regulations or the Rehabilitation Act of 1973. Actual costs to each public and private entity are difficult to measure because costs will depend on a number of variables, including the condition of the existing structure, the nature of the changes that need to be made, the goods and/or services being offered, the contractual obligations for building maintenance and facility compliance, and available tax deductions. Existing federal tax incentives are a benefit of compliance.

There are no specific costs associated with R10-3-405 through R10-3-412, which are the procedural sections of this Article, because these sections do not establish any substantive rights, duties, or obligations. There should be no increased expenditures for compliance with the AzDA rules, nor should there be any effect on State revenues. Any costs associated with this Article will depend on the level of compliance with the federal law.

There are thousands of Arizona citizens who benefit from greater accessibility. The ability for these Arizona citizens with disabilities to gain access to public and private facilities or to participate in public events and activities is significant to their quality of life. The specific benefits from each Section of this Article are difficult to assess because not all individuals with disabilities benefit from the same accessibility standards. Arizona citizens will also benefit from the enforcement of the accessibility standards by the Attorney General and the ability to pursue their claims of disability discrimination in state court.

The benefits justify the additional costs to public entities, commercial facilities, places of public accommodation, and providers of specified public transportation services.

9. A description of the changes between proposed rule, including any supplemental notices, and the final rule:

Some minor changes to this Article have been made. Each change in text was made either to enhance the clarity, conciseness, and understandability of the rule or in response to public comment. None of the changes makes the final rule substantially different from the proposed rule. The persons affected by the final rule, and the rule's subject matter and effects, are not significantly differ-

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ent from those of the proposed rule.

Spelling, grammatical, and technical errors were corrected and the following changes were made for accuracy and consistency:

“Administrative Rules” was deleted from the heading of the Article.

“Civil Rights Section” was changed to “Civil Rights Division.”

“said” and “such” were changed to “the.”

“his or her” and “his” were changed to “their.”

“hereby” was deleted from R10-3-401 and R10-3-403.

“this rule” was changed to “this Section.”

“above” was changed to “in R10-3-408” in R10-3-409(A).

“and” was deleted from R10-3-410(G).

The heading for R10-3-411 was changed to “Reserved.”

The hyphen was deleted from the word subsection in R10-3-401(B).

The number (4) was added to R10-3-410(D), as it had been inadvertently omitted.

The text of the final rule differs from that of the proposed rule as follows:

R10-3-401. The proposed Section was deleted and replaced by the definitional provisions of R10-3-402 to eliminate unnecessary and repetitive provisions or to move the provisions to a more applicable Section. The first sentence was reworded for clarity. The definition of “Arizona Attorney General” was added for consistency and to avoid any confusion with the federal regulation. R10-3-401(A)(1) was deleted as redundant; however, the substance of this provision is incorporated into R10-3-403. R10-3-401(A)(2) was also deleted as redundant; however, the substance of this provision is incorporated into R10-3-404. R10-3-401(A)(3) was moved to R10-3-402 as a separate Section. Subsection (B) repeated the statutory language and was therefore deleted as unnecessary.

R10-3-402. The definitions in this Section were moved to R10-3-401. This appeared as R10-3-401(A)(3) in the proposed rule. The language “[o]wners and operators of specified public transportation shall comply with” was added to clarify this Section’s application.

R10-3-403. The language “[p]ublic entities shall comply with” was added to clarify this Section’s application. The accessibility guidelines in Appendix A to 28 CFR 36 apply to public entities, pursuant to 28 CFR 35.151(c); however, the phrase “and Appendix A to 28 CFR 36” was added for clarification. The phrase “relating to public entities” was deleted as unnecessary. Subsection (B) was added to extend the time period for public entities to provide curb ramps until January 26, 1997. This change is consistent with a rule proposed by the Department of Justice on November 27, 1995 (60 FR 58462), which extends the time period for the provision of curb ramps at locations serving state and local government offices and facilities, transportation, and places of public accommodation to January 26, 2000, and at public pedestrian walkways to January 26, 2005. The Attorney General is extending the time period because it is anticipated that the proposed federal rule will become final by then. This will allow the Attorney General time to propose rulemaking and receive public comments on extending the time for providing curb ramps. Subsection (B) was added to facilitate compliance with A.R.S. § 41-1492.06(C), which states that the Attorney General shall amend rules if amendments are needed to achieve consistency with regulations promulgated pursuant to the ADA.

R10-3-404. Subsection (A) of the proposed rule, regarding the effective date of this Article, was deleted because the Administrative Procedure Act provides that the final rule will become effective when filed with the Secretary of State. The language “[p]laces of public accommodations and commercial facilities shall comply with” was added to clarify this Section’s application. The Attorney General does not have the statutory authority to incorporate by reference 28 CFR 36.207, 36.209, 36.210 through 36.214, 36.306 through 36.307, 36.501 through 36.506, 36.508, and 36.601 through 36.608. These provisions were added to the exceptions to incorporation.

In response to a public comment, 28 CFR 36.503 was included in the list of provisions that were not incorporated by reference because A.R.S. § 41-1492.09 states that the Attorney General shall file a civil action if a reasonable cause determination is made and conciliation cannot be reached; however, the federal regulation states that the Attorney General may file a civil action.

The amendments to Appendix A to 28 CFR 36, which appeared in R10-3-404(B) of the proposed rule, were deleted from the final rule based upon public comment regarding inconsistencies between the proposed rule and the federal standards and the legislative directive for this rulemaking. By deleting the amendments, the final rule will be identical to federal standards. This eliminates the potential impact on the public and private sector of trying to comply with 2 different standards. The proposed R10-3-404(B) had adopted universal parking and several other preferred accessibility standards permitted by the federal regulations. The Attorney General encourages the use of universal parking, whenever possible, to provide for greater accessibility; however, a rule requiring universal parking cannot be adopted because of the restrictions placed upon this rulemaking by statute.

