

May 23, 2005

Via Facsimile and Electronic Mail

The Honorable Alex Acosta
Assistant Attorney General for Civil Rights
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., NW
Suite 5642
Washington, DC 20530

Re: Advance Notice of Proposed Rulemaking; Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (69 Fed. Reg. 58,768, September 30, 2004).

Dear Mr. Acosta:

The Office of Advocacy (Advocacy) is writing to comment on the U.S. Department of Justice's (DOJ) advance notice of proposed rulemaking (ANPRM), *Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*.¹ Advocacy commends DOJ for publishing an ANPRM that informs the public of the intent of DOJ to adopt new accessibility guidelines for barrier removal in public accommodations and commercial facilities in light of the recent changes to the Americans with Disabilities Act accessibility guidelines (ADAAG) proposed by the U.S. Architectural and Barriers Compliance Board (Access Board). Advocacy previously commented briefly on the importance of this advance notice to small business, and promised additional comprehensive comments. This letter focuses on the application of the Regulatory Flexibility Act (RFA) and the questions presented by DOJ on regulatory alternatives. Also, consistent with the RFA's requirement to review rules for small entity impacts, Advocacy recommends the completion of an initial regulatory flexibility analysis (IRFA) for the proposed rule (following the ANPRM) and identifies some significant regulatory alternatives which should be addressed in the IRFA.

¹ DOJ, *Advance Notice of Proposed Rulemaking; Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 69 Fed. Reg. 58,768 (2004) (ANPRM).

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.²

On August 13, 2002, President George W. Bush enhanced Advocacy's RFA mandate when he signed Executive Order 13272, which directs Federal agencies to implement policies protecting small entities when writing new rules and regulations.³ Executive Order 13272 instructs Advocacy to provide comment on draft rules to the agency that has proposed the rule, as well as to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.⁴ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

I. Review of Existing Rules for Small Entity Impacts.

Advocacy applauds DOJ's efforts to ensure that this rulemaking reasonably considers the impacts the existing Americans with Disabilities Act (ADA) rules have on small businesses.⁶ DOJ has committed to completing the required ten-year review of its existing regulations in conjunction with the current rulemaking.⁷ Advocacy looks forward to working with DOJ to ensure that this rulemaking considers the burdens small businesses currently bear under the 1991 ADA rules and addresses regulatory alternatives which could reduce those burdens, consistent with the RFA and the ADA.

II. Regulatory Flexibility Act Determinations.

The RFA requires regulatory agencies to estimate the impacts of proposed rules on small entities. Agencies must complete an IRFA for proposed rules⁸ unless the head of the

² Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

³ Exec. Order No. 13272 § 1, 67 Fed. Reg. 53461 (Aug. 16, 2002).

⁴ E.O. 13272, at § 2(c).

⁵ *Id.* at § 3(c).

⁶ The RFA requires all Federal agencies to revisit within ten years every rule that has a significant economic impact on a substantial number of small entities to determine "whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. § 610(a).

⁷ DOJ, Unified Agenda, *Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (Section 610 Review)*, 70 Fed. Reg. 27310 (May 16, 2005).

⁸ 5 U.S.C. § 603.

agency can certify that the rule would not have “a significant economic impact on a substantial number of small entities,” and publishes the factual basis for the decision to certify in the *Federal Register*.⁹ If the agency does not certify its proposed rule, the RFA also requires it to publish a final regulatory flexibility analysis (FRFA) at the same time as any final rule, which includes “a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes” and the factual, policy, and legal reasons behind the alternative selected.¹⁰

In response to Question 10 of DOJ’s ANPRM, Advocacy recommends that DOJ complete an IRFA for any proposed rule that contains barrier removal requirements similar to those recently set by the Access Board for new construction and altered facilities. Advocacy agrees with DOJ’s conclusion that the standards would be likely to impose significant economic impacts on a substantial number of small entities.¹¹

