ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. ATBCB–2021–0002]

RIN 3014–AA45

Standards for Accessible Medical Diagnostic Equipment

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Direct final rule.

SUMMARY: We, the Architectural and Transportation Barriers Compliance Board (hereafter, ''Access Board'' or ''Board''), are issuing this direct final rule to extend, for three years, the sunset provisions in the Board's existing accessibility standards for medical diagnostic equipment related to the low-height specifications for transfer surfaces to provide additional time for research necessary to determine the appropriate, final specification for the low transfer height position. The Access Board is issuing these amendments directly as a final rule because we believe they are noncontroversial, unlikely to receive adverse comment, and will serve the public interest.

DATES: This direct final rule is effective February 3, 2022, without further action, unless adverse comment is received by March 7, 2022. If timely adverse comment is received, the Access Board will publish a notification of withdrawal in the **Federal Register**. Such notification may withdraw the direct final rule in whole or in part.

ADDRESSES: You may submit comments by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: docket@access-board.gov.* Include docket number ATBCB–2021–0002 in the subject line of the message.
- *Mail:* Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

Instructions: All submissions must include the docket number (ATBCB–2021–0002) for this regulatory action. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov/docket/ATBCB-2022-0002.*

FOR FURTHER INFORMATION CONTACT: Attorney Advisor Wendy Marshall, (202) 272–0043, *marshall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 510 of the Rehabilitation Act charges the Access Board with developing and maintaining minimum technical criteria to ensure that ''medical diagnostic equipment used in or in conjunction with physician's offices, clinics, emergency rooms, hospitals, and other medical settings, is accessible to, and usable by, individuals with accessibility needs, and shall allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.'' 29 U.S.C. 794f. The Access Board's minimum technical criteria do not impose any mandatory requirements on health care providers or medical device manufacturers. Adopting agencies or entities may, however, issue regulations or adopt policies requiring health care providers to acquire accessible medical diagnostic equipment that complies with the minimum technical criteria set forth by the Access Board.

Purpose of Direct Final Rule

In January 2017, the Board issued a final rule establishing accessibility standards for medical diagnostic equipment (MDE Standards). 82 FR 2810 (codified at 36 CFR part 1195). The MDE Standards set forth minimum technical criteria to ensure that medical diagnostic equipment used by health care providers (such as examination tables, weight scales, and imaging equipment) is accessible to, and usable by, individuals with disabilities. One of the areas covered by these Standards is the adjustability of transfer surfaces for certain types of medical diagnostic equipment. Specifically, for diagnostic equipment used by patients in a supine, prone, side-lying, or seated position, the MDE Standards specify the following adjustability requirements for transfer-height positions: A high height of 25 inches, a low height of 17–19 inches, and four unspecified intermediate heights between the high and low transfer height, which are separated by a minimum of one inch. 36 CFR part 1195, appendix, sections M301.2.1 & M302.2.2.

Unlike the other transfer height specifications, the low transfer height was set as a temporary range with five-year sunset provisions. *Id.* As explained in the preamble to the final rule, the Board took this approach because ''there was insufficient information to designate a single minimum low height requirement at this time. Specifically, there [was] insufficient data on the extent to which and how many individuals would benefit from a transfer height lower than 19 inches.'' 82 FR at 2816. The Board thus specified a five-year sunset period to afford time for needed research and subsequent promulgation of a final specification for the low transfer height position. *Id.*

The Access Board is currently conducting research on low transfer heights; however, this research will not be completed in time for the Board to finalize a low transfer height specification prior to the expiration of the sunset period. By this rule, the Board thus extends the sunset provisions by an additional three years (*i.e.,* January 2025) so that there is no lapse in specifications for the low transfer height provisions while the Board completes both its research and the required rulemaking processes to establish final specifications.

Regulatory Process Matters

A. Administrative Procedures Act and Good Cause Findings

The Access Board is extending the sunset provisions in the MDE Standards without prior notice and opportunity for public comment because it has determined that such procedures are unnecessary and contrary to the public interest. *See* 5 U.S.C. 553(b)(B) (permitting agencies to bypass notice-and-comment procedures when, for good cause, they find prior notice ''impracticable, unnecessary, or contrary to the public interest''). Extending the sunset provisions for the low transfer height provisions represents a minor, technical change that merely maintains the status quo for an additional three years. We thus believe the changes effected by this direct final rule will be noncontroversial and unlikely to draw adverse comment. Additionally, because the MDE Standards were promulgated through full notice-and-comment rulemaking, the public interest is best served by ensuring there is no lapse in low transfer height requirements. The Board thus finds good cause for waiver of prior notice and comment.