R10-3-405. The 1st sentence in subsection (A) was added to distinguish the provisions in this Article from the provisions in Chapter 3, Article 3, which pertain to complaints of discrimination based on race, color, creed, national origin, and ancestry. The statutory provisions “A.R.S. §§ 41-1492.01 through 41-1492.05 and A.R.S. §§ 41-1492.10 through 41-1492.11” referenced in

subsections (A) and (B), and "A.R.S. § 41-1492 *et seq.*" referenced in subsection (C) were replaced with the phrase "the Act" for consistency and clarification. The phrase "or this Article" was added to subsections (A), (B), and (C) also for clarification. The word "must" in subsection (F) was replaced with "shall" to use regulatory language. The subsection referred to in R10-3-405(I) was a typographical error. The reference to R10-3-405(A)(5) was deleted from the final rule as unnecessary. The subsection referred to in R10-3-405(J) was also a typographical error. This reference has been corrected and changed from R10-3-405(A)(4) to R10-3-405(D) and (E). The phrase "if available" was added to R10-3-405(H)(2) and replaces the phrase "if appropriate" in R10-3-405(H)(3) as unduly restrictive because a complaining person may not have the name and address of the respondent or a description of the public or private entity readily available.

R10-3-406. The phrase "at any time during the pendency of the investigation" was added to subsection (A) to clarify when a complaint may be amended and to make this Section consistent with R10-3-409(B). The subsection referred to in R10-3-406(B) was a typographical error. This reference has been changed from R10-3-405(D) to R10-3-408.

R10-3-408. The phrase "within 10 days of the notification" was deleted from the final rule to clarify the intent of this Section.

R10-3-409. The word "must" in subsection (A) was replaced with "shall" to use regulatory language.

R10-3-410. The sentence "[i]n no event shall the Attorney General's Office grant an extension of time which will exceed 21 days from the original date upon which the interrogatories were due" was deleted from R10-3-410(B)(3) because it established an unduly restrictive standard. Subsections (C) and (D) were deleted because they restated the language of the statute. Subsections (F) through (K) were deleted because they inappropriately set forth internal policy decisions to be made by the management of the Attorney General's Office. Subsection (E) was relettered as subsection (C).

R10-3-412. Subsection (A) was deleted as unnecessary and the remaining subsections were relettered. The phrase "and the prohibitions with respect to the disclosure of information can be observed" was deleted from R10-3-412(B) because it was confusing. The 1st sentence of subsection (C) was reworded for clarity. In subsection (D), the word "conciliation" was added before the word "agreement" for accuracy; the word "must" in subsection (D) was replaced with "shall" to use regulatory language. In subsection (E) the phrase "[t]he Chief Counsel" was replaced with the phrase "[t]he Attorney General" because who the Attorney General designates to file a civil action on his behalf is an internal management decision. In subsection (J) the phrase "the complaining person or the respondent fail to make a good faith effort to resolve any dispute" was deleted based upon public comment. In subsection (L), the "(B)" following A.R.S. § 41-1492.09 was deleted because all of A.R.S. § 41-1492.09 applies to an action by the Attorney General.

R10-3-413. Subsections (A) and (B) were deleted from the final rule because they inappropriately restated the language of the statute. Subsection (C) was deleted because it could have unnecessarily restricted the ability of the Attorney General to make determinations on cumulative complaints or new evidence.

10. A summary of the principal comments received and agency response to them:

COMMENT: It appears that R10-3-404(B)(1) will diminish a previous grant of authority to a political subdivision of this state because it would supersede local and county zoning ordinances which regulate the size of certain buildings by the number of automobile spaces provided.

RESPONSE: R10-3-404(B)(1) was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The economic impact of R10-3-404(B)(1) and (4) could be very considerable when having to retrofit an existing parking structure to comply with these requirements. Just saying that 1 vehicle is actually "1.5 vehicles" does not make it so. An existing building with a specific number of parking spaces may become "nonconforming" if unable to provide accessible parking spaces required by the proposed rule. A "nonconforming" building must address the problem of reducing the number of parking spaces needed to satisfy the needs of the facility's use. In addition, the requirement to provide a vertical clearance in a parking garage of 8 feet 2 inches will impact nearly every existing parking structure, resulting in a major expense in order to comply.

RESPONSE: R10-3-404(B)(1) and (4), which amended sections of Appendix A to 28 Part 36, were deleted from the final rule because they exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B)(4) should be modified. It states that there must be a 60-inch wide adjacent access aisle on the right side of the parking stall. It goes on to state that compliance with this provision is acceptable when 2 accessible parking spaces share the same access aisle, which would require the access aisle to be on the left side (not the right side) of 1 of the vehicles.

RESPONSE: R10-3-404(B)(4), which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B)(5). Why are subsections (i) and (ii) not combined in the interest of brevity and good code writing?

RESPONSE: R10-3-404(B)(5), which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B)(5). How is access to only 1/2 of the food or utensils considered appropriate for protection of the civil

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rights of disabled persons? Also, the phrase "must be within the reach of a person using a wheelchair" is not acceptable code writing when you have such an excellent set of graphic illustrations to choose from and to reference.

RESPONSE: R10-3-404(B)(5) was deleted from the final rule and the federal standard regarding access to food service was incorporated by reference. Section 5.5 of Appendix A to 28 CFR 35 states, in pertinent part, that if self-service shelves are provided, "at least 50% of each type" must be within specified reach ranges. This Section does not limit access to only 1/2 of the food or utensils. It was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: In the interest of brevity, R10-3-404(B)(6)(i) and (ii) should be combined and should reference both Fig. 55 and 56 as graphic examples to follow.

RESPONSE: R10-3-404(B)(6), which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-405(A). 180 days seems to be an excessive amount of time in which to file a complaint since accurate memories fade and thus create far more difficulty in accurately reconstructing the facts of the case. If this time could be shortened, it would be of great assistance to all and would reduce legal costs.

