



Federal Register

**Monday,
April 26, 2010**

Part X

**Department of
Justice**

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

8 CFR Ch. V

21 CFR Ch. I

27 CFR Ch. II

28 CFR Ch. I, V

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its spring 2010 regulatory agenda pursuant to Executive Order 12866 “Regulatory Planning and Review,” 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601 to 612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

SUPPLEMENTARY INFORMATION: Beginning with the fall 2007 edition, the Internet

has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice’s printed agenda entries include only:

(1) Rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available

in the Unified Agenda published on the Internet.

The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department’s regulatory agenda includes two regulations requiring such a review: “Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities” (RIN 1190-AA44) and “Nondiscrimination on the Basis of Disability in State and Local Government Services” (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on these regulations. Those comments should be addressed to the contact persons listed in the entries for these items.

Dated: March 10, 2010.

Kevin R. Jones,
Acting Assistant Attorney General, Office of Legal Policy.

Civil Rights Division—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
202	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (Section 610 Review)	1190-AA44
203	Nondiscrimination on the Basis of Disability in State and Local Government Services (Section 610 Review)	1190-AA46

Department of Justice (DOJ)

Final Rule Stage

Civil Rights Division (CRT)

202. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Legal Authority: 5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

Abstract: In 1991, the Department of Justice published regulations to implement title III of the Americans With Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG)

published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board began the process of revising ADAAG a number of years ago. It published new ADAAG in final form on July 23, 2004, after having published guidelines in proposed form in November 1999 and in draft final form in April 2002. In order to maintain consistency between ADAAG and the ADA Standards, the Department is

reviewing its title III regulations and expects to propose, in one or more stages, to adopt revised ADA Standards consistent with the final revised ADAAG and to make related revisions to the Department’s title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions is to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department’s technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to

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comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The first step in adopting revised Standards was an advance notice of proposed rulemaking that was published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes that the advance notice simplified and clarified the preparation of the proposed rule. In addition to giving notice that the proposed rule will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above described title III rulemaking. This notice proposed to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG, and initiated the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Timetable:

Action	Date	FR Cite
ANPRM	09/30/04	69 FR 58768
ANPRM Comment Period End	01/28/05	
ANPRM Comment Period Extended	01/19/05	70 FR 2992
ANPRM Comment Period End	05/31/05	
NPRM	06/17/08	73 FR 34508
NPRM Comment Period End	08/18/08	

Action	Date	FR Cite
NPRM Correction Final Action	06/30/08 09/00/10	73 FR 37009

Regulatory Flexibility Analysis

Required: Yes

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue NW, Washington, DC 20030
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190-AA44

203. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101-336

Abstract: On July 26, 1991, the Department published its final rule implementing title II of the Americans With Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. The Access Board published an Availability of Draft Final Guidelines on April 2, 2002, and published the ADA Accessibility Guidelines in final form on July 23, 2004. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. In order to maintain consistency between ADAAG and the Standards, the Department is reviewing its title II regulations and expects to propose, in one or more stages, to adopt revised standards consistent with new ADAAG. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and

services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The first part of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes the advance notice simplified and clarified the preparation of the proposed rule to follow. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADA Standards consistent with revised ADAAG will also serve to address changes to the ADA Standards previously proposed under RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above-described title III rulemaking. This notice also proposed to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/04	69 FR 58768

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Action	Date	FR Cite
ANPRM Comment Period End	01/28/05	
ANPRM Comment Period Extended	01/19/05	70 FR 2992
ANPRM Comment Period End	05/31/05	
NPRM	06/17/08	73 FR 34466
NPRM Comment Period End	08/18/08	

Action	Date	FR Cite
NPRM Correction Final Action	06/30/08	73 FR 36964
	09/00/10	

**Regulatory Flexibility Analysis
Required: Yes**

Agency Contact: John L. Wodatch,
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RIN: 1190-AA46

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