

## Department of Justice

### SUPPORTING STATEMENT

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

*Extension of Currently Approved Collection  
OMB Control Number 1190-0019*

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.*

This collection of information is necessary to satisfy a regulatory requirement arising under title III of the Americans with Disabilities Act (ADA) (42 U.S.C. 12182), which prohibits public accommodations from discriminating against individuals with disabilities. Consistent with this requirement, public accommodations must furnish appropriate auxiliary aids and services, where necessary, to ensure effective communication with individuals with disabilities. Title III 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 ADA regulations have always required public accommodations, including movie theaters, to ensure effective communication with individuals with disabilities. *See* 28 CFR 36.303(a)–(c). In December 2016, the Department modified the title III regulation to specify explicit requirements for movie theaters to satisfy their effective communication obligations. *See* “Final Rule: Nondiscrimination on the Basis of Disability by Public Accommodations–Movie Theaters; Movie Captioning and Audio Description,” 81 FR 87348 (December 2, 2016). The title III regulation requires theaters offering movies exhibited in a digital format (digital movies) to provide “closed captioning”<sup>1</sup> and “audio description”<sup>2</sup> whenever digital movies are distributed with those features. 28 CFR 36.303(g)(2). The regulation further requires that movie theaters providing captioning or audio description for digital movies ensure “that all notices of movie showings and times at the box office and other ticketing locations, on Web sites and mobile telephone applications, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description.” 28 CFR 36.303(g)(8). (This requirement does not apply to any third-

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<sup>1</sup> 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.

<sup>2</sup> 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.

party providers of films, unless they are part of or subject to the control of the public accommodation. *Id.*) The notice requirement in the ADA movie rule is the provision that necessitates this Information Collection Request (ICR).

Currently, not all movies shown at movie theaters are produced or distributed with closed movie captions and audio description. As a result, individuals with hearing and vision disabilities need information from movie theaters about the availability of accessible features to ensure that they can identify which movies will be accessible to them. Title III's public disclosure requirement supports the ADA's purpose of ensuring equal access to the goods and services provided by public accommodations for individuals with disabilities.

The text of the statutory and regulatory provisions that mandate this collection of information appear as an Appendix to this Supporting Statement.

*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 uses this information to determine which movies shown at a particular movie theater are accessible to individuals with hearing and vision disabilities. This ICR is designed to provide information to the public, not to the agency.

*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.*

Title III does not require a specific form of public notice regarding the availability of accessible features for digital movies. Instead, the rule requires movie theaters to add references to accessible features to movie advertisements or other public notices that the firms are already providing to the public. For example, if a movie theater offers its movie schedule online, then the notices about available accessible features would also need to be provided as part of the online schedule. The Department anticipates that movie theaters will almost exclusively, if not exclusively, use automated, electronic, or other technological techniques to update their communications listing movie showings to add information about which movies are being shown with closed movie captions and audio description.

In the rulemaking process, the Department learned that firms owning one or more movie theaters likely will update their existing movie showing listings on a regular basis to include information concerning the availability of closed movie captioning and audio description. The Department's research suggests that this information only would need to be updated when a new movie with accessible features is added to the schedule. The frequency of such updates regarding accessible features will vary as some movies stay on the schedule for longer periods of time than others, but the Department estimates that respondent firms will generally update their listings to include this information weekly. In the future, if all movies are distributed with accessible features, specific

notice on a movie-by-movie basis may no longer be necessary and firms owning movie theaters may only need to provide a general notice to the public that they provide closed captioning and audio description for all of their movies.

*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.*

Prior to the issuance of the movie rule, the Department reviewed movie theater listing advertisements and communications and found that some, but not all, movie theaters were providing notices of accessible features available for digital movies. The rule requires movie theaters to consistently provide notice to the public of the accessibility features of their digital movies that offer such features by including references to those accessible features in their movie advertisements and communications. The Department is not aware of another effective method of informing the public of such accessible features that is specific to particular movie show times and locations.

