

Department of Justice

SUPPORTING STATEMENT

REQUIREMENT THAT MOVIE THEATERS PROVIDE NOTICE AS TO THE AVAILABILITY OF CLOSED MOVIE CAPTIONING AND AUDIO DESCRIPTION

New Collection

11. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Title III of the Americans with Disabilities Act (ADA) (42 U.S.C. 12182) prohibits public accommodations from discriminating against individuals with disabilities. Consistent with this prohibition against discrimination, public accommodations are obligated to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, and title III expressly requires owners, operators, or lessees of public accommodations, including movie theaters, to take “such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently * * * because of the absence of auxiliary aids and services” unless doing so would result in an undue burden or fundamental alteration. 42 U.S.C. 12182(b)(2)(A)(iii). Pursuant to 42 U.S.C. § 12186(b), the Attorney General is authorized to promulgate regulations to carry out title III of the ADA. The Department’s existing regulation (28 CFR 36.303(a)–(c)), implementing the obligation of covered entities to ensure effective communication with individuals with disabilities, specifies that “open and closed captioning,” and “audio recordings” are examples of auxiliary aids and services.

Despite this longstanding obligation for movie theaters to provide effective communication to individuals with disabilities, neither closed movie captioning¹ nor audio description² is universally available at movie theaters across the United States. As a result, in its Notice of Proposed Rulemaking (NPRM), the Department proposed to amend its title III regulation to specifically require movie theaters to provide closed movie captioning and audio description for patrons with hearing and vision disabilities. 79 FR 44976 (Aug. 1, 2014). In addition to requiring movie theaters to have available and maintain the equipment necessary to provide closed movie captions and audio description to movie patrons at their seats whenever showing a movie produced, distributed, or otherwise made available with these features, the NPRM also proposed that movie theaters be required to notify the public as to the availability of closed movie captioning and audio description. Proposed § 36.303(g)(5) stated that “movie theaters shall ensure that communications and advertisements intended to inform potential patrons of

¹ Closed movie captioning is the written text of a movie’s dialogue and other sounds or sound making (*e.g.*, sound effects, music, and the character who is speaking). It requires the use of an individual captioning device to deliver the captions to a patron at his or her seat.

² Audio description is the spoken narration of a movie’s key visual elements. It requires the use of an individual audio description device to deliver the audio description to a patron at his or her seat.

movie showings and times, that are provided by the theater through Web sites, posters, marquees, newspapers, telephone, and other forms of communications, shall provide information regarding the availability of closed movie captioning and audio description for each movie.’’

Currently, not all movies shown at movie theaters are produced or distributed with closed movie captions and audio description. As a result, movie theaters must notify the public about the availability of these features to ensure that individuals with hearing and vision disabilities know which movies are accessible to them. This proposed public disclosure requirement supports the ADA’s intent of providing equal access to the goods and services provided by public accommodations for individuals with disabilities.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The public will use this information to determine which movies shown at a particular movie theater are accessible to individuals with hearing and vision disabilities.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The Department has not proposed a specific form of notice required to satisfy this proposed public disclosure requirement. However, the Department anticipates that movie theaters will almost exclusively, if not exclusively, use automated, electronic, mechanical, or other technological techniques to update their communications and advertisements listing movie showings and times so that they indicate which movies are being shown with closed movie captions and audio description. According to public comments received on the NPRM, movie theaters routinely use electronic advertisements, such as listings on a movie theater’s Web site or an online publication, to advertise their movie showings and times. As a result, it is reasonable to assume that these electronic advertisements are also updated using electronic means.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

The Department has reviewed current movie theater advertisements and communications listing movie showings and times. The Department found that some movie theater firms currently indicate which movies are being shown with closed movie captions and audio description. However, not all movie theater firms include this information in their communications and advertisements; and even when a movie theater firm does include this information, it is not available on all communications and advertisements in which movie theater firms inform the public of movie showings and times. Commenters on the NPRM indicated that they wanted individuals with disabilities to be able to easily determine which movies are accessible to them.

As a result, the Department has proposed this public disclosure requirement to ensure that individuals with disabilities are on notice as to which movie showings are accessible to them.

5. *If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.*

Approximately 98% of movie theater firms qualify as small businesses.³ As a result, small businesses will be impacted by this proposed public disclosure requirement. The Department has minimized the burden of this proposed public disclosure requirement on small businesses by limiting the circumstances in which a movie theater is obligated to comply. A movie theater is only obligated to comply with this proposed public disclosure requirement to the extent that the movie theater is already issuing a communication or advertisement listing movie showings and times. The proposed public disclosure does not require a movie theater to create additional communications and advertisements to comply with the notice requirement.

6. *Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

If this proposed public disclosure requirement is not required or is required on a more limited basis, individuals with hearing and vision disabilities may face difficulties in determining which movies are accessible to them. As a result, the goals and guarantees of the ADA to provide equal access to movie theaters for people with hearing and vision disabilities will not be fully met.

7. *Explain any special circumstances that would affect the manner in which an information collection is to be conducted.*

None of the listed special circumstances are applicable to this proposed public disclosure requirement.

