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DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 105; AG Order No. 3180–2010]

RIN 1190-AA46

Nondiscrimination on the Basis of Disability in State and Local Government Services; Corrections

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** of Wednesday, September 15, 2010, at 75 FR 56164, relating to nondiscrimination on the basis of disability in State and local government services. This document will correct typographical errors and one substantive error reflected in certain sections of the rule relating to service animals.

DATES: *Effective Date:* March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara J. Elkin, Attorney Advisor, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections revises the Department of Justice regulations implementing title II of the Americans with Disabilities Act (ADA), which adopt enforceable accessibility standards under the ADA that are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board (Access

Board), and update or amend certain provisions of the title II regulation so that they comport with the Department's legal and practical experiences in enforcing the ADA since 1991.

I. Need for Correction

A. Typographical Errors

As published, the final rule contains typographical errors that may cause confusion and therefore are in need of clarification. On page 56178, in § 35.136 ("Service animals"), paragraph 35.136(i)(C) ("Other requirements") is incorrectly designated in the hierarchal outline. Paragraph 35.136(i)(C) needs to be redesignated as paragraph 35.136(i)(3). Additionally, on page 56182, in § 35.151(c) ("Accessibility standards and compliance date"), there is a superfluous "the" in the first sentence, which reads as follows: "If physical construction or alterations commence after July 26, 1992, but prior to the September 15, 2010, then new construction and alterations subject to this section must comply with either UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply" (emphasis added). The word "the" before "September 15, 2010" needs to be removed. Finally, in the section-by-section analysis contained in Appendix A to part 35, on page 56214, under the heading Section 35.151(e) ("Social service center establishments"), there are two errors in the following language: "* * * the Department proposed adding a provision that would require certain social service center establishments that provide sleeping rooms with more than 25 beds to ensure that a minimum of 5 percent of the beds have clear floor space in accordance with section 806.2.3 or 3004 ADAAG" (emphasis added). The words "or 3004" need to be changed to "of the 2004".

B. Substantive Error

As published, the final rule contains an error in wording that may cause confusion over the interpretation of the rule. Specifically, in § 35.104 ("Definitions"), the "service animal" definition states as follows: "The work or tasks performed by a service animal must be directly related to the handler's disability." Because a service animal is not always controlled by the individual with a disability, the service animal's

"handler" is not necessarily the individual with a disability. To clear up any confusion, the word "handler's" should be replaced with the word "individual's" in that sentence. Similar use of the word "handler" in the section-by-section analysis contained in Appendix A to part 35 also needs to be changed to "individual" so it is clear that the individual with a disability does not necessarily need to be the animal's handler in order to be covered by the rule's provisions.

II. Corrections

In the final rule FR Doc. 2010-21821, beginning on page 56164 in the **Federal Register** of Wednesday, September 15, 2010, 75 FR 56164, make the following corrections:

§ 35.104 [Corrected]

■ 1. On page 56177, in the third column, starting on line 30, in § 35.104, in the definition of "Service animal," correct the third sentence of the definition to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

§ 35.136 [Corrected]

■ 2. On page 56178, in the third column, in § 35.136, paragraph (i)(C) is redesignated as paragraph (i)(3).

§ 35.151 [Corrected]

■ 3. On page 56182, in the first column, in line 15, in paragraph (c)(1) of § 35.151, remove the word "the" preceding "September 15, 2010".

Appendix A to Part 35 [Corrected]

■ 4. On page 56192, in the first column, beginning on line 13, remove the following sentence: "The work or tasks performed by a service animal must be directly related to the handler's disability" and add in its place the corrected sentence to read as follows: "The work or tasks performed by a service animal must be directly related to the individual's disability."

■ 5. On page 56192, in the second column, starting on line 53, remove the following sentence: "Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the handler to take medications, and protecting the

handler from injury resulting from seizures or unconsciousness” and add in its place the corrected sentence to read as follows: “Other commenters identified non-violent behavioral tasks that could be construed as minimally protective, such as interrupting self-mutilation, providing safety checks and room searches, reminding the individual to take medications, and protecting the individual from injury resulting from seizures or unconsciousness.”