RESPONSE: This change was not made because the 180-day requirement is set forth in A.R.S. § 41-1492.09.

COMMENT: Is the Attorney General going to render some type of preliminary plan review and answer the technical questions from local building departments that always seem to arise in the design and renovation of buildings?

RESPONSE: The Attorney General does not have statutory authority to provide a preliminary plan review.

COMMENT: R10-3-404(B)(1) does not reference a valid Section number. The provision should be changed from "Section 4.2.3.5(b) of Appendix A" to "Section 4.1.2(5)(b) of Appendix A."

RESPONSE: This change was not made because this provision was deleted from the final rule. It exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: In the second sentence of R10-3-404(B) there is an invalid Section number. The provision should be changed from "Section 4.1.2.5(b)" to "Section 4.1.2(5)(b)."

RESPONSE: This change was not made because this provision was deleted from the final rule. It exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B)(2). Why is this change being proposed? This provision deletes the forward or parallel wheelchair positioning and the figures referenced in ADAAG and is therefore not consistent with the legislative intent. The ADAAG language should not be changed. RESPONSE: R10-3-404(B)(2) was deleted from the final rule and the ADAAG language was incorporated by reference. R10-3-404(B)(2) was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B)(3). Why was Section 4.13.12 revised to delete the performance requirements for automatic doors and power-assisted doors? These standards are needed to regulate these installations. In addition, the proposed text has no source in the Federal Act or Guidelines.

RESPONSE: R10-3-404(B)(3) was deleted from the final rule and the exact language of Section 4.13.12 of Appendix A to 28 CFR 36 regarding automatic and power-assisted doors was incorporated by reference, with no amendments. R10-3-404(B)(3) was deleted because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The final rule should contain a provision addressing a process to periodically revise the rules to maintain consistency with forthcoming federal rules. In addition, the final rule should include provisions to assist local jurisdictions by providing a means to obtain advisory technical assistance in the application of these standards.

RESPONSE: Pursuant to A.R.S. § 41-1492.06(C), the Attorney General is required to periodically review the final rules and amend rules if amendments are needed to achieve consistency with regulations promulgated pursuant to the ADA. The Attorney General declines to adopt a rule requiring the provision of technical assistance.

COMMENT: R10-3-404(B)(4). Universal parking should be 13 feet wide.

RESPONSE: R10-3-404(B)(4) was deleted from the final rule. Section 4.6.3 of Appendix A to 28 CFR 36, the federal standard regarding accessible parking, was adopted and incorporated by reference. Section 4.6.3 requires accessible parking spaces to be at least 96 inches wide with an adjacent 60 inch access aisle (i.e., 13 ft). Designated "van accessible" parking spaces must be 96 inches wide with an adjacent 96 inch access aisle (i.e., 16 ft). Use of the "universal" parking design is permitted and encouraged. Universal parking requires all accessible spaces to be 132 inches wide with a 60-inch access aisle (i.e., 16 feet). R10-3-404(B)(4)

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was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: It is unfortunate that the hard work of the advisory committee is not going to be used in the proposed rules; however, the members of the committee support the proposed rules.

RESPONSE: The hard work of the advisory committee is duly noted and greatly appreciated. COMMENT: R10-3-403 should also incorporate 28 CFR § 35.130(b)(5), which states: "A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability." Incorporation of § 35.130(b)(5) is necessary to fully implement A.R.S. § 41-1492.01, which requires that certain buildings and facilities "conform to" Title II of the ADA. In order to "conform to" Title II, a building or facility must not only meet accessibility guidelines, it also must be construed, altered, and/or maintained by a contractor who was selected according to criteria that do not discriminate on the basis of disability.

RESPONSE: This change was not made because it would exceed the Attorney General's statutory authority. Protection of persons with disabilities in the selection of procurement contractors is an issue which relates to the services, programs or activities of the state. A.R.S. § 41-1492.01 regulates the accessibility of the buildings and facilities that are used by state and local public entities and that are leased or constructed with the use of state or local monies, but does not regulate the services, programs, or activities of state and local public entities.

COMMENT: R10-3-404. Arizona cannot adopt 28 CFR 36.503 with respect to lawsuits by the Attorney General. Our state law requires that a lawsuit must be filed if a cause determination is made and conciliation cannot be reached. See A.R.S. § 41-1492.09.

RESPONSE: This change is reflected in R10-3-401(A)(2) and R10-3-404(A). The citation "28 CFR 36.503" was added to the list of provisions that were not incorporated by reference.

COMMENT: The provision relating to automatic or power-assisted doors should not be eliminated from Section 4.13.12 of Appendix A to 28 CFR 36. See R10-3-404(B)(3).

RESPONSE: R10-3-404(B)(3) was deleted from the final rule and the exact language of Section 4.13.12 of Appendix A to 28 CFR 36 regarding automatic and power-assisted doors was incorporated by reference, with no amendments. R10-3-404(B)(3) was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The word "Part" in R10-3-404(A) should be deleted and replaced with "§."

RESPONSE: R10-3-404(A) of the proposed rule was deleted as unnecessary and replaced with language from R10-3-401(A)(2).

COMMENT: R10-3-404(B)(4), which relates to Section 4.6.3 of Appendix A, should include the following language from that Section: "Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions." This language is necessary to ensure that parking spaces are accessible.

RESPONSE: We agree. R10-3-404(B)(4) was deleted from the final rule. The requirement that parking spaces and access aisles be level with surface slopes not exceeding 1:50 (2%) in all directions, which appears in Section 4.6.3 of Appendix A to 28 CFR 36, was adopted and incorporated by reference. R10-3-404(B)(4) was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The language in R10-3-405(F), which requires that each complaint contains the affirmation which is made "under penalty of perjury" should be replaced with the language "to the best of my knowledge and belief." The proposed language exceeds the requirements of the ADA, and it will almost certainly have a chilling effect on the filing of complaints.