8. *Provide an electronic copy and identify the date, volume number and page number of the publication in the federal register of the agency's notice (for a 60-day and a 30-day notice), required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.*

On June 10, 2016, the Department published a notice soliciting public comments on this proposed public disclosure requirement. 81 FR 37643, on June 10, 2016. This notice, entitled *Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description*, initiated the 60-day public comment period required by 5 CFR 1320.8(d). A 30-day FR notice was published at 81 FR 59657, on August 30, 2016.

³ The Regulatory Flexibility Act defines a “small entity” as a small business (as defined by the Small Business Administration (SBA) Size Standards) or a small organization such as a nonprofit that is “independently owned and operated” and is “not dominant in its field.” 5 U.S.C. 601. For Motion Picture Theaters (Except Drive-Ins) (NAICS Code 512131), the SBA Size Standards categorize any firm with less than \$38.5 million in annual revenue as a small business. U.S. Small Business Administration (SBA), *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* at 28 (July 14, 2014), available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf (last visited Dec. 17, 2015).

The Department received one comment on the 60-day notice. This comment was submitted on behalf of five disability advocacy groups representing individuals with hearing disabilities. These organizations stressed the importance of a notice requirement, indicating that not all movies are available with closed movie captioning and audio description, and a notice requirement ensures that individuals with hearing and vision disabilities know which movies are accessible to them. Finally, the organizations encouraged the Department to specify the form of notice required and suggested that at a minimum, movie theaters should be required to indicate which specific services (*i.e.*, closed movie captioning, open movie captioning, audio description, or assistive listening) and devices are available because simply stating that accessibility features are available does not inform individuals with hearing and vision disabilities which movie showings are accessible to them. The Department has considered these comments in the development of the final rule.

9. *Explain any decision to provide a payment or gift to respondents, other than enumeration of contractors or grantees.*

The Department does not intend to provide any payment or gift to respondents for compliance with this proposed public disclosure requirement.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

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The proposed public disclosure requirement does not require the disclosure of any confidential information. As a result, the Department has not provided any assurance of confidentiality to respondents.

311. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

The proposed public disclosure requirement does not require respondents to disclose information of a sensitive nature.

12. *Provide estimates of the hour burden of the collection of information.*

An estimated 1,876 respondents will be required to disclose information concerning the availability of closed movie captioning and audio description in their existing communications and advertisements concerning movie showings and times. The Department anticipates that respondents will spend between 0 and 10 minutes per week updating their communications and advertisements listing movie showings and times so that these communications and advertisements indicate which movies are being shown with closed movie captions and audio description.

As a result, the Department estimates that the total annual public burden associated with this proposed public disclosure requirement is between 0 and 16,259 hours. Assuming a movie theater spends 10 minutes every week to include this information in its update to its notices of moving showings and times that it makes available to the public, the movie theater will spend 8.67 hours annually (1/6 hour x 52 times) performing the necessary tasks to comply with this requirement. If every movie theater spends 8.67 hours performing these tasks annually, the total annual public burden hours for disclosing this information sum to 16,258.67 hours (1,876 respondents x 1/6 hours x 52 times a year = 16,258 and 2/3 hours). However, it is unlikely that every movie theater will spend 10 minutes every week complying with this requirement. The proposed disclosure requirement only requires a movie theater to add this information when a new movie is added to the schedule. Additionally, specific notice on a movie-by-movie basis may no longer be necessary if all movies are distributed with these features in the future. At such time, a movie theater may only need to advise the public that it shows all movies with closed movie captioning and audio description.

Requirements	Number of Respondents	Frequency (per year)	Estimated Annual Burden (per respondent)	Estimated Total Annual Burden (all respondents)
Provide notice as to the availability of closed movie captioning and audio description on listings of movie showings and times	1,876	0-52	0-8.7 hours	0-16,269 hours

13. *Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the costs of any hour burden shown in items 12 and 14).*

Yearly costs to industry are estimated to be \$0, as updates to communications and advertisements listing movie showings and times are normal tasks performed by movie theater personnel and any additional work related to this proposed public disclosure requirement is minimal (e.g., adding symbols to indicate the availability of closed movie captioning and audio description next to a movie title).

14. *Provide estimates of annualized cost to the federal government. Also, provide a description of the method used to estimate costs, which should include quantification of hours, operational expenses such as equipment, overhead, printing, and support staff, and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from items 12, 13, and 14 in a single table.*

There is no cost anticipated to the federal government.

15. *Explain the reasons for any program changes or adjustments reported in items 12, 13 or 14.*

This is a new information collection, so it must be recorded as a program change according to the instructions for Item 13(f) of Form 83-I. As discussed above in response to Questions 1, 2, and 6, the proposed public disclosure requirement is necessary because without it, individuals with hearing and vision disabilities may face difficulties in determining which movies are accessible to them. As a result, such individuals will not be afforded the equal access to movie theaters that the ADA requires.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Though movie theaters will publish the information required to be disclosed, the Department has no plans to tabulate and publish the information.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

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The display of the expiration date is not appropriate because the proposed public disclosure requirement is an information collection contained in a proposed rule. Display of the expiration date is only required for an information collection that is not contained in a proposed rule or a current rule. See 5 CFR 1320.10, 1320.11, 1320.12; see also 5 CFR part 1320, app. A.

18. *Explain each exception to the certification statement "Certification for Paperwork Reduction Act Submissions."*

There are no exceptions to the certification statement in Item 19 of Form 83-I.