APPENDIX E—GUIDANCE TO REVISIONS TO ADA TITLE II AND TITLE III REGULATIONS REVISIONING THE MEANING AND INTERPRETATION OF THE DEFINITION OF “DISABILITY” AND OTHER PROVISIONS IN ORDER TO INCORPORATE THE REQUIREMENTS OF THE ADA AMENDMENTS ACT

For guidance providing a section-by-section analysis of the revisions to 28 CFR parts 35 and 36 published on August 11, 2016, see appendix C of 28 CFR part 35. [AG Order 3702–2016, 81 FR 53243, Aug. 11, 2016]

APPENDIX F TO PART 36—GUIDANCE AND SECTION-BY-SECTION ANALYSIS

SECTION 36.303(g)(1) DEFINITIONS

In the Notice of Proposed Rulemaking, 79 FR 44976 (Aug. 1, 2014) (NPRM), the Department proposed §36.303(g)(1), which set forth definitions for certain terms specifically referenced in paragraph (g). The Department sought public comment on these proposed definitions.

“Analog Movie”

Although the Department did not specifically propose a definition of “analog movie” in the NPRM, the Department defined the term in the preamble and solicited comment on the state of analog movies and their availability. In the final rule, the Department has added a definition of “analog movie” in order to distinguish between movies shown in digital cinema format and movies shown in analog format. “Analog movie” is defined to mean “a movie exhibited in analog film format.”

“Audio Description”

In the NPRM, the Department used the term “audio description” to refer to the spoken description of information describing the visual elements of a movie to an individual who is blind or has low vision and who is unable to see the images and action on the screen. Proposed §36.303(g)(1)(i) defined “audio description” as the “provision of a spoken narration of key visual elements of a visually delivered medium, including, but not limited to, actions, settings, facial expressions, costumes, and scene changes.” Although the Department believes that the term “audio description” is most commonly used to describe this service, it sought public comment on whether to use this or some other nomenclature.

All commenters addressing this issue agreed with the Department’s proposal and supported the use of the term and the Department’s definition. In the final rule, the Department has retained the term “audio description,” and has slightly modified the definition for clarity to read as follows: “Audio description means the spoken narration of a movie’s key visual elements, such as the action, settings, facial expressions, costumes, and scene changes. Audio description generally requires the use of an audio description device for delivery to a patron.”

“Audio Description Device”

In the NPRM, at proposed §36.303(g)(1)(ii), the Department used the term “individual audio description listening device” to refer to the “individual device that patrons may use at their seats to hear audio description.” The sole commenter on this definition expressed concern that the term “individual audio description listening device” was unnecessarily long. The Department agrees with the commenter and has revised the name of the device accordingly in the final rule. The final rule retains the text of the proposed definition with minor edits.

“Captioning Device”

In the NPRM, at proposed §36.303(g)(1)(iv), the Department used the term “individual captioning device” to refer to the “individual device that patrons may use at their seats to view the closed captions.” The sole commenter on this definition recommended that the Department shorten the nomenclature for this device to “captioning device.” The Department agrees with the commenter and has revised the name of the device accordingly in the final rule. The final rule retains the text of the proposed definition with minor edits.

“Closed Movie Captioning”

The NPRM defined “closed movie captioning” as “the written text of the movie dialogue and other sounds or sound making (e.g. sound effects, music, and the character who is speaking).” The NPRM further provided that closed movie captioning be available only to individuals who request it, and that, generally, it requires the use of an individual captioning device to deliver the captions to the patron.

Commenters were equally split as to whether the Department should use “closed movie captioning” or some other language to refer to the technology. Some commenters urged the Department to use the term “closed captioning.” Other commenters disagreed, however, and stated that the Department should avoid using the term “closed captioning” to distinguish it from the “closed captioning” that is turned on at home by a person viewing the television. In the final rule, the Department is retaining the term “closed movie captioning,” but the definition is modified for clarity to read: “Closed movie captioning means the written display of a movie’s dialogue and non-speech