■ 6. On page 56192, in the third column, starting on line 7, remove the following sentence: “While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression but could include actively cuing the handler by nudging or pawing the handler to alert to the onset of an episode and removing the individual from the anxiety-provoking environment” and add in its place the corrected sentence to read as follows: “While many individuals with PTSD may benefit by using a service animal, the work or tasks performed appropriately by such an animal would not involve unprovoked aggression but could include actively cuing the individual by nudging or pawing the individual to alert to the onset of an episode and removing the individual from the anxiety-provoking environment.”

■ 7. On page 56193, in the first column, starting on line 42, remove the following sentence: “A pet or support animal may be able to discern that the handler is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal” and add in its place the corrected sentence to read as follows: “A pet or support animal may be able to discern that the individual is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal.”

■ 8. On page 56195, in the second column, starting on line 2, remove the following sentence: “Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations” and add in its place the corrected sentence to read as follows: “Tasks performed by psychiatric service animals may include reminding individuals to take medicine, providing safety checks or room

searches for individuals with PTSD, interrupting self-mutilation, and removing disoriented individuals from dangerous situations.”

■ 9. On page 56197, in the second column, starting on line 69, remove the following sentence: “The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the handler’s disability to the definition of ‘service animal’ in § 35.104” and add in its place the corrected sentence to read as follows: “The Department has moved the requirement that the work or tasks performed by the service animal must be related directly to the individual’s disability to the definition of ‘service animal’ in § 35.104.”

■ 10. On page 56214, in the second column, in the fourth line from the bottom, remove the words “or 3004” and add in lieu thereof the words “of the 2004”.

Dated: March 7, 2011.

Rosemary Hart,
Special Counsel.

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DEPARTMENT OF JUSTICE

28 CFR Part 36

[CRT Docket No. 106; AG Order No. 3181-2010]

RIN 1190-AA44

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Corrections

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** of Wednesday, September 15, 2010, at 75 FR 56236, relating to nondiscrimination on the basis of disability by public accommodations and in commercial facilities. This document will correct an inadvertent error in an instruction, the omission of some language in the rule, and an error reflected in certain sections of the rule relating to service animals.

DATES: *Effective Date:* March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Christina Galindo-Walsh, Attorney Advisor, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from

the Department’s toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections revises the Department of Justice regulations implementing title III of the Americans with Disabilities Act (ADA), which adopt enforceable accessibility standards under the ADA that are consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board (Access Board), and update or amend certain provisions of the title III regulation so that they comport with the Department’s legal and practical experiences in enforcing the ADA since 1991.

I. Need for Corrections

As published, an instruction in the final rule has the unintended effect of deleting several paragraphs currently in the Code of Federal Regulations. Specifically, on page 56250, § 36.104 is amended by revising the definition of “place of public accommodation.” However, only the introductory text of that definition, and paragraph (1) and its subparagraphs, are set out below the instruction and were meant to be amended. The Code of Federal Regulations also currently includes paragraphs (2) through (12) to that definition, and, as the instruction is written, those paragraphs will drop out of the Code of Federal Regulations as of the effective date of the final rule, March 15, 2011. This problem can be avoided by revising the instruction. Where the instruction currently reads “* * * revising the definitions of place of public accommodation, qualified interpreter, and service animal * * *” it should be corrected to read as follows: “* * * revising the introductory text and paragraph (1) of the definition of place of public accommodation, and revising the definitions of qualified interpreter and service animal * * *.”

Additionally, the final rule contains an error in wording that may cause confusion over the interpretation of the rule. Specifically, on page 56250, in § 36.104 (“Definitions”), the “service animal” definition includes the following language: “The work or tasks performed by a service animal must be directly related to the handler’s disability.” Because a service animal is not always controlled by the individual with a disability, the service animal’s “handler” is not necessarily the individual with a disability. To clear up any confusion, the word “handler’s” should be replaced with the word “individual’s” in that sentence. Similar