

ADA Title II Self-Evaluation Requirements

28 C.F.R. § 35.105 and Current Services That Use RF- or LED-Emitting Products

The Self-Evaluation Requirement

28 C.F.R. § 35.105 requires every public entity to evaluate its current services, policies, and practices to identify any that do not meet the requirements of Title II of the Americans with Disabilities Act ("ADA"), and to make appropriate modifications. The regulation's original compliance deadline (January 26, 1993, for most entities) governed only the timing of the initial evaluation. It did not limit the substantive scope of what must be evaluated to services that existed as of that date.

The obligation runs to an entity's current services, policies, and practices — meaning any service, technology, or practice a public entity has adopted since its last self-evaluation is squarely within scope. If such a service has not yet been evaluated, that represents an unaddressed compliance gap under the regulation.

Tyler v. City of Manhattan, Kansas

Federal courts have reinforced this reading. In *Tyler v. City of Manhattan*, 849 F. Supp. 1429 (D. Kan. 1994), the court recognized that a public entity's self-evaluation obligations are not satisfied by a one-time, historical exercise; entities remain accountable for evaluating the accessibility of the services they actually operate today. Read together with § 35.105(d) — which directs that self-evaluations and any resulting modifications be maintained and made available for public inspection — the regulation contemplates a living compliance record, not a static filing frozen at the entity's original evaluation date.

Application to EMR-Emitting Products and Systems

This obligation extends to any current service, program, or activity that relies on products emitting electromagnetic radiation, including:

- RF-emitting infrastructure, such as advanced metering ("smart meter") systems, wireless sensors, and similar telemetry deployed in public utilities or public buildings; and
- LED-based lighting and signaling systems, including streetlights, vehicle and traffic warning lamps, and public art or wayfinding installations that use blue-rich, high-intensity, or flashing LED sources.

Where these technologies were adopted after a public entity's last self-evaluation, or were not addressed by it, they remain subject to the current evaluation duty under § 35.105 — including consideration of their effects on individuals with disabilities related to EMR Syndrome, photosensitivity, migraine and seizure disorders, and related conditions.

Bottom Line

A public entity's ADA self-evaluation is not a one-time historical document. If RF- or LED-emitting technologies were adopted after the entity's most recent self-evaluation, or were never addressed by it, the entity has an existing, unmet obligation under § 35.105 to evaluate them.