*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.<sup>3</sup> As a result, small businesses are impacted by this public disclosure requirement. The Department has minimized the burden of this 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 public disclosure requirement to the extent that the movie theater is already issuing a communication or advertisement listing movie showings and times. The public disclosure does not require a movie theater to create additional communications and advertisements to comply with the notice requirement. Finally, compliance with the rule's notice provision is not required where doing so would constitute a fundamental alteration or an undue burden on the movie theater firm.

*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 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.

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<sup>3</sup> 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](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf) (last visited November 14, 2019).

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 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 September 13, 2019, the Department published a notice soliciting public comments on this proposed extension of the public disclosure requirement. 84 FR 48379. This notice, entitled *Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description*, initiated the 60-day public comment period, which concluded on November 12, 2019, as required by 5 CFR 1320.8(d). The Federal Register notice is available at: <https://www.federalregister.gov/documents/2019/09/13/2019-19864/agency-information-collection-activities-proposed-ecollection-ecomments-requested-extension-without> (last visited November 14, 2019).

The Department did not receive any substantive comments on the 60-day notice.

On November 26, 2019, the Department published a 30-day notice, providing the public until December 26, 2019, to submit comments to OMB on the requested extension. 84 FR 65185. The Federal Register notice is available at: <https://www.federalregister.gov/documents/2019/11/26/2019-25640/agency-information-collection-activities-proposed-ecollection-ecomments-requested-extension-without> (last visited November 26, 2019).

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 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 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 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 1,790 movie theater firms 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. See U.S. Census Bureau, 2016 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, U.S., 6-digit NAICS. 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.

The Department acknowledges that the amount of time it will take a respondent to comply with this requirement may vary depending on the number of movies that the respondent is showing at any given time. Based on information gathered during the initial rulemaking process, the Department estimates that respondents will take an average of 10 minutes each week to update existing notices of movie showings and times with closed captioning and audio description information. Therefore, the Department estimates that each firm owning one or more theaters offering digital movies with closed captioning or audio description will spend approximately  $((10 \text{ minutes/week} \times 52 \text{ weeks/year}) \div 60 \text{ minutes/hour})$  8.7 hours each year to comply with this requirement. The Department expects that the annual public burden hours for disclosing this information will total  $(1,790 \text{ respondents} \times 8.7 \text{ hours/year})$  15,573 hours.

However, it is unlikely that every movie theater firm will spend 10 minutes every week complying with this requirement. The 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.

*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 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. *The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component.*

There is no cost anticipated to movie theater firms.

15. *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.

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

This is an extension of an approved information collection and it does not comprise any change in the required notice. The only adjustment arises from the reduction in the estimated overall number of movie theater firms. In the Department's initial 2016 request, the Department estimated that 1,876 movie theater firms would be required to provide public notice of the accessible features of films. That total number of firms was based on U.S. Census Bureau data from 2012. See 81 FR 37643 (June 10, 2016). The most recent U.S. Census Bureau data, from 2016, shows that there was a total of 1,790 firms owning one or more movie theaters. See U.S. Census Bureau, 2016 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, U.S., 6-digit NAICS. Therefore, the estimated hour burden of the collection of information has dropped from the earlier estimate of up to 16,259 hours to the current estimate of up to 15,573 hours. The reduction in the estimated burden totals 686 hours.

17. *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.*

Movie theaters have an ongoing requirement to publish the required information as part of their existing movie advertisements or communications. The Department has no plans to tabulate and publish the information.

18. *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 warranted because the requirement imposing a duty on movie theater owners to provide public notice originates in title III of the ADA. See 5 CFR 1320.6(e).

19. *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.

## Appendix

### Statutory Provisions Authorizing Collection of Information

#### 42 U.S.C. § 12182. Prohibition of discrimination by public accommodations.

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

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(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a) of this section, discrimination includes

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(iii) a failure 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 than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.

