



June 21, 2010

Office of Technical and Informational Services
Access Board
1331 F Street, NW
Suite 1000
Washington, D. C. 20004-1111

Re: Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards; Docket No. 2010-1 RIN 3014-AA37

Dear Sir or Madam:

The Food Marketing Institute (FMI) respectfully submits the following comments in response to the advance notice of proposed rulemaking relating to updating the Electronic and Information Technology Accessibility Standards, the Telecommunications Act Accessibility Guidelines and the Americans With Disabilities Act Accessibility Guidelines to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias.

Introduction

By way of background, FMI is a national trade association conducting programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's U.S. based members operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food sales in America. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from more than 50 foreign countries. FMI's associate members include the supplier partners of its retail and wholesaler members.

Since the enactment of the Americans with Disabilities Act in 1990, FMI and its members have had a strong and ongoing interest on a wide range of issues pertaining to Title III of the statute as well as ADA's Accessibility Guidelines or ADAAG. That is because the supermarket

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industry serves the needs of millions of shoppers each and every day of the year. Approximately 75 million Americans visit their neighborhood grocery store each week and the typical shopper will make 2.3 trips per week to a supermarket. Thus, our members' stores must be as accessible as possible and user friendly to meet the varying needs of their diverse customer base. This has been our industry's challenge since the advent of self-service grocery stores more than seven decades ago.

FMI research continues to show that today's consumer wants and expects courteous, helpful and friendly employees, convenient locations, quick and efficient check-out lanes, quality and selection of goods and services, low prices, and an accessible store format that facilitates an enjoyable shopping experience in the least amount of time.

Because of our industry's ongoing commitment to better serve all customers, and to make supermarkets more convenient and accessible, as well as enjoyable places in which to shop for groceries, this advance notice of proposed rulemaking is clearly of interest to our retail members. FMI's interest and concerns in the proposed rulemaking are directed at its possible impact on the use of self-service machines at retail stores.

It is FMI's view that it makes some sense for the Access Board to begin the process for updating standards for electronic and information technology as they relate to the Federal sector covered by Section 508 of the Rehabilitation Act and updating guidelines for telecommunications products subject to Section 255 of the Telecommunications Act. This will help ensure Federal employees and members of the public with disabilities have the same access to and use of information and data that would be comparable to that of employees and members of the public without disabilities. Products and technologies to be covered by the Access Board's rulemaking include telephones and cell phones and other telecommunication products, computer hardware and software, websites, media players, electronic documents and PDAs among others. As such, improving accessibility, communications and productivity for individuals who are employed by the Federal sector or interact with Federal entities are laudable goals that our industry supports.

Supermarket Industry's Concerns on Proposed Rulemaking

However, FMI has serious reservations over how this proposed rulemaking could apply to self-service machines located in a retail setting, and in particular self-service checkout machines. The underlining hope and objective for self-service machines is that they can be used by everyone. Regrettably, this objective is very elusive. Each person's disability or limitation presents unique challenges for self-service machines in such areas as vision, hearing, movement, mobility, motor skills, dexterity, touch, cognitive and learning skills, knowledge and language. Universal design can address many of these special needs of persons with disabilities to maximize the number of individuals who can use a self-service machine without the need for extra equipment, adaptations or assistance, but universal design or advancements in technology will not always translate into self-service accessibility for all.

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The Access Board should note that self-service machines in supermarkets are relatively recent phenomena in comparison to the concept of a self-service grocery store which began in earnest in the 1920s when customers for the very first time could select products directly without having to ask a clerk behind a counter for a specific item.

Automated teller machines TM (ATM) became prevalent in grocery stores starting in the mid-1990s and are now quite common place. Around the same time frame, self-service checkout machines began appearing in supermarkets, but they are not as widespread as ATMs. Most consumers are very familiar and comfortable with using ATMs, but such is not the case yet with self-service checkout especially among technologically challenged shoppers. Other examples of self-service machines found in retail food stores include change machines, vending machines, digital photography, DVD rentals and various types of kiosks. The online ordering of groceries over supermarket internet websites for home delivery might also be affected by the Access Board's rulemaking although this form of self-service shopping is not specifically mentioned.

Technology Will Improve Accessibility for Self-Service Machines

The task of developing accessibility standards for some self-service machines that perform limited functions, such as change machines, vending machines, ATMs, and DVD rentals is not as daunting as attempting to develop a standard for self-service checkout that has a wide range of functions and features, such as scales, a computer touch screen, voice commands, printers and payment slots among other things. Because self-service checkout is multi-functional, FMI believes that it would be extremely difficult and costly to design accessibility standards for this type of technology. Moreover, because self-service checkout technology is rapidly changing, improving and evolving, any standard setting would likely become irrelevant or obsolete within a very short period of time. For these reasons, FMI strongly urges the Access Board not to proceed with standard setting through rulemaking for self-service checkout. Furthermore, it is FMI's position that evolving technology should be the driving force for enhancing accessibility as it relates to self-service machines located in retail settings, and especially in terms of self-service checkout.

Online Ordering and Home Delivery Should Not Be Covered By Rulemaking

The supermarket industry is also concerned over the potential impact of this proposed rulemaking and potential accessibility standards affecting the online ordering of groceries from a website for home delivery. While an argument could be made that online ordering of products from an internet is a form of self-service, it is quite evident that the process of online ordering does not take place in a retail setting. Therefore, it should not be considered self-service.

FMI further believes that the internet grocery websites and their technology are already very accessible and user-friendly allowing those individuals who have a disability to order groceries and other consumer necessities over the internet quickly and efficiently. For those individuals who

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might have difficulty placing online orders or who do not own a home computer, they could call in their order by telephone or have a family member or caregiver order for them over the internet.

The Access Board's proposed rulemaking references a number of settlement agreements and structured negotiations with retail companies and point-of-sale equipment as one of the reasons to extend access standard setting to other types of self-service machines in retail establishments. The common theme in these settlements is that retailers have agreed to install tactile keypads so that shoppers with visual impairments can enter their personal identification number (PIN) or other confidential information without having to provide this sensitive data to a store employee. As such, FMI believes that the Access Board's proposed rulemaking should limit itself to tactile keypads that are used with point-of-sale terminals.

Equivalent Facilitation Is Better Than Accessibility Standards

Finally, FMI wishes to further point out that rather than initiating costly accessibility standards through rulemaking that will affect retail self-service machines, one of the guiding, common sense principles of ADA allows for equivalent facilitation in order to avoid imposing an undue burden on places of public accommodation which would result in a substantial adjustment or change to a product or service. Equal facilitation occurs routinely in grocery stores. For example, if a customer has difficulty in the check-out lane whether it is an express lane, self-service checkout, or a full service lane, a cashier or bagger will provide appropriate assistance. When a shopper cannot reach an item on the top shelf of a retail display, an associate will get that product for the shopper. If a customer needs assistance getting their groceries to their vehicle, such assistance is provided. The supermarket industry prides itself in providing customer service wherever and whenever it is needed for all of our shoppers.

In conclusion, FMI recommends that the Access Board's rulemaking not extend to self-service machines in retail stores with the exception of tactile keypads used in conjunction with point-of-sale, and that rulemaking should not apply to the online ordering of groceries and similar consumer items for home delivery. FMI deeply appreciates the opportunity to provide comments on these important issues and it is our hope that our views will be given careful consideration.

Sincerely,



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