RESPONSE: A.R.S. § 41-1492.09 states that each complaint "shall be in writing under oath and in such form as the Attorney General requires"; therefore, this requirement is consistent with Arizona law.

COMMENT: R10-3-405(I) refers to R10-3-405(A)(5), but the rule contains no (A)(5).

RESPONSE: The subsection referred to in R10-3-405(I) was a typographical error. This reference was deleted from the final rule as unnecessary.

COMMENT: R10-3-405(J) refers to R10-3-405(A)(4), but the rule contains no (A)(4).

RESPONSE: The subsection referred to in R10-3-405(J) was a typographical error. This reference has been changed from R10-3-405(A)(4) to R10-3-405(D) and (E).

COMMENT: R10-3-406(B) refers to notifying respondents under R10-3-405(D), but that rule does not pertain to notifying respondents.

RESPONSE: The subsection referred to in R10-3-406(B) was a typographical error. This reference has been changed from R10-3-405(D) to R10-3-408.

COMMENT: The language in R10-3-409 which requires the respondent to answer the complaint "under penalty of perjury" should be replaced with the language "to the best of my knowledge and belief." The proposed language exceeds the requirements

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of the ADA.

RESPONSE: This change was not made because it would reduce the evidentiary value of respondent's answer. If the factual allegations are set forth in a respondent's answer are to be considered as evidence in the investigation, the answer must be signed and under oath. The ADA does not specifically address the procedural requirements for conducting an investigation, therefore this language does not exceed the requirements of the ADA.

COMMENT: R10-3-411 should not be reserved. Rules regarding access to investigative files are very important. The Attorney General's Office should include provisions regarding access to investigative files in the final rule. The language should allow attorneys considering representation of a complaining party in private litigation access to files regarding the subject of the investigation.

RESPONSE: This would constitute a substantial change to the rule. At this time, the Attorney General's Office would like to keep this Section reserved until further consideration.

COMMENT: The language in R10-3-412(J) which allows the Attorney General's Office to terminate its efforts to conciliate the complaint if the parties "fail to make a good faith effort to resolve any dispute" is of concern. As worded, genuine disagreement in difficult cases will be considered failure to make a good faith effort. Delete this phrase or use more objective language.

RESPONSE: This phrase was deleted based upon this comment.

COMMENT: In R10-3-412(M), the "(B)" after A.R.S. § 41-1492.09 should be deleted because all of A.R.S. § 41-1492.09 applies to an action by the Attorney General.

RESPONSE: This change was made based upon this comment.

COMMENT: R10-3-413 should set forth the statutory time limits for the Attorney General to effectuate a conciliation agreement and to file a civil action if no agreement is reached. Subsection (B) should be amended by adding the following language, which is taken from A.R.S. § 41-1492.09(A): "If, after investigation, the attorney general determines that reasonable cause exists to believe that AzDA or its implementing rules are being violated, the attorney general shall attempt for a period of not more than 30 days to effectuate a conciliation agreement. If no conciliation agreement has been reached after thirty days from the date of the reasonable cause determination, the attorney general shall file a civil action in the appropriate court."

RESPONSE: This change was not made and R10-3-413 was deleted from the final rule because it is not appropriate to restate the language of a statute in a rule.

COMMENT: The following language should be added to R10-3-413 as subsection (D): "Within 180 days after the filing of a complaint under R10-3-405, the attorney general shall issue a determination of whether reasonable cause exists to believe that AzDA or its implementing rules have been violated." This language is necessary to ensure that discrimination on the basis of disability is redressed promptly.

RESPONSE: This language would unduly restrict the ability of the Attorney General to assist victims of discrimination.

COMMENT: It should not make a difference if a disabled person crosses city, county or state lines. They should expect the same level of accessibility. Therefore, adopting the federal accessibility standards with minor modifications is an excellent idea.

RESPONSE: By incorporating the federal regulation by reference, the final rule will set forth accessibility standards that have been enforced since January 26, 1992.

COMMENT: If A.R.S. §§ 34-401 through 34-411 are still active statutes, the Attorney General's Office should ensure that there is no conflict with the proposed rules.

RESPONSE: A.R.S. §§ 34-401 through 34-411 were repealed by Laws 1992, Ch. 224, § 3, which makes reference to A.R.S. §§ 41-1492 to 41-1492.12.

COMMENT: R10-3-404(B)(3) should include not exclude automatic doors, power-assisted doors and sliding doors to have a bottom 10 inches (255 mm) and a smooth uninterrupted surface, as often these doors do not open completely or open too slowly, resulting in the wheelchair bumper or footrest contacting the bottom 10 inches of the door.

RESPONSE: R10-3-404(B)(3) was deleted from the final rule. The language of Section 4.13.12 of Appendix A to 28 CFR 36, including language regarding automatic and power-assisted doors, was incorporated by reference with no amendments. R10-3-404(B)(3) was deleted because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The proposed rules do not address the needs of disabled persons suffering with environmental illnesses or chemical sensitivities.

RESPONSE: The ADA does not protect categories of illnesses or diseases. Each is evaluated individually and must meet the definition of what constitutes "disability" as described in the law, rules, and regulations of the ADA. The ADA Technical Assistance manual also provides numerous examples to help determine if the individual meets the definition of "disability." The issue is beyond the scope of the ADA and A.R.S. § 41-1492 et seq.

COMMENT: Do the amendments to Appendix A to 28 CFR 36, which appear in R10-3-404(B), apply to both Title II and Title III entities?

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RESPONSE: Yes. Pursuant to 28 CFR 35.151, which was adopted and incorporated by reference in R10-3-403, design, construction, or alteration of facilities used by Title II entities shall be deemed to comply with the requirements of the ADA, if done in conformance with ADAAG (Appendix A to 28 CFR 36). Therefore, ADAAG applies to public entities. However, the amendments to Appendix A to 28 CFR 36 have been deleted from the final rule because they exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA.