A number of trade and membership organizations representing small business and individual small business owners have contacted the Advocacy to express concern over revisions to the ADAAG. These small businesses would incur significant economic impacts if the Access Board’s ADAAG provisions were adopted by DOJ as the new standard for removing barriers from existing facilities. In addition, substantive comments submitted to DOJ, the Access Board, and Advocacy to date indicate that some of the specific accessibility provisions approved by the Access Board would likely impose significant economic impacts on small business. One industry study submitted to the Access Board during its rulemaking indicated that new provisions requiring permanent installation of visible fire alarms in hotel rooms could result in costs of approximately \$2.3 billion over seven years.¹² Another industry study indicated that new toe clearance requirements for retail sales counters were likely to cost smaller retailers alone more than \$74 million.¹³ Advocacy notes that these are only a few of the requirements found within approximately 300 pages of regulatory language proposed by the Access Board, and believes there may be more economically significant provisions present.

Also, applying the new ADA accessibility guidelines to barrier removal obligations would likely affect a substantial number, perhaps millions of small businesses. Referring back to the example above, the hotel industry indicates that more than 500,000 rooms would require conversion to new alarm requirements, and that about 57% of these would

⁹ 5 U.S.C. § 605(b).

¹⁰ 5 U.S.C. § 603(b)(4).

¹¹ 70 Fed. Reg. at 27131.

¹² See Letter from John Connors, American Hotel and Lodging Association, to Thurman Davis, Access Board (June 20, 2002).

¹³ Gray, Thomas, *Estimating the Impact of Proposed ADAAG Guidelines Requiring Clearance for Wheelchair Front In Approaches to Point of Sale Counters and Display Cabinets*, at 3 (April 7, 2004). The Gray retail study did not attempt to quantify the costs of additional floor space to accomplish the Access Board’s desired changes, a cost which small business representatives inform Advocacy could be significant.

be at small hotels with less than 150 rooms.¹⁴ Further, new employee work area requirements could apply to almost every small business employer in the United States—up to around 5 million small business employers.¹⁵ Under the ADA, any new standards adopted by DOJ as barrier removal requirements would necessarily affect every small business that holds itself open to the public, in addition to those small businesses that are not open to the public, but who have employees.

Since the Access Board’s changes could impose significant economic impacts to a substantial number of small entities if adopted as a new barrier removal standard, Advocacy concurs with DOJ’s determination that an IRFA is necessary for any proposed rule revising the ADA Title III regulation to incorporate such changes.

III. Recommended Regulatory Alternatives.

Pursuant to section 603(c) of the RFA each IRFA shall contain “a description of any significant alternatives to the proposed rule...which minimize any significant economic impact of the proposed rule on small entities.”¹⁶ Advocacy is pleased to note that, in its ANPRM, DOJ has already identified three potential approaches to reducing financial burdens for barrier removal duties that could be considered in its IRFA.¹⁷ The alternatives proposed by DOJ have the potential to remove much regulatory uncertainty and provide a level playing field for small businesses anxious to provide accessibility to their customers. DOJ’s options included: (1) a barrier removal safe harbor from new requirements for businesses which have already expended time and money becoming compliant with previous ADA requirements, (2) different scoping requirements for barrier removal than the revised standards adopted by the Access Board for new construction and altered facilities, and (3) limited exemptions from some standards for the purposes of barrier removal. Advocacy has general comments as to these regulatory alternatives, as well as comments on their application to specific provisions of the revised ADA guidelines.

A. Recommended Safe Harbor.

Small businesses and their representatives have informed Advocacy that they are greatly concerned with regulatory uncertainty about what constitutes a barrier to disabled customers. Specifically, many are worried that having spent money to make facilities compliant with the original ADA accessibility guidelines as adopted by DOJ, they could

¹⁴ See Letter from John Connors, American Hotel and Lodging Association, to Thurman Davis, Access Board (June 6, 2002).

¹⁵ Office of Advocacy, U.S. Small Business Administration, *Employer Firms, and Employment by Employment Size of Firm by NAICS Codes, 2001* (available online at http://www.sba.gov/advo/stats/us_01_n6.pdf).

¹⁶ 5 U.S.C. § 603(c).