In addition, the Access Board finds good cause under 5 U.S.C. 553(d)(3) to

waive the 30-day delay in effectiveness of this rule. This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The Access Board has examined the impact of this direct final rule under Executive Orders 12866 and 13563. These executive orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not impose any incremental costs or benefits because it simply extends the sunset period for the low transfer height requirement for an additional three years; it imposes no new or revised substantive obligations. As such, this direct final rule is not a significant regulatory action for purposes of section 3(f) of Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires federal agencies to analyze the impact of regulatory actions on small entities, unless an agency certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 604, 605 (b). Because this direct final rule merely extends the existing sunset period for an additional three years to permit the Access Board to complete both its research and the required rulemaking processes to establish a permanent specification for the low transfer height position, the Access Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

D. Federalism (Executive Order 13132)

The Access Board has evaluated this direct final rule in accordance with the principles and criteria set forth in Executive Order 13132. We have determined that this action will not have a substantial direct effect on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1531 *et seq.*) (''UMRA'') generally requires that Federal agencies assess the effects of their discretionary regulatory actions that may result in the expenditure of $100 million (adjusted for inflation) or more in any one year by the private sector, or by state, local, and tribal governments in the aggregate. Because this direct final rule is being issued under the APA's good cause exception, UMRA's analytical requirements are inapplicable. *See* 2 U.S.C. 1532(a).

F. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), federal agencies are generally prohibited from conducting or sponsoring a ''collection of information: As defined by the PRA, absent OMB approval. *See* 44 U.S.C. 3507 *et seq.* The MDE Standards do not impose any new or revised collections of information within the meaning of the PRA.

G. Congressional Review Act

This direct final rule is not a major rule within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*)

List of Subjects in 36 CFR Part 1195

Health care, Individuals with disabilities, Medical devices.

For the reasons stated in the preamble, and under the authority of 29 U.S.C. 794f, the Board amends 36 CFR part 1195 as follows:

PART 1195—STANDARDS FOR ACCESSIBLE MEDICAL DIAGNOSTIC EQUIPMENT

■ 1. The authority citation for part 1195 continues to read as follows:

Authority: 29 U.S.C. 794f.

Appendix to Part 1195—[Amended]

■ 2. In the appendix to part 1195:

■ a. In M301.2.2, remove the words ''January 10, 2022'' and add, in their place, the words ''January 10, 2025''.

■ b. In M302.2.2, remove the words ''January 10, 2022'' and add, in their place, the words ''January 10, 2025''.

Approved by notational vote of the Access Board on December 10, 2021.

Sachin Pavithran,

Executive Director.

[FR Doc. 2022–02133 Filed 2–2–22; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR22

Extension of the Presumptive Period for Compensation for Gulf War Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations regarding compensation for disabilities resulting from undiagnosed illnesses suffered by veterans who served in the Persian Gulf War. This amendment is necessary to extend the presumptive period for qualifying chronic disabilities resulting from undiagnosed illnesses that must become manifest to a compensable degree in order for entitlement for disability compensation to be established. The intended effect of this amendment is to provide consistency in VA adjudication policy and preserve certain rights afforded to Persian Gulf War veterans and to ensure fairness for current and future Persian Gulf War veterans.

DATES:

Effective date: This final rule is effective February 3, 2022.

Applicability date: The provisions of this final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Bryant Coleman, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On September 14, 2021, VA published an interim final rule in the **Federal Register** at 86 FR 51000 to amend its adjudication regulation 38 CFR 3.317 regarding compensation for disabilities suffered by veterans who served in the Southwest Asia Theater of Operations during the Persian Gulf War. This amendment is necessary to extend the presumptive period during which disabilities associated with undiagnosed illnesses and medically unexplained chronic multi-symptom illnesses must become manifest in order for a veteran to be eligible for compensation. To