### Regulation Authorizing Collection of Information

#### 28 CFR § 36.303(g) Movie theater captioning and audio description.

(2) *General.* A public accommodation shall ensure that its movie theater auditoriums provide closed movie captioning and audio description whenever they exhibit a digital movie that is distributed with such features. Application of the requirements of paragraph (g) of this section is deferred for any movie theater auditorium that exhibits analog movies exclusively, but may be addressed in a future rulemaking.

(3) *Minimum requirements for captioning devices.* (i) A public accommodation shall provide a minimum number of fully operational captioning devices at its movie theaters in accordance with the following Table:

Number of Movie Theater Auditoriums Exhibiting	Minimum Required Number of Captioning
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Digital Movies	Devices
1	4
2–7	6
8–15	8
16 +	12

(4) *Minimum requirements for audio description devices.* (i) A public accommodation shall provide at its movie theaters a minimum of one fully operational audio description device for every two movie theater auditoriums exhibiting digital movies and no less than two devices per movie theater. When calculation of the required number of devices results in a fraction, the next greater whole number of devices shall be provided.

(ii) A public accommodation may comply with the requirements in paragraph (g)(4)(i) of this section by using the existing assistive listening receivers that the public accommodation is already required to provide at its movie theaters in accordance with Table 219.3 of the 2010 Standards, if those receivers have a minimum of two channels available for sound transmission to patrons.

(5) *Performance requirements for captioning devices and audio description devices.* Each captioning device and each audio description device must be properly maintained by the movie theater to ensure that each device is fully operational, available to patrons in a timely manner, and easily usable by patrons. Captioning devices must be adjustable so that the captions can be viewed as if they are on or near the movie screen, and must provide clear, sharp images in order to ensure readability of captions.

(6) *Alternative technologies.* (i) A public accommodation may meet its obligation to provide captioning and audio description in its movie theaters to persons with disabilities through any technology so long as that technology provides communication as effective as that provided to movie patrons without disabilities.

(ii) A public accommodation may use open movie captioning as an alternative to complying with the requirements specified in paragraph (g)(3) of this section, either by providing open movie captioning at all showings of all movies available with captioning, or whenever requested by or for an individual who is deaf or hard of hearing prior to the start of the movie.

(7) *Compliance date for providing captioning and audio description.* (i) A public accommodation must comply with the requirements in paragraphs (g)(2)–(6) of this section in its movie theaters that exhibit digital movies by June 2, 2018.

(ii) If a public accommodation converts a movie theater auditorium from an analog projection system to a system that allows it to exhibit digital movies after December 2, 2016, then that auditorium must comply with the requirements in paragraph (g) of this section by December 2, 2018, or within 6 months of that auditorium’s complete installation of a digital projection system, whichever is later.

(8) *Notice.* On or after January 17, 2017, whenever a public accommodation provides captioning and audio description in a movie theater auditorium exhibiting digital movies, it shall ensure that all notices of movie showings and times at the box office and other ticketing locations, on Web sites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description. This paragraph does not impose any obligation on third parties that provide information about movie theater showings and times, so long as the third party is not part of or subject to the control of the public accommodation.

(9) *Operational requirements.* On or after January 17, 2017, whenever a public accommodation provides captioning and audio description in a movie theater auditorium exhibiting digital movies, it shall ensure that at least one employee is available at the movie theater to assist patrons seeking or using captioning or audio description whenever a digital movie is exhibited with these features. Such assistance includes the ability to—

(i) Locate all necessary equipment that is stored and quickly activate the equipment and any other ancillary systems required for the use of the captioning devices and audio description devices;

(ii) Operate and address problems with all captioning and audio description equipment prior to and during the movie;

(iii) Turn on open movie captions if the movie theater is relying on open movie captioning to meet the requirements of paragraph (g)(3) of this section; and

(iv) Communicate effectively with individuals with disabilities, including those who are deaf or hard of hearing or who are blind or have low vision, about how to use, operate, and resolve problems with captioning devices and audio description devices.

(10) This section does not require the use of open movie captioning as a means of compliance with paragraph (g) of this section, even if providing closed movie captioning for digital movies would be an undue burden.