¹⁷ Advocacy believes that these alternatives rightly reflect the different roles of the Access Board’s and DOJ’s regulatory actions. The Access Board sets standards for newly constructed or altered facilities, facilities that are much more malleable and amenable to new requirements, and DOJ sets standards for existing facilities that have been subject to different rules for a number of years and are more likely to incur serious costs due to changes in ADA requirements.

be required to spend even more money to comply with different guidelines. Thus, Advocacy recommends the adoption of a general safe harbor for existing complying elements.

B. Recommended Changes in Scoping Requirements.

Question 4(a) of the ANPRM asks whether DOJ should “develop an alternative set of reduced scoping requirements for the barrier removal obligation.” Scoping requirements contain the technical provisions for accessibility and the requirements as to how many of multiple elements must be made accessible. Advocacy notes that the revised ADA standards issued by the Access Board contained a number of provisions which increased the potential costs of pre-existing requirements. During its rulemaking, the Access Board did not consider the costs or benefits of requiring retrofitting existing facilities to conform to the new provisions. Instead, the agency certified the rule under the RFA and deferred to DOJ’s regulatory authority over barrier removal.¹⁸

Small business representatives have raised concerns over changes in scoping provisions that could potentially impose high costs on small business owners. Based on the substantive comments provided to date by small businesses, Advocacy believes that, in some cases, it would be more reasonable to maintain the current levels for barrier removal. Among the new provisions small entities have raised concerns about are: (1) side reach ranges, (2) public entrances, (3) hotel rooms, (4) retail establishments, and (5) restaurants.

1. Side Reach Ranges

DOJ’s current regulations set reach ranges between 9 and 54 inches from floor level for elements that must be approached by wheelchair from the side (as opposed to a head on, or forward, approach).¹⁹ The new ADA guidelines adopted by the Access Board suggests decreasing this range to between 15 and 48 inches.²⁰ Advocacy believes that many small businesses could be harmed by such a change, and recommends that DOJ’s IRFA consider retaining existing scoping requirements.

For example, pay telephones would be required to have phone controls within side reach ranges if they provide parallel wheelchair access.²¹ However, the pedestals for pay

¹⁸ The Access Board also did not include estimates of the costs of complying with the ADAAG revisions when altering facilities. Although the Access Board stated that its Regulatory Assessment included the costs of alterations in its cost estimate, Advocacy notes that the Access Board never actually included any additional estimates of alteration costs and it appears that the final Regulatory Assessment, measures instead only new construction costs. Access Board, *Regulatory Assessment*, at § 2.5 (available online at <http://www.access-board.gov/ada-aba/reg-assess.htm>).

¹⁹ 28 C.F.R. Pt. 36, App. A, at 4.2.6 (“Side Reach”).

²⁰ Access Board, *Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines*, 69 Fed. Reg. 44084, at 44302-03 (July 23, 2004).

²¹ 69 Fed. Reg. at 443383 (Section 704.2.2, “operable parts” must comply with section 309), 44304 (Section 309.3, “operable parts” must be within one or more reach ranges specified in section 308), 44302-03 (Section 308.3, side reach).

telephones would likely have to be replaced if new side reach requirements went into effect—a renovation which pay phone industry representatives inform Advocacy could cost hundreds of dollars per phone. With the prevalence of cell phones, the market for pay telephones is declining,²² and the introduction of costly new regulatory requirements into such a market could prove to be devastating for a struggling industry.

3. Public Entrances

Currently, DOJ's ADA rules require 50% of public entrances from a thoroughfare to be accessible.²³ Section 206.4.1 of the Access Board's new standards, however, has proposed raising this requirement from 50% to 60%.²⁴ This change would require small businesses with two public entrances to make both their entrances wheelchair accessible. This could prove costly, as doing so may require not only potentially widening doors or reducing thresholds for wheelchair accessibility, but making the approach to the door accessible, as well.²⁵ Given the costs to small businesses this new requirement could represent, Advocacy would recommend retaining the existing standard in the proposed rule.

