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February 1, 2017

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Architectural and Transportation Barriers Compliance Board: Information and Communication Technology (ICT) Standards and Guidelines*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Architectural and Transportation Barriers Compliance Board (Access Board) entitled “Information and Communication Technology (ICT) Standards and Guidelines” (RIN: 3014-AA37). We received the rule on January 18, 2017. It was published in the *Federal Register* as a final rule on January 18, 2017, with an effective date of March 20, 2017. 82 Fed. Reg. 5790.

The final rule revises and updates, in a single rule, the standards for electronic and information technology developed, procured, maintained, or used by federal agencies covered by section 508 of the Rehabilitation Act of 1973, as well as the guidelines for telecommunications equipment and customer premises equipment covered by section 255 of the Communications Act of 1934. The revisions and updates to the section 508-based standards and section 255-based guidelines are intended to ensure that information and communication technology covered by the respective statutes is accessible to and usable by individuals with disabilities.

Enclosed is our assessment of the Access Board’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Access Board complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Gretchen Jacobs
General Counsel
Architectural and Transportation Barriers
Compliance Board

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
ENTITLED
“INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)
STANDARDS AND GUIDELINES”
(RIN: 3014-AA37)

(i) Cost-benefit analysis

The Architectural and Transportation Barriers Compliance Board (Access Board) prepared an analysis of the benefits and costs of the final rule. According to the Access Board, overall, results from the Final Regulatory Impact Analysis (RIA) demonstrate that the Revised 508 Standards will likely have substantial monetizable benefits to federal agencies and persons with disabilities. The annualized value of monetized benefits from these revised standards is estimated to be \$72.4 million at a 7 percent discount rate over the 10-year analysis period (sensitivity estimates of \$32 million and \$187.4 million). In calculating these monetized benefits, the Final RIA makes the following assumptions: (a) one-third of the recurring annual benefits derived from accessible Information and Communication Technology (ICT) would be realized in the first year of implementation, two-thirds of the recurring annual benefits in the second year of implementation, and full annual benefits would start in the third year of implementation; and (b) the number of individuals with vision impairments and other addressable disabilities who visit federal agency Web sites will increase every year, but a constant proportion of those individuals will visit such Web sites every year. The Access Board summarized these findings in a table in the final rule. The Access Board noted that the final rule is expected to generate significant benefits that could not be evaluated in the Final RIA, either because they were not quantified or monetized (due to lack of data or for other methodological reasons) or are inherently qualitative. According to the Access Board, estimating the economic impact of a civil rights-based regulatory initiative in an area—and marketplace—as dynamic as ICT is a complex and difficult task. Some of these unquantified (or inherently unquantifiable) benefits of the Revised 508 Standards are included in a table in the final rule. The Access Board stated that the fact that these benefits were not being formally assessed in this Final RIA should not diminish their importance or value.

The Final RIA shows that the Revised 508 Standards and 255 Guidelines will likely increase compliance costs substantially when first implemented, but will thereafter result in only a small percentage increase in recurring annual costs in later years. The Access Board states, that, overall, the Final RIA estimates that the total incremental cost of the Revised 508 Standards and 255 Guidelines is expected to be \$182.4 million on an annualized basis over the 10-year analysis period, based on a 7 percent discount rate with sensitivity estimates of \$285.7 million and \$121 million. It is assumed by the Access Board that, given a variety of budget constraints federal agencies have faced in recent years, the one-time incremental costs would be incurred across the first 3 years of implementation. The Final RIA does not, however, quantify and monetize all potential compliance costs arising from the final rule—due primarily to insufficient data or for other methodological limitations. The impact of the Revised 255 Guidelines on telecommunications equipment manufacturers is, as the Final RIA notes, particularly difficult to quantify. Some of these unquantified costs of the Revised 508 Standards and 255 Guidelines are listed in a table in the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Access Board states that because the Revised 255 Guidelines regulate non-federal entities (e.g., telecommunications equipment manufacturers), these guidelines fall within the purview of the RFA. The Revised 508 Standards, on the other hand, directly regulate only federal entities, which are not covered by the RFA. Accordingly, the Access Board evaluated only the impact of the Revised 255 Guidelines on small entities. The Access Board concluded that it does not believe that the Revised 255 Guidelines are likely to have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Access Board states that the Unfunded Mandates Reform Act (UMRA) does not apply to regulations that enforce constitutional rights of individuals or enforce statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Accordingly, it states that an assessment of the effect of the Revised 508 Standards and 255 Guidelines on state, local, and tribal governments is not required by UMRA.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On March 22, 2010, the Access Board issued an Advance Notice of Proposed Rulemaking (2010 ANPRM) inviting public comment on an initial set of draft revisions to the standards and guidelines. 75 Fed. Reg. 13,457. On Dec. 8, 2011, the Access Board issued a second Advance Notice of Proposed Rulemaking (2011 ANPRM). 76 Fed. Reg. 76,640. On February 27, 2015, the Access Board formally commenced the rulemaking process by issuing a notice of proposed rulemaking (NPRM) to update the existing 508 Standards and 255 Guidelines. Public hearings and comments were received on all of the proposals. Hearings were held on the NPRM on March 5, 2015, in San Diego, California, on March 11, 2015, in Washington, D.C., and April 29, 2015, in Salt Lake City, Utah. Additionally, 137 written comments were received in response to the NPRM. Comments came from industry, federal and state governments, disability advocacy groups, manufacturers of hardware and software, trade associations and trade organizations, institutions of higher education and research, and individuals who did not identify with any of these groups. Overall, the Access Board received about 160 comments in response to the NPRM, including written comments and oral testimony from witnesses at the three public hearings. These commenters represented, when excluding multiple submissions, about 140 different entities or individuals. By general category, these NPRM commenters can be broken down as follows: individuals (59); disability advocacy organizations (59); ICT companies (10); accessible ICT services providers (11); trade associations representing ITC and telecommunications companies (11); individuals or groups identifying themselves as ICT subject matter experts (13); academicians (6); state or local governmental agencies (7); standards development organizations (3); international disability advocacy organizations (9); and anonymous (4).

