DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 10, 11, 12, and 39

[FAR Case 2017–011; Docket No. FAR–2017–0011, Sequence No. 1]

RIN 9000–AN46

Federal Acquisition Regulation: Section 508–Based Standards in Information and Communication Technology

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate recent revisions and updates to accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before June 1, 2020 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2017–011 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2017–011''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–011.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–011'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR case 2017–011 (proposed rule)'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2017–011.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Congress amended section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), to strengthen requirements for accessibility to electronic and information technology (now generally referred to as ''information and communication technology'' or ''ICT'') provided by the Federal Government. Among other things, section 508 mandates that Federal agencies ''develop, procure, maintain, or use'' ICT in a manner that ensures that Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly available information and data.

The Access Board, also known as the Architectural and Transportation Barriers Compliance Board, is tasked with issuing accessibility standards for ICT covered under section 508, and updating these standards periodically to reflect technological changes. The Federal Acquisition Regulatory Council, in turn, is required to revise the FAR to incorporate the Access Board's accessibility standards or any amendments thereto.

In December 2000, the Access Board published its initial set of accessibility standards at 65 FR 80500, (December 21, 2000). Thereafter, a final FAR rule was published incorporating the Access Board's accessibility standards at 66 FR 20894 (April 25, 2001).

The Access Board completed a multiyear effort to ''refresh'' its initial, existing set of accessibility standards under section 508 to address advances in ICT, harmonize with accessibility standards developed by standards organizations worldwide, and ensure consistency with the Access Board's regulations that had been promulgated since the late 1990s. The revised section 508 Accessibility Standards support the access needs of individuals with disabilities, while also considering the costs of providing accessible ICT to Federal agencies.

The Access Board's final rule was published in the **Federal Register** at 82 FR 5790 on January 18, 2017. This proposed rule updates the FAR to ensure that the updated standards are appropriately considered in Federal ICT acquisitions. The proposed rule includes a ''safe harbor'' provision for existing (*i.e.,* legacy) ICT, which considers legacy ICT in existence on or before January 18, 2018, to be compliant if it meets the earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (See E202.2 of Revised Standards) and the legacy ICT is not altered after January 18, 2018. In other words, such ''untouched'' ICT need not be modified or upgraded to conform to the revised 508 standards as long as it already conforms to the original 508 standards. However, ICT acquired on or before January 18, 2018, will need to be upgraded or modified to conform to the new standard if such ICT is altered after January 18, 2018, or does not comply with the original 508 standards. In addition, ICT acquired after January 18, 2018, must be upgraded or modified to conform to the new standard. Such direction will be included in requirements documents issued by the agency.

II. Discussion and Analysis

The proposed rule provides for the following:

(1) At FAR 2.101, the definition for ''Electronic and information technology (EIT)'' is removed and replaced with the definition of ''Information and communication technology (ICT)''.

(2) At FAR 7.103, ''EIT'' is removed and replaced with ''ICT'', the standard citation is updated, the term ''service requirement'' is added along with examples, and the unnecessary reference to 11.002(e) is removed.

(3) At FAR 7.105, language is added to require that the applicable accessibility standards be identified in the acquisition plan and provide the applicability, exception or exemption of the standards to the acquisition.

(4) At FAR 10.001, EIT is removed and replaced with ICT, and the name of the Architectural and Transportation Barriers Compliance Board is removed, and the citation is updated.

(5) At FAR 11.002, the text is revised to guide the contracting officer rather than requiring activities, and to more clearly identify the ICT information that is required in the requirements documents.

(6) At FAR 12.202, EIT is removed and replaced with ICT, and the standards citation is updated. The obligations for requirements documents are revised from ''must comply with'' to

''shall identify'' the applicable information and communication technology accessibility standards.

(7) At FAR 39.000, the term ''electronic and information technology'' is revised to ''information and communication technology.''

(8) At FAR 39.001, the section is restructured to add a new paragraph (b) to clarify the scope of the applicability of part 39.

(9) At FAR 39.101, the term ''accommodations'' is removed and replaced with ''accessibility,'' to more closely align the FAR with the terminology in 36 CFR 1194.1.

(10) At FAR 39.201, the name ''Architectural and Transportation Barriers Compliance Board'' is replaced with the ''U.S. Access Board,'' and ''EIT'' is removed and replaced with ''ICT.''

(11) At FAR 39.203, paragraph headings are added for easier navigation through the subject matter.

(i) In paragraph (a), ''EIT'' is replaced with ''ICT.''

(ii) Paragraph (b) clarifies that an exception or a determination of an exemption is not required prior to the award of an indefinite-quantity contract, except for requirements that are to be satisfied by initial award.

(iii) In paragraph (c) (formerly paragraph (b)(3)), new language has been added to clarify that requiring and ordering activities shall document an exception or an exemption to the accessibility standards, if applicable, at the time of order issuance.