COMMENT: If public entities have complied with Section 4.6.3 of ADAAG, they will suffer a financial impact if they need to redesign their parking lots to comply with R10-3-404(B)(4) requiring all accessible parking spaces to be not less than 132 inches (3350 mm) in width. Some public entities will have to decrease the existing number of disabled parking spaces due to the physical space required by the proposed rule. Therefore, the disabled parking stall width should remain 96 inches, per ADAAG.

RESPONSE: This change was made. This provision, which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The reach range for library card catalogs and magazine displays specified in the ADAAG allows a 54-inch maximum and 48 inches as a preferred limit. The 4-inch difference proposed in R10-3-404(B)(6)(I) is not a large 1 but could become a problem if a library can only accommodate a certain number of catalogs or magazines within that range. This would require a greater amount of floor space designated to these functions. The amount of floor space is a concern due to the cost assigned to it. How floor space is allocated is important to a library function; for this reason, the allowable reach range should remain as stated in the ADA Accessibility Guidelines, 54 inches maximum and 48 inches preferred.

RESPONSE: This change was made. This provision, which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: Disappointed that the prior proposed rules were discarded. They made it much easier to comply with AzDA requirements than the new proposed rules do.

RESPONSE: The prior rulemaking packet was terminated, as the result of numerous public comments and the desire to make the final rules more consistent with federal law. The final rules incorporate the federal law by reference and thereby provide for a more uniform accessibility standard.

COMMENT: R10-3-404(B) adopts a 16' requirement with 1.5 credit while ADAAG uses a 13' requirement. The 13' requirement should be maintained to be consistent with ADAAG, but give credit only to providers which use desirable 16' standard.

RESPONSE: R10-3-404(B)(4) was deleted from the final rule. Section 4.6.3 of Appendix A to 28 CFR 36 ("ADAAG"), which requires accessible parking to be at least 96 inches wide with an adjacent 60 inch access aisle (i.e., 13 ft), was adopted and incorporated by reference. The "universal" parking space design is permitted and encouraged. Under the "universal" parking space design all accessible spaces are 132 inches wide with a 60-inch access aisle (i.e., 16 ft). R10-3-404(B)(4) was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: Under R10-3-404(B)(2), the millimeter requirement has been changed from 1220 mm to 1200 mm. Is this a typo?

RESPONSE: There was a typographical error in the proposed rule; however, this provision has been deleted from the final rule because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA.

COMMENT: Does R10-3-404(B)(3) replace the automatic door requirement?

RESPONSE: The proposed language of R10-3-404(B)(3) did replace the automatic door requirement; however, it was deleted from the final rule. The language of Section 4.13.12 of Appendix A to 28 CFR 36 regarding automatic and power-assisted doors was incorporated by reference with no amendments. R10-3-404(B)(3) was deleted because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The language in R10-3-404(B)(6) is of concern. Adjusting the widths of shelves is not a problem. A problem does arise when the height of shelves must be adjusted because manufacturers of the shelves rely on the ADAAG requirements. Establishing a different requirement would force builders to use custom shelving all the time.

RESPONSE: We agree. R10-3-404(B)(6), which amended Section 8.4 of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The numbering of the proposed rules is confusing. The vertical clearance provision in R10-3-404(B) refers to a non-existent Section.

RESPONSE: R10-3-404(B), which amended a Section of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

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COMMENT: The 1.5 standard for parking places in R10-3-404(B)(1) is confusing. RESPONSE: The 1.5 standard in R10-3-404(B)(1) was deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06. Deletion of this wording should resolve any possible confusion.

COMMENT: In R10-3-404(B)(2), the last 2 sentences of Section 4.2.4.1, regarding forward and parallel approach and knee spaces, should not have been deleted. That language is very helpful in enforcement.

RESPONSE: We agree. R10-3-404(B)(2), which amended Section 4.2.4.1 of Appendix A to 28 CFR 36, was deleted from the final rule because it exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: The final rule should establish a requirement that investigation will be completed within 100 days or something similar to that, as provided under the Fair Housing Act.

RESPONSE: There is no similar statutory requirement under AzDA. This language would unduly restrict the ability of the Attorney General to assist victims of discrimination.

COMMENT: Since the multifamily housing guidelines have been deleted from the proposed rules, rulemaking under the Fair Housing Act should be reopened and the requirements inserted there.

RESPONSE: AzDA only applies to public entities, places of public accommodation and commercial facilities, and specified public transportation. Establishing accessibility guidelines for multifamily housing would go beyond the scope of AzDA.

COMMENT: Enforcement of AzDA should be shared with the building code officials and not left solely on the Attorney General. Are building code people going to be involved in enforcement of the rules?

RESPONSE: Enforcement will be shared with building code officials pursuant to A.R.S. § 41-1492.03 which states that the standards and specifications referred to in AzDA and its implementing rules shall be incorporated into existing state and local building codes. COMMENT: It is unclear as to whether the final rule will be applied retroactively.

RESPONSE: The final rule shall become effective when it has been filed with the Secretary of State. There is no statutory provision providing that the final rule will be applied retroactively. COMMENT: The proposed rule is ambiguous as to whether the requirements for places of public accommodation also apply to governmental entities, e.g., libraries.

RESPONSE: 28 CFR 35.151 was added to R10-3-403 to clarify this issue. Pursuant to this federal regulation, which was adopted and incorporated by reference in R10-3-403, public entities must comply with ADAAG (Appendix A to 28 CFR 36), in the design, construction, or alteration of their facilities. Therefore, the accessibility guidelines that apply to places of public accommodation also apply to governmental entities.

