



Serving the Vending, Coffee Service and Foodservice Management Industries

Coming Changes to the Vending Industry Under the Americans with Disability Act

Frequently Asked Questions

The Department of Justice Issues New ADA Regulations.

The U.S. Department of Justice has issued new regulations related to side reach regulations which may impact vending machines. The regulations can be viewed at <http://www.ada.gov/regs2010/ADAREgs2010.htm> “The reach range requirements have been changed to provide that the side reach range must now be no higher than 48 inches (instead of 54 inches) and no lower than 15 inches (instead of 9 inches). The side reach requirements apply to operable parts on accessible elements, to elements located on accessible routes, and to elements in accessible rooms and spaces.”

The 1991 Standards at section 4.2.6 establish a maximum side-reach height of 54 inches. The 2010 Standards at section 308.3 reduce that maximum height to 48 inches. The 2010 Standards also add exceptions for certain elements to the scoping requirement for operable parts. However under safe harbor provisions, existing facilities that are in compliance with the 1991 Standards, which require a 54-inch side-reach maximum, would not be required to comply with the lower side-reach requirement, unless there is an alteration. See §35.150(b)(2). “Existing self-service food stations and vending areas that already are in compliance with the 1991 Standards will not be required to satisfy the 2010 Standards unless they engage in alterations. With regard to prefabricated vending machines and food service components that will be purchased and installed in businesses after the 2010 Standards become effective, the Department expects that companies will design these machines and fixtures to comply with the 2010 Standards in the future, as many have already done in the 10 years since the 48-inch side-reach requirement has been a part of the model codes and standards used by many jurisdictions as the basis for their construction codes.” The final regulations for Titles II and III of the Americans with Disability Act will be published in the Federal Register on September 15, 2010. According to statements released by the Justice Department, these new regulations would become a legal option six months after publication and a mandate after 18 months or March 15, 2012.

1. What is the biggest change for the vending, water and coffee industry?

These regulations establish new side reach regulations requiring that all operable parts be no higher than 48 inches or lower than 15 inches. This differs from most current machines which have controls at 54 inches high and 9 inches low.

The National Automatic Merchandising Association. www.vending.org

HEADQUARTERS: 20 N. Wacker Drive, Suite 3500, Chicago, IL 60606-3102, Voice: 312/ 346-0370, Fax: 312/ 704-4140

EASTERN OFFICE: 1600 Wilson Blvd., Ste. 650, Arlington, VA 22209, Voice: 571/346-1901, Fax: 703/836-8262

SOUTHERN OFFICE: 2300 Lakeview Parkway, Ste. 700, Alpharetta, GA, 30009, Voice: 678/916-3852. Fax: 678-916-3853

WESTERN OFFICE: 80 South Lake Avenue, Suite 538, Pasadena, CA 91101, Voice: 626/229-0900, Fax: 626/229-0777

2. When do these changes go into effect?

The rules become effective on March 15, 2011, and enforcement will begin on March 15, 2012.

3. Why comply with the new ADA Regulations? Aside from vending machine site owners/lessors requesting or requiring individual vending machines (or vending machine “sites” with multiple vending machines where at least one machine needs to be compliant in order to achieve necessary “ADA accessibility”), what are the penalties for non-compliance and how are they enforced?

Individuals may file complaints with the U.S. Attorney General and the U.S. Department of Justice who may then file lawsuits in federal courts to enforce the ADA. The courts may award money damages and impose civil penalties as a remedy if the Department prevails. Individuals may also file private lawsuits seeking injunctive remedies to achieve ADA-compliant “accessibility”, but the courts may not award money damages and impose civil penalties in private lawsuits. Under Title III (which governs “Public Accommodations” and is most relevant to the industry), the Department of Justice may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation. Under general rules governing lawsuits brought by the Federal Government, however, the Department of Justice may not sue a party unless negotiations to settle the dispute have failed.

4. What locations must have ADA compliant machines?

The regulations apply to “public entities”. “Public entities” include any State or local government and any of its departments, agencies, or other instrumentalities. All activities, services, and programs of public entities are covered, including activities of state legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of state and local governments whether or not they receive federal funds. Private entities that operate public accommodations, such as hotels, restaurants, theaters, retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys, hospitals, nursing homes, shopping centers, specified public transportation terminals, recreational facilities, such as health clubs or golf courses, schools, and day care facilities [42 U.S.C. 12182(a)] are covered.