3. Hotel Rooms

Hotel industry representatives have informed Advocacy that two provisions included in the new Access Board requirements are of special concern to small hoteliers. Currently, hoteliers are required to provide visible fire alarms to patrons with hearing disabilities.²⁶ The current rules allow the use of portable fire alarm units which are not permanently hard-wired into the building's electrical or alarm system.²⁷ The first change adopted by the Access Board would forbid the use of portable fire alarm units and require hoteliers to install permanent visible fire alarms in guest rooms. Adopting this new requirement as a new barrier removal standard is likely to impose serious burdens on small hoteliers, and Advocacy recommends DOJ consider regulatory alternatives, in preparing an IRFA, which continue to allow the use of portable fire alarms in the IRFA.

The second change proposed by the Access Board is likely to result in a large increase in the number of rooms which hoteliers would need to retrofit to comply with the visible

²² For example, over the past 6 years, more than one million pay phones have been eliminated from the market, bringing the number down from 2.6 million in 1998 to 1.4 million in 2004. William Glanz, *Pay phones find calling despite plunging numbers*, WASH. TIMES, Sep. 27, 2004, at 1.

²³ 28 C.F.R. Pt. 36, App. A, at 4.1.3(8)(a)(i).

²⁴ 69 Fed. Reg. at 44180 (Section 206.4.1).

²⁵ For example, making a door and its approach accessible could involve providing minimum maneuvering clearances for wheelchairs near the door, ensuring ground surfaces are made of suitable material, eliminating steps or other changes in level leading up to the door or providing ramps of a specified slope, and ensuring approaches such as sidewalks are wide enough to accommodate wheelchairs. 69 Fed. Reg. at 44308-12 (Section 404.2.4 doorway maneuvering clearance requirements), 44170 (Section 202.4, alterations to primary function areas must include making paths of access to altered area accessible), and 44305-07 (Section 403 provisions regarding ground materials, changes in level, and other provisions in providing accessible path of access).

²⁶ 28 C.F.R. Pt. 36, App. A, at 9.3.1.

²⁷ 28 C.F.R. Pt. 36, App. A, at 9.3.2 ("Equivalent Facilitation.").

fire alarm requirements. Rules currently require hoteliers to make a certain number of hotel rooms accessible by installing visible fire alarms, with more rooms having these visible alarms in larger hotels.²⁸ There is also a similar numerical requirement for hoteliers to make rooms accessible for guests with mobility impairments.²⁹ The current rules allow hoteliers to retrofit a single room to contain both visible alarms and wheelchair accessibility features. However, the Access Board has now specifically prohibited most of any overlap, stating that “[n]ot more than 10 percent of guest rooms required to provide mobility features...shall be used to satisfy the minimum number of guest rooms required to provide communications features” such as visible fire alarms.³⁰ In other words, two separate rooms could be required under the Access Board’s new proposed rules—one that meets mobility requirements and one that meets communication requirements.

Small hotel representatives inform Advocacy that this new prohibition could cause hoteliers to incur serious costs. When taken together with the new requirement to install permanent fire alarms in guest rooms, small hotels which have already paid to install permanent fire alarms in guest rooms would be required to choose whether these rooms were to be designated as mobility accessible *or* hearing impairment accessible, but not both. Small hoteliers would be required to expend money to retrofit another room to the specifications of a room they have already made accessible. Also, small hotels which have relied on current DOJ rules and have not installed permanent fire alarms would be required to make major renovations on additional rooms. Advocacy believes that the Access Board’s proposed increase in scoping requirements could represent a significant cost to small hoteliers. Advocacy recommends that DOJ include in its IRFA for the proposed rule an alternative approach such as retaining existing room overlap allowances.

4. Retail Establishments

Small retail establishments also could incur significant costs if the Access Board’s revisions were adopted as the new barrier removal standard. Clothing stores, in particular, are concerned with a changed provision on the placement of benches in customer dressing rooms which could require redesigns of entire changing areas. Currently, DOJ’s rules require clothing stores providing dressing rooms to make at least five percent (or at least one) of those dressing rooms wheelchair accessible.³¹ To make a dressing room wheelchair accessible, a retailer must provide clear floor space alongside the dressing room bench “to allow a person using a wheelchair to make a parallel transfer onto the bench.”³² The Access Board’s final rule changes this parallel transfer provision to require retailers to provide clear floor space “at the end of the bench seat and parallel to the short end of the bench.”³³

²⁸ For example, a hotel with 25 rooms must have one room with a visible alarm, whereas a hotel with 100 rooms would be required to provide 4 accessible rooms. 28 C.F.R. Pt. 36, App. A, at 9.1.3.