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

According to the Access Board, the 255 Guidelines, in both their existing and revised form, impose PRA-covered “information collection” obligations on manufacturers of telecommunications equipment and customer premises equipment by requiring such

manufacturers to ensure that their support documentation and services meet specified accessibility requirements. Accordingly, in the NPRM, the Access Board published a notice of proposed collection of information to accompany the proposed revisions to the existing 255 Guidelines. The Access Board received one responsive comment, which addressed the estimated PRA-related time burdens under the proposed guidelines. The Access Board discussed its estimates under the Revised 255 Guidelines of the projected annual time burden (in hours) on 255-covered manufacturers to make their support documentation and services accessible. Section C206, in conjunction with the technical provisions in Chapter 6 (Support Documentation and Services), obligates manufacturers of telecommunications equipment and customer premises equipment to provide accessible support documentation and services, which constitute “collections of information” under PRA. Specifically, the Access Board states the revised guidelines require covered manufacturers, when providing support documentation and services, to ensure accessibility for individuals with disabilities in four respects: (1) support documentation must list, and explain how to use, accessibility and compatibility features of telecommunications products (602.2); (2) electronic support documentation must conform to Web Content Accessibility Guidelines (WCAG) 2.0 (602.3); (3) non-electronic support documentation must be provided upon request in alternate formats (e.g., braille, large print) usable by individuals with disabilities (602.4); and (4) support services (e.g., help desks, call centers) must offer information on accessibility and compatibility features, as well as ensure a contact method that accommodates the communication needs of individuals with disabilities (603.2 and 603.3). Taken together, according to the final rule, these four accessibility requirements in the final rule impose PRA-covered information collection obligations on section 255-covered manufacturers that are generally similar to those under the existing 255 Guidelines (which previously received PRA approval from OMB) (OMB Control Number 3014-0010), though compliance with WCAG 2.0 is new. The Revised 255 Guidelines do establish a new information collection by requiring that covered manufacturers ensure their electronic support documentation (such as Web-based self-service support or PDF user guides) complies with specified accessibility standards (602.3). The Access Board estimates the annual burden on manufacturers of telecommunications equipment and customer premises equipment for the four categories of information collections under the final rule will be 2,384,981 burden hours.

Statutory authorization for the rule

The final rule was promulgated under the authority of section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), and section 255 of the Communications Act (47 U.S.C. § 255).

Executive Order No. 12,866 (Regulatory Planning and Review)

According to the Access Board, the final rule has been evaluated from a benefit-cost perspective under the order in a final regulatory impact analysis prepared by the Board's consulting economic firm. The focus of the Final RIA is to define and, where possible, quantify and monetize the potential incremental benefits and costs of the Revised 508 Standards and 255 Guidelines. The Access Board summarized its methodology and results.

Executive Order No. 13,132 (Federalism)

The Access Board determined that the final rule does not have federalism implications within the meaning of the federalism order.