5. I have accounts at locations other than those that are listed above. Will I also need to have ADA compliant machines?

You won't be legally required to have such machines at locations which are not included in the above public facilities. However, any account or location could require ADA compliant machines in their bid specifications.

6. Will all machines in a location be required to be ADA compliant?

No. The ADA requires access to compliant machines to accommodate individuals with disabilities. So if you provide several banks of machines at one location, at least one of each machine type (snack, food, beverage, coffee) must be ADA compliant. For example, if a hotel has snack and beverage machines on each level, at least one bank of snack and beverage machines must be ADA compliant. The other machines could be existing older machines.

7. Are machines or locations “grandfathered” and exempt from these regulations?

You will not have to replace existing machines with new ADA compliant machines at a location, unless the location undergoes alterations. If the location isn't upgraded, changed or renovated, then there is no need to install new equipment. The rule includes a general "safe harbor" under which elements in covered facilities that were built or altered in compliance with the 1991 Standards would not be required to be brought into compliance with the 2010 Standards until the elements were subject to a planned alteration.

8. What is the definition of “alteration”? If I replace existing machines with new machines, is that renovation requiring ADA machines? If I win a new account, and install new machines, is that “renovation”?

If you bring in new equipment, you may have to install new ADA compliant machines to at least one area of the location.

9. I didn't think this applied to vending machines, since they are not “fixed equipment”. Does this really apply to vending machines?

NAMA continues to argue that this does not apply to vending, since our equipment is moveable and not fixed. NAMA is submitting official comments to the DOJ to make this argument. We recommend that until a specific exemption is allowed for vending from the DOJ, all operators move toward compliance as outlined in this document.

In addition, any account could require ADA compliant machines in their bid or RFP. NAMA recommends that vending operators begin to move to provide ADA compliant equipment.

10. How about coffee machines? Are they fixed or moveable equipment under ADA?

Any equipment which is connected to plumbing is fixed equipment, and will not be exempt under the fixed vs. moveable argument.

11. Do all operating controls need to be lower than 48 inches?

Regulations require that the operable parts be located no higher than 48 inches. We recognize that machines may use a combination of cashless solutions, bill acceptors and coin mechanisms. Regardless, we recommend that all operating controls be located no higher than 48 inches.

12. What is the measuring point of the 15 inch lower reach requirement?

The Department of Justice states that this distance is measured from the floor to the lowest point of the interior dispensing tray. The intent is for the customer to reach no further than 15 inches from the floor to grasp the product or retrieve change.

13. Are there labels or certifications which manufacturers or operators can use to verify ADA compliance?

The federal government does not certify machines to ADA standards, but NAMA does provide a review of machines and can verify machines which do comply with these new standards. Machines are evaluated to the applicable design and construction specifications of the latest edition of the U.S. Public Health Service Model Food Code, and the further requirements of the NAMA Standard for the Sanitary Design and Construction of Food and Beverage Vending Machines. All evaluations are conducted by public health consultants who are specialists in

public health and environmental issues. These consultants are retained under contract with NAMA. When a machine meets the requirements of these two documents, a "Letter of Compliance" is issued by the public health consultant identifying the machine by manufacturer, model and the date the certification was first issued. Manufacturers are then authorized to display the "NAMA Listed" service mark on its LISTED machines. Evaluations are conducted at the site of manufacturer; depending upon test facilities needed, at a location which can accommodate the evaluation.

14. Is there federal funding to support this new burden on my company?

In very limited cases, an operator may use IRS Form 8826 – Disabled Access Credit to receive a tax credit for installation of ADA compliant equipment. Consult with your tax attorney prior to using this information.

15. Can I still manufacture, sell or purchase machines with operable parts at 54” high, even though they don’t comply with the new regulations?

Yes. Machines which have operable parts higher than the new 48 inch requirement can still be manufactured sold or purchased. These machines can still be placed in public locations if at least one type of ADA compliant machine is accessible to the public. If you have a private location, then 48” machines are not legally required. However, NAMA strongly recommends that new machines be manufactured to the new 48” - 15” standards. Vending operators are strongly urged to purchase ADA compliant machines, or begin to modify existing machines so they meet the new requirements.

For additional information please contact:

Sandra Larson

Senior Director & Counsel

Government Affairs

80 S. Lake Avenue, Suite 538

Pasadena, CA 91101

Phone: 626.229.0900

Fax: 626.229.0777

email: slarson@vending.org