²⁹ 28 C.F.R. Pt. 36, App. A, at 9.1.2.

³⁰ 69 Fed. Reg. at 44204 (Section 224.5).

³¹ 28 C.F.R. Pt. 36, App. A, at 4.1.3(21).

³² 28 C.F.R. Pt. 36, App. A, at 4.35.4.

³³ 69 Fed. Reg. at 44407 (Section 903.2).

If DOJ were to adopt the Access Board's new provision as the requirement for barrier removal, small clothing stores would likely be required to renovate at least one dressing room to move the clear floor space provided from the side of the bench to the end of the bench. This would likely require changing the size or layout of a changing room. Also, since dressing rooms generally adjoin each other, sharing walls, it is very possible that any retrofitting of dressing rooms accessible under the current rules would require further retrofitting of adjacent and non-adjacent dressing rooms, increasing the costs of this provision. Given the high costs this provision is likely to impose, Advocacy recommends that DOJ present a regulatory alternative in its IRFA that considers retaining current clear floor space requirements for dressing rooms.

5. Restaurants

Currently, restaurants and bars with counter or bar areas are required to provide a 60-inch length that is no more than 34 inches in height for patrons in wheelchairs. However, bars and restaurants may provide service at tables in the same area.³⁴ The Access Board has proposed eliminating the provision allowing for table service from its final ADA standards revision, and instead required 5% of any bars or counter service to be no more than 34 inches in height.³⁵ Given the costs likely to be imposed through renovating existing fixed structures, such as bars and counters, and the Access Board's failure to consider the impacts of the provision as a barrier removal requirement, Advocacy recommends that DOJ consider retaining the current table service provision as a regulatory alternative in the IRFA for the proposed rule.

C. **Recommended Exemptions.**

Section 603(c) of the RFA also encourages the consideration of exemptions as an alternative to proposed regulation (as long as those exemptions are consistent with the stated agency objectives).³⁶ Question 4(b) of DOJ's ANPRM asks whether the agency should exempt certain requirements from barrier removal standards, and if so, which specific requirements and why. In addition to the scoping changes described above, the Access Board's revisions to its ADA accessibility guidelines also include new accessibility provisions not found within DOJ's current rules on barrier removal. With respect to two of these new requirements, Advocacy recommends DOJ provide exemptions for: (1) employee work area requirements and (2) knee and toe clearance requirements. Small businesses have informed Advocacy that these new requirements are likely to impose significant economic impacts on millions of small businesses.

1. Employee Work Areas

The current DOJ barrier removal standard for employee work areas requires small business employers to provide accessible approaches, entrances, and exits to the work

³⁴ 28 C.F.R. Pt. 36, App. A, at 5.2.

³⁵ 69 Fed. Reg. at 44205 (Section 226.1).

³⁶ 5 U.S.C. § 603(c)(4).

areas, but explicitly excludes the work area itself from disabled access requirements.³⁷ Section 203.9 of the Access Board's standards for the first time would require accessibility within employee-only areas of all facilities, regardless of whether the employer was open to the public or not.³⁸ Advocacy believes that DOJ should exempt employee work areas from barrier removal obligations because the provision's adoption appears to conflict with a provision of the ADA providing a small business exemption from such requirements, and also because the provision is likely to impose significant costs on small business employers.

Section 603(b)(5) of the RFA states that each IRFA shall contain "an identification, to the extent possible, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule."³⁹ Title I of the ADA requires an employer to make "reasonable accommodation" for a disabled employee.⁴⁰ "Reasonable accommodation" under Title I of the ADA is defined as "making existing facilities used by employees readily accessible to and usable by individuals with disabilities."⁴¹ However, the ADA itself exempts small businesses with less than 15 employees from the reasonable accommodation requirement.⁴² Advocacy believes there is a conflict between the statutory exemption for small employers from the ADA's employee accommodation requirements and the Access Board's new regulatory provision requiring accessibility within the workplace for all employers, regardless of size.⁴³ Therefore, Advocacy recommends that DOJ's IRFA consider a regulatory alternative exempting small businesses from this new requirement.