(iv) In paragraph (d) (formerly paragraph (c)(1), the requirement that commercial items must be available in time to meet the agency's delivery requirements is modified to state that the items must best meet the agency's needs.

(v) Paragraph (e) is new. It sets forth the requirements for legacy ICT, *i.e.,* any component or portion of existing ICT that was procured, maintained, or used on or before January 18, 2018.

(vi) Paragraph (f) is also new. It addresses the requirements for alterations of legacy ICT after January 18, 2018.

(12) At FAR 39.204, obsolete language in paragraph (a) is removed. The new paragraph (a) has been restructured to clarify that the accessibility standards for ICT do not apply to acquisitions that fall under one of the three exception categories: (1) National security systems; (2) incidental contract items; and (3) maintenance or monitoring spaces. New language has been added as paragraph (b) which requires the contracting officer to receive written confirmation from the requiring activity of the exception. Current paragraph (e) regarding undue burden is moved to the new section 39.205 which covers exemptions.

(13) FAR 39.205 is a new section that is added to address exemptions. Paragraph (a)(1) addresses undue burden which was moved from 39.204(e). Paragraph (a)(2) provides an exemption for agencies to acquire ICT that conforms only to the extent that conformance with the accessibility standards in 36 CFR 1194.1 will not result in a fundamental alteration in the nature of the ICT. Paragraph (a)(3) addresses an exemption when there are no commercial items that fully conform to the ICT accessibility standards in 36 CFR 1194.1. Paragraph (b) requires an agency to provide individuals with disabilities access to and use of information and data by an alternative means when using an exemption. *Paragraph (c) addresses the documentation requirements for using an exemption.*

III. Expected Impact of the Proposed Rule and Proposed Cost Savings

DoD, GSA, and NASA did not perform their own regulatory cost analysis on this proposed rule because the Final Regulatory Impact Analysis (FRIA), dated January 5, 2017, which accompanied the U.S. Access Board's Final ICT Rule, provides an adequate economic assessment of both the Board's rule and this proposed rule. Therefore, the calculated compliance costs of $79.0 million over a 10-year timeframe is attributable to the U.S. Access Board's Final ICT Rule.

The Access Board's FRIA estimates that, under the expected cost scenario, incremental compliance costs to Federal agencies for procured ICT under the revised 508 Accessibility Standards over a 10-year timeframe will be $79.0 million per year using a 7% discount rate, and $82.8 million per year using a 3% discount rate. These costs will largely be incurred from compliance with the revised 508 Accessibility Standards for procured ICT products and services.

With respect to monetized benefits attributable to procured ICT, the Access Board's FRIA estimates that, under the expected scenario, benefits for procured ICT (and, hence, this proposed rule) are likely to have an annualized value of $33.1 million over a 10-year timeframe using a 7% discount rate, and $35.2 million using a 3% discount rate. These benefits would accrue to Federal agencies as a result from productivity increases by Federal employees and time saved from reduced phone calls to Federal agencies. Additionally, persons with disabilities using public-facing Federal information and data (*e.g.,* Federal websites) would experience improved access and time savings. There are also substantial unquantifiable benefits. For example, enhanced ICT accessibility for persons with disabilities can be expected to improve independent living, increase civic engagement, decrease stigma, promote equality, and enhance integration into American society. Updating the FAR to incorporate the revised 508 Accessibility Standards is also expected to provide benefits to ICT firms that could not be monetized. For example, harmonization with national and international consensus standards is likely to assist American ICT companies by helping to achieve economies of scale created by wider use of these technical standards.

To access the U.S. Access Board's FRIA, go to the Access Board's website (*https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-regulatory-impact-analysis*), or the electronic docket for the Access Board's Final ICT rule at the Federal eRulemaking Portal (*https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-regulatory-impact-analysis*).

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not add or modify any provisions or clauses. This rule proposes to amend FAR part 39, Acquisition of Information Technology, and other references to Government requirements for information and communication technology. The objective of the rule is to update the FAR text to align with the accessibility standards revisions made by the Access Board at 36 CFR 1194.1. The accessibility standards are currently applicable to all information and communication technology acquisitions. As such, determinations and findings under 41 U.S.C. 1905 to 1907 regarding the applicability of this rule to acquisitions at or below the SAT or to acquisitions for commercial and COTS items are not required.

The FAR rule will continue the existing applicability of Section-508 requirements, when acquiring ICT through contracts at or below the SAT, or contracts for the acquisition of commercial items, including COTS items.

V. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a ''significant regulatory action'' under the terms of E.O. 12866 (58 FR 51735, October 4, 1993) and is therefore subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011). This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule, if finalized as proposed, is expected to be an E.O. 13771 regulatory action.