COMMENT: The proposed rule provides no guidance and none has been given from the federal government as to whether the Uniform Federal Accessibility Standards ("UFAS") can still be used by local governmental entities.

RESPONSE: 28 CFR 35.151(c), which was adopted and incorporated by reference in R10-3-403, allows local governmental entities to choose to comply with either UFAS or ADAAG to be deemed in compliance with the ADA. If ADAAG is chosen, the elevator exemption contained in 28 CFR §§ 36.401(d) and 36.404 does not apply. Until the Department of Justice determines otherwise, since 28 CFR 35.151(c) has been incorporated by reference, under this Section, local governmental entities may continue to use UFAS.

COMMENT: The parking and dimension requirements exceed ADAAG.

RESPONSE: ADAAG was incorporated by reference, with no amendments, in the final rule. The parking provisions in the proposed rule were deleted from the final rule because they exceeded the regulations, guidelines, and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA and therefore exceeded the statutory standard set forth in A.R.S. § 41-1492.06.

COMMENT: R10-3-404(B) should include the undercounter knee and toe space which is included in ADAAG.

RESPONSE: We agree. ADAAG was incorporated by reference, with no amendments, in the final rule. R10-3-404(B) has been deleted from the final rule because it exceeded the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the ADA.

COMMENT: Some of the provisions of ADAAG are unenforceable because they are vague or conflicting; therefore, by incorporating ADAAG, some of the proposed rules are unenforceable. Municipalities, especially building code officials, do not like the proposed rules because the parameters of ADAAG are too vague.

RESPONSE: A.R.S. § 41-1491.06(B) requires the Attorney General to adopt rules which do not exceed Titles II and III of the federal ADA and its implementing regulations. The provisions of ADAAG are not vague or conflicting.

COMMENT: There is ambiguity in ADAAG. There is a lack of construction guidelines, which may lead building code officials to turn over decisions to the Attorney General, rather than making decisions at the municipality level.

RESPONSE: There is no provision in AzDA for the Attorney General to provide legal advice to local building code officials.

COMMENT: The proposed rules are not enforceable because they are not in building code language. The final rule should be

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written as a building code.

RESPONSE: A.R.S. § 41-1492.03 states that the standards and specifications referred to in AzDA and its implementing rules shall be incorporated into existing state and local building codes. Local building officials are responsible for adopting the applicable standards.

COMMENT: Simply publishing the rules is not the same as enforcement. The Attorney General should send a letter to all towns and cities so that the rules will be enforced.

RESPONSE: Once the final rule becomes effective, it must be incorporated into local building codes by local building officials as a means of enforcement. AzDA contemplates enforcement by cities and towns through their local building codes. A letter from the Attorney General is not necessary.

COMMENT: A "plan review" by the Attorney General is necessary to ensure compliance with the rules.

RESPONSE: The Attorney General does not have statutory authority to provide plan reviews.

COMMENT: ADAAG is useable, but the final rule needs to have the graphics accompany the language to be better suited for use by building code officials.

RESPONSE: Although the graphics do not often appear on the same page as the corresponding language, the graphics included in ADAAG have been incorporated by reference.

COMMENT: The Attorney General should develop technical assistance hand outs for the public.

RESPONSE: The Attorney General's Office will continue to participate in continuing legal education in other forums to assist interested parties in complying with civil rights laws.

COMMENT: The Uniform Building Code ("UBC") and ANSI A117.1 standards should be referred to in the proposed rule.

RESPONSE: UBC and ANSI A117.1 standards have not been referred to in ADAAG, therefore they have not been referred to in the final rule.

COMMENT: The proposed rules do not address the duties and responsibilities of building code officials.

RESPONSE: The Attorney General does not have the statutory authority to adopt rules which establish the duties and responsibilities of building code officials.

COMMENT: The language of R10-3-405(C) appears to make building code officials liable as respondents in cases where they may have given opinions on the interpretation of ADAAG or the proposed rules.

RESPONSE: AzDA contemplates the filing of a complaint against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility or public transportation service, if that person, acting within the scope of their authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a violation of AzDA. There is no express statutory exception for building code officials.

11. Other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

A.R.S. § 41-1492.06(A) requires the Attorney General to hold a reasonable number of public hearings at locations throughout the state prior to adoption of R10-3-401 through R10-3-412. A.R.S. § 41-1492.06(B) states that all rules adopted under the Arizona Americans with Disabilities Act shall not exceed the regulations, guidelines and standards issued by the United States Departments of Transportation and Justice relating to Titles II and III of the Americans with Disabilities Act.

12. Incorporations by reference and their location in the rules:

R10-3-401 incorporates by reference the definitions in 28 CFR 35.104 and 36.104.

R-10-3-402 incorporates by reference those provisions of 36 CFR 1191 and accompanying appendix, which relate to specified public transportation services by a private entity.

R10-3-403 incorporates by reference 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163 and Appendix A to 28 CFR 36.

R10-3-404 incorporates by reference 28 CFR 36 and accompanying Appendix A (the "Americans with Disabilities Act Accessibility Guidelines" or "ADAAG") with the exception of 28 CFR 36.201 through 36.214, 36.301 through 36.304, 36.305 through 36.308, 36.310, 36.501 through 36.506, 36.508, and 36.601 through 36.608.

13. Whether the rule was previously adopted as an emergency rule and if so, whether the text was changed between adoption as an emergency rule and the adoption of this final rule:

The rule was not adopted as an emergency rule.

