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Part VIII

**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

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its spring 2008 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 is now the basic means for disseminating the Unified Agenda. The complete Unified Agenda is 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.

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. This edition also includes one regulation resulting from a section 610 review: “Commerce in Explosives (Including Explosives in the Fireworks Industry)” (RIN 1140-AA01).

Dated: March 14, 2008.

Elisebeth C. Cook,

Acting Assistant Attorney General, Office of Legal Policy.

Civil Rights Division—Proposed 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

Bureau of Alcohol, Tobacco, Firearms, and Explosives—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
204	Commerce in Explosives (Including Explosives in the Fireworks Industry) (Rulemaking Resulting From a Section 610 Review)	1140-AA01

Legal Activities—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
205	Revised Inspection of Records Relating to Depiction of Sexually Explicit Performances	1105-AB18

Department of Justice (DOJ)
Civil Rights Division (CRT)

Proposed Rule Stage

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 will be 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 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 will simplify and clarify the preparation of the proposed rule to follow. 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 will accompany 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 will 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 will issue as the second step of the above described title III rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title III regulation, this notice will propose to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG. The second stage will initiate 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	05/00/08	
NPRM Comment Period End	07/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035

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

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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 will simplify and clarify 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 will accompany 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 will 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 will issue as the second step of the above-described title II rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title II regulation alone, this notice will also propose 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
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	05/00/08	
NPRM Comment Period End	07/00/08	

Regulatory Flexibility Analysis Required: Yes

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035
 Phone: 800 514-0301
 TDD Phone: 800 514-0383
 Fax: 202 307-1198

RIN: 1190-AA46

Department of Justice (DOJ)

Long-Term Actions

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

204. COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY) (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Legal Authority: 18 USC 847

Abstract: The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), in part, pursuant to the Regulatory Flexibility Act, which requires an agency to review within 10 years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. This rule

amends the explosives regulations relating to fireworks. In addition, this rule incorporates the provisions of an ATF Ruling 76-18, concerning alternate construction standards for storage facilities for explosive materials. This rule also addresses documentation requirements, various exemptions from the explosive regulations, and other amendments to the regulations that have been initiated by ATF or proposed by members of the explosives industry.

Timetable:

Action	Date	FR Cite
General Notice of Regulatory Review	01/10/97	62 FR 1386

Action	Date	FR Cite
NPRM	01/29/03	68 FR 4406
NPRM Comment Period End	04/29/03	
NPRM Comment Period Reopened	06/23/03	68 FR 37109
NPRM Reopened Comment Period End	07/07/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Agency Contact: James Ficaretta
 Phone: 202 648-7094

RIN: 1140-AA01

Department of Justice (DOJ)

Final Rule Stage

Legal Activities (LA)

205. REVISED INSPECTION OF RECORDS RELATING TO DEPICTION OF SEXUALLY EXPLICIT PERFORMANCES

Legal Authority: 18 USC 2257; PL 109-248

Abstract: In the Child Protection and Obscenity Enforcement Act of 1998, Public Law No. 100-690, as amended

by the Child Protection Restoration and Penalties Enhancement Act of 1990, Public Law No. 101-647, and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Public Law No. 108-21, Congress set forth requirements at section 2257, title 18, United States Code, concerning recordkeeping requirements for

producers of sexually explicit material. Section 2257 of title 18, United States Code, specifies steps that must be taken by persons who produce materials depicting sexually explicit conduct to determine the names and dates of birth of persons depicted in those materials, lists records that must be kept by persons producing those materials, and requires that notices as to the location

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of those records be affixed to those materials. 28 CFR part 75 contains recordkeeping and inspection requirements implementing section 2257, title 18, United States Code. On May 24, 2005 (70 FR 29607), the Department published a final rule amending these requirements at 28 CFR part 75 to bring the regulations up to date and to make the inspection process effective for the purposes set by Congress in enacting section 2257.

This rule amends the recordkeeping and inspection requirements of 28 CFR part 75 to account for changes in the underlying statute, 18 U.S.C. section 2257, made by the Adam Walsh Child Protection and Safety Act of 2006.

Timetable:

Action	Date	FR Cite
NPRM	07/12/07	72 FR 38033
NPRM Comment Period End	09/10/07	
Final Action	08/00/08	

Regulatory Flexibility Analysis**Required:** Yes

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RIN: 1105-AB18

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