In addition, Advocacy believes a substantial number of small businesses may be economically affected by the employee work area provision. Census statistics compiled by Advocacy indicate that there are approximately 5 million firms employing 20 people or less.⁴⁴ Since most of these firms were previously exempt from Title I reasonable accommodation requirements, any employee work area requirements are likely to involve new expenditures. For example, manufacturing firms that have not been covered by the ADA rules until now have informed Advocacy that requiring shop floors to be made accessible would cost significant amounts and put manufacturers at a competitive disadvantage to foreign manufacturers who are not required to incur such costs. Thus,

³⁷ 28 C.F.R. Pt. 36, App. A, at 4.1.1(3) ("Areas Used Only by Employees as Work Areas.").

³⁸ 69 Fed. Reg. at 44173 (Section 203.9)

³⁹ 5 U.S.C. § 603(b)(5).

⁴⁰ 42 U.S.C. § 12112(b)(5).

⁴¹ 42 U.S.C. § 12111(9).

⁴² 42 U.S.C. § 12111(5).

⁴³ Also, it is not clear to Advocacy whether the Access Board's regulatory authority under Titles II and III of the ADA allows it to promulgate what amount to ADA reasonable accommodation rules. Congress granted the Access Board regulatory authority under Titles II and III of the ADA. 29 U.S.C. § 792(b)(3). At least one circuit has held that Titles II and III do not apply within employee work areas. *See, e.g., Jankey v. Twentieth Century Fox Film Corp.*, 212 F. 3d 1159, at 1161 (rejecting a claim that Title III applied to employee-only areas and citing to 42 U.S.C. § 12187 and 42 U.S.C. § 2000a(e) as limiting Title III's application to areas open to the public) (9th Cir. 2000).

⁴⁴ Office of Advocacy, U.S. Small Business Administration, *Employer Firms, and Employment by Employment Size of Firm by NAICS Codes, 2001* (available online at http://www.sba.gov/advo/stats/us_01_n6.pdf).

Advocacy believes it would also be appropriate for DOJ to consider exempting small businesses from this work area requirement in its IRFA.

2. Knee and Toe Clearance

The new accessibility guidelines proposed by the Access Board also contain a new provision which would require sales counters to provide toe clearance if the approach for wheelchairs is from the front, as opposed to a parallel approach.⁴⁵ Small retailers inform Advocacy that they consider space in front of sales counters of high value for display of items, due to high traffic. Holiday and sale displays are often set to either side of the sales counter, making parallel approaches for wheelchairs impracticable. However, the new toe clearance requirement from the Access Board's accessibility guidelines would necessitate the removal of bottom display shelves to accommodate toe space if retailers choose to provide a frontal approach. Advocacy believes this will force small retailers into choosing between side displays and bottom shelf displays, but either choice could result in lost revenues. Given the potential for lost high-value selling space, Advocacy recommends that DOJ consider a regulatory alternative exempting small retailers from the new toe clearance requirement and retaining existing wheelchair accessibility standards for sales counters.

⁴⁵ 69 Fed. Reg. at 44410 (Section 904.4.2).

III. Conclusion.

Advocacy applauds the extended opportunity DOJ has provided small businesses to comment on the ANPRM and its commitment to address the current rule's burdens on small entities through an RFA section 610 review. Advocacy agrees with DOJ's conclusion that an IRFA is necessary for its proposed rule, and recommends a number of small business alternatives. Advocacy will be happy to share further information which it obtains through its regular contacts with small business representatives. Thank you for your consideration and please do not hesitate to contact Michael See with any further questions at (202) 619-0312 or Michael.See@sba.gov.

Sincerely,

/s
Thomas M. Sullivan
Chief Counsel for Advocacy

/s
Michael R. See
Assistant Chief Counsel

cc: The Honorable John D. Graham, Administrator, Office of Information and
Regulatory Affairs