14. The full text of the rules follows:

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TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

<u>R10-3-401.</u>	<u>Definitions</u>
<u>R10-3-402.</u>	<u>Nondiscrimination on the Basis of Disability by Specified Public Transportation</u>
<u>R10-3-403.</u>	<u>Nondiscrimination on the Basis of Disability by Public Entities</u>
<u>R10-3-404.</u>	<u>Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities</u>
<u>R10-3-405.</u>	<u>Complaints</u>
<u>R10-3-406.</u>	<u>Amendment of Complaints</u>
<u>R10-3-407.</u>	<u>Notification of the Complaining Person</u>
<u>R10-3-408.</u>	<u>Notification of Respondent</u>
<u>R10-3-409.</u>	<u>Answer to a Complaint</u>
<u>R10-3-410.</u>	<u>Investigations</u>
<u>R10-3-411.</u>	<u>Reserved</u>
<u>R10-3-412.</u>	<u>Conciliation</u>

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

R10-3-401. Definitions

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. "Act" or "the Act" means the "Arizonans with Disabilities Act" or "AzDA," A.R.S. § 41-1492 et seq.
2. "ADAAG" means Appendix A to 28 CFR 36, referred to as the "Americans with Disabilities Act Accessibility Guidelines."
3. "Assistant Attorney General" means the "Arizona Assistant Attorney General."
4. "Attorney General" means the "Arizona Attorney General."
5. "National" means "State of Arizona."
6. "Respondent" means a person, public entity, commercial facility or public accommodation against whom a complaint has been filed alleging a violation of the Arizonans with Disabilities Act.

R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation

Owners and operators of specified public transportation shall comply with the provisions of 36 CFR 1191 and accompanying appendix, adopted September 6, 1991 and no further amendments, relating to specified public transportation services by a private entity, which are adopted, incorporated by reference and are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

- A. Public entities shall comply with the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163, and Appendix A to 28 CFR 36, adopted July 26, 1991, and no further amendments, which are adopted, incorporated by reference and are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.
- B. 28 CFR 35.150(c), as incorporated by this Section, is amended as follows:

1. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving state and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 1997, but in any event as expeditiously as possible.
2. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to subsection (B)(1) no later than January 26, 1997, but in any event as expeditiously as possible.
3. If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of subsections (B)(1) and(2).

R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

Places of public accommodations and commercial facilities shall comply with the provisions of 28 CFR 36 and accompanying Appendix A (referred to as the "Americans with Disabilities Act Accessibility Guidelines" or "ADAAG"), adopted July 26, 1991, and no further amendments, with the exception of 28 CFR §§ 36.207, 36.209, 36.210 through 36.214, 36.306 through 36.307, 36.501 through 36.506, 36.508, and 36.601 through 36.608, which are adopted, incorporated by reference and are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035.

R10-3-405. Complaints

- A. Any person may file a complaint alleging discrimination on the basis of disability in accordance with the provisions of this Article. The complaint may be filed with the Attorney General no later than 180 days after an alleged discriminatory act or practice in violation of the Act or this Article. The complaint may be filed with the assistance of any person or organization authorized to act on behalf of the complaining person.
- B. A complaint may be filed against any person alleged to be engaged, to have engaged, or about to be engaged, in a discriminatory act or practice in violation of the Act or this Article.
- C. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to the accessibility of any public building, public accommodation, commercial facility, or public transportation service, if that person, acting within the scope of their authority as an employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a violation of the Act or this Article.
- D. A person may file a complaint in person with, or by mail to: Attorney General, Civil Rights Division, 1275 West Washington, Phoenix, Arizona 85007, or Attorney General, Tucson Office, Civil Rights Division, 402 Congress West, Tucson, Arizona 85701, or such alternate or additional offices as the Attorney General may establish.

- E. A person may provide information stating a violation of the Arizonans with Disabilities Act by telephone to the Attorney General. The Attorney General shall reduce the information provided by telephone to writing on a complaint form and send the form to the complaining person to be signed and affirmed.
- F. Each complaint must be in writing and shall be signed and affirmed by the complaining person filing the complaint. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct".
- G. The Attorney General shall accept any written statement which substantially sets forth the allegations of a discriminatory act or practice under the Arizonans with Disabilities Act. Personnel in the Civil Rights Division shall provide appropriate assistance in filling out complaint forms and in filing a complaint.
- H. Each complaint shall contain substantially the following information:
 1. The name and address of the complaining person;
 2. The name and address of the respondent, if available;
 3. A description and the address of the public entity, commercial facility, public accommodation or specified public transportation which is involved, if available;
 4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act or practice.
- I. A complaint is filed when it is received by the Attorney General's Office.
- J. A complaint is timely filed if within the 180-day period for the filing of complaints, written information identifying the parties and describing generally the alleged discriminatory act or practice is filed as provided in R10-3-405(D) and (E).
- K. Where a complaint alleges a discriminatory act or practice that is continuing, the complaint will be timely if filed within 180 days of the last alleged occurrence of that practice.
- L. Failure to file an administrative complaint pursuant to this Section does not prevent an aggrieved person from bringing a civil action in Superior Court pursuant to A.R.S. § 41-1492.08.

R10-3-406. Amendment of Complaints

- A. Complaints may be amended at any time during the pendency of the investigation. Amendments may be used:
 1. To cure technical defects or omissions, including failure to sign or affirm a complaint;
 2. To clarify or add to the allegations in a complaint; or
 3. To join additional or substitute respondents.
- B. Except for the purposes of notifying respondents under R10-3-408, amended complaints shall relate back to the original filing date.

R10-3-407. Notification of the Complaining Person

Upon the filing of a complaint, the Attorney General shall serve a notice upon each complaining person on whose behalf the complaint was filed. The notice shall:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
2. Include a copy of the complaint;
3. Advise the complaining person of the time limits applicable to complaint processing and of the procedural rights and obligations of the complaining person under this Article;
4. Advise the complaining person of their right to commence a civil action under A.R.S. § 41-1492.08 in an appropriate court, not later than 2 years after the occurrence or termination of the alleged discriminatory act or practice or the breach of a conciliation agreement entered into under this Article; and
5. Advise the complaining person that retaliation against the

complaining person or any other person because of the filing of a complaint or because the person testified, assisted, or participated in an investigation or conciliation under this Article, is a discriminatory act or practice that is prohibited by A.R.S. § 41-1492.10.

R10-3-408. Notification of Respondent

- A. Within 20 days of the filing of a complaint or the filing of an amended complaint, the Attorney General shall serve a notice on each respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or about to engage in the discriminatory act or practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person.
- B. The notice shall:
 1. Identify the alleged discriminatory act or practice upon which the complaint is based, and include a copy of the complaint;
 2. State the date that the complaint was accepted for filing;
 3. Advise the respondent of the time limits to file a response and of the procedural rights and obligations of the respondent;
 4. Advise the respondent of the complaining person's right to commence a civil action under the Act in an Arizona Superior Court at any time within 2 years after the occurrence or termination of the alleged discriminatory act or practice.
 5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, explain the basis for the Attorney General's belief that the joined person is properly joined as a respondent.
 6. Advise the respondent that retaliation against any person because the person made a complaint or testified, assisted, or participated in an investigation or conciliation under this Section, is a discriminatory act or practice that is prohibited under A.R.S. § 41-1492.10.

R10-3-409. Answer to a Complaint

- A. The respondent may file an answer not later than 10 days after receipt of the notice described in R10-3-408. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."
- B. An answer may be amended at any time during the pendency of the investigation.

R10-3-410. Investigations

- A. Upon the filing of a complaint, the Attorney General shall initiate an investigation to:
 1. Obtain information concerning the events or transactions that relate to the alleged discriminatory act or practice identified in the complaint.
 2. Document policies or practices of the respondent involved in the alleged discriminatory act or practice raised in the complaint.
 3. Develop factual data necessary for the Attorney General to make a determination whether reasonable cause exists to believe that a discriminatory act or practice has occurred or is about to occur, and to take other actions provided by A.R.S. § 41-1492.09.
- B. Issuance of interrogatories. During the course of investigation, any member of the Attorney General's Office may cause to be issued interrogatories upon any party or witness to the proceedings.
 1. Interrogatories issued pursuant to this provision shall

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require that the person addressed answer the interrogatories under oath.

2. Interrogatories issued pursuant to this provision shall be answered and returned to the Attorney General's Office within 14 days of receipt of the interrogatories.
3. Any person served with interrogatories issued pursuant to this provision may request of the Attorney General's Office a reasonable extension of time in which to answer the interrogatories. In computing any time period under this provision, the computation shall be governed by Rule 6A, Arizona Rules of Civil Procedure, A.R.S. Volume 16.

C. Taking of Testimony -- Mechanical Recording. A taking of testimony pursuant to R10-3-405(F)(4) may be recorded by other than stenographic means, including, but not limited to, tape recording.

R10-3-411. Reserved

R10-3-412. Conciliation

- A. In conciliating a complaint, the Attorney General shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violation of the rights of the aggrieved person, and take action that will assure the elimination of discriminatory acts or practices, or their prevention or recurrence.
- B. Where the rights of the complaining party and the respondent can be protected, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.
- C. The terms of a conciliation agreement shall be in writing. The conciliation agreement shall seek to protect the interest of the complaining person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in A.R.S. § 41-1492.09(B). The provisions that may be sought for the vindication of the public interest are described in A.R.S. § 41-1492.09(C).
- D. A conciliation agreement shall be executed by the respondent, the complaining person, and the Attorney General. The Attorney General shall approve a conciliation agreement and shall execute the agreement, only if:
 1. The complaining person and the respondent agree to the relief accorded the aggrieved person; and
 2. The provisions of the agreement will adequately vindicate the public interest.
- E. The Attorney General may file a civil action under A.R.S. § 41-1492.09 if the complaining person and the respondent have executed a conciliation agreement that has not been approved by the Attorney General.
- F. The following types of relief may be sought (without limitation) for complaining persons in conciliation:
 1. Monetary relief in the form of damages, including compensatory damages and attorney fees; and
 2. Equitable relief including but not limited to the provision of an auxiliary aid or service, modification of a policy, practice or procedure, and an order to alter facilities to make these facilities readily accessible to and usable by individuals with disabilities to the extent that alteration is required by A.R.S. § 41-1492.02.
- G. The provisions which may be sought for vindication of the

public interest (without limitation) include:

1. Elimination of discriminatory acts or practices, procedures, policies, and rules;
 2. Prevention of future discriminatory acts or practices;
 3. Remedial affirmative action activities to overcome discriminatory acts or practices;
 4. Reporting requirements;
 5. Monitoring and enforcement activities; and
 6. Civil penalties against the covered person or entity in an amount of not more than \$5,000.00 for a 1st violation and \$10,000.00 for any subsequent violation.
- H. The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in R10-3-412(G) and (H). The complaining person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.
- I. The Attorney General shall terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the Attorney General, or if the Attorney General finds, for any reason, that voluntary agreement is not likely to result.
- J. Where the complaining person has commenced a civil action seeking relief from the alleged discriminatory act or practice, and the trial in the action has commenced, the Attorney General will terminate conciliation unless the court specifically directs the Attorney General to continue conciliation.
- K. Except as otherwise provided by the Act or this Section, nothing that is done in the course of conciliation under this Section shall be made public without the written consent of the persons concerned.
- L. The Attorney General has authority to review compliance with the terms of any conciliation agreement and shall file a civil action pursuant to A.R.S. § 41-1492.09, if there is reasonable cause to believe that a respondent has breached a conciliation agreement.
- private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after September 29, 1995.
- R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**
- A. Each employer pursuant to A.R.S. § 23-403(B) shall comply with the standards enumerated in Subparts C through Z inclusive of the federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments up to and including (but not including any later amendments or editions) October 12, 1994, as of October 11, 1995, incorporated herein by reference and on file with the Office of Secretary of State. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after October 11, 1995.
 - B. No change.
 - C. No change.
 - D. No change.