VII. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This proposed rule amends the FAR to incorporate recent revisions and updates to the accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d). Section 508 generally mandates that Federal agencies develop, procure, maintain, and use information and communication technology (ICT) in a manner that ensures Federal employees and members of the public with disabilities have comparable access to, and use of, such information and data. The U.S. Access Board periodically reviews and revises these accessibility standards to reflect technological advances and other changes to ICT that occur over the passage of time.

The objective of this proposed rule is to revise the FAR to improve the accessibility of ICT developed, procured, maintained, or used by the Federal Government. Improved accessibility reduces barriers to employment in the Federal Government for individuals with disabilities and reduces the probability that Federal employees with disabilities will be underemployed. The revised 508 accessibility standards may also benefit people outside the Federal workforce, since the accessible technology from the Federal Government may spill over to the rest of society. The legal basis for this rule is section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

Based on fiscal year 2018 data from the Federal Procurement Data System (FPDS), it is estimated that there are approximately 22,809 contractors that manufacture, sell, or lease ICT supplies or services required to comply with section 508 standards. Approximately 12,845 of these contractors are small businesses. Although, the section 508 standards are not new, small businesses will have to analyze whether the information and communication technology they or their resellers plan to sell to the Federal Government complies with the revised 508 accessibility standards. Manufacturers may want to redesign their supplies and services to make them fully compliant, to have a better chance for their items to be purchased by the Government. The proposed rule may decrease demand for some supplies and services that are not fully compliant, potentially leading to decreased sales for small entities manufacturing or selling those items. Conversely, the proposed rule may increase demand for some supplies and services that are fully compliant and meet agency's business needs, potentially leading to increased sales for small businesses manufacturing or selling those items. To meet the requirements of the law, small businesses cannot be exempt from any part of the rule.

There are no projected reporting or recordkeeping requirements. There is a compliance requirement; entities will need to familiarize themselves with the differences between the 2000 and 2017 standards in order to assess the impact on procurements and comply with the revised functional performance criteria and technical accessibility standards beyond those currently mandated in FAR subpart 39.2.

Although the U.S. Access Board did not provide an analysis in their final rule of the impact of the regulatory action on small entities because the revised 508 standards directly regulate only Federal entities, DoD, GSA, and NASA included compliance burden for large and small entities. It was estimated that approximately 12,845 small businesses would be subject to the requirement.

There are no known significant alternatives to the rule for effective implementation of this statutory requirement. Since the statute imposes private enforcement, where individuals with disabilities can file civil rights lawsuits, the Government has little flexibility in promulgating alternatives to the Access Board's standards. The impact of this rule may be significant for small entities that are not currently in compliance with existing standards.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–011) in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 7, 10, 11, 12, and 39

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 10, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 10, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b) by—

■ a. Removing the definition ''Electronic and information technology (EIT)''; and

■ b. Adding in alphabetical order the definition ''Information and communication technology (ICT)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information and communication technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; website; videos; and electronic documents.

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.103 by revising paragraph (q) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(q) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product or service requirements (*e.g.,* help desks, call centers, training services, and automated self-service technical support) descriptions that address information and communication technology (ICT) accessibility standards (see 36 CFR 1194.1) in proposed acquisitions and that these standards are included in requirements planning (see subpart 39.2).

* * * * *

■ 4. In section 7.105, amend paragraph (b) by redesignating paragraph (b)(5)(iv) as paragraph (b)(5)(v) and adding a new paragraph (b)(5)(iv) to read as follows.

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(iv) For acquisitions to which the ICT accessibility standards will apply, identify the applicable standard(s) and whether an exception or an exemption to the standard(s) applies (see subpart 39.2 and 36 CFR 1194.1).

* * * * *

PART 10—MARKET RESEARCH

■ 5. Amend section 10.001 by revising paragraph (a)(3)(viii) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(viii) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 6. Amend section 11.002 by revising paragraph (f) to read as follows:

11.002 Policy.

* * * * *

(f) In accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), the contracting officer shall obtain from the requiring activity the requirement documents, which must identify—

(1) The needs of current and future users with disabilities to determine how—

(i) Users with disabilities will perform the functions supported by the information and communication technology (ICT); and

(ii) The ICT will be developed, installed, configured and maintained to support users with disabilities;

(2) The applicable information and communication technology accessibility standards (see subpart 39.2); and

(3) Any information and communication technology accessibility standards that cannot be met due to an exception or an exemption for any component or portion of the product (see subpart 39.2).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 7. Amend section 12.202 by revising paragraph (d) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(d) Requirements documents shall identify the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see 11.002(f) and subpart 39.2).

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 8. Amend section 39.000 by revising paragraph (b) to read as follows:

39.000 Scope of part.

* * * * *

(b) Information and communication technology (see 2.101(b)).

■ 9. Revise section 39.001 to read as follows:

39.001 Applicability.

This part applies to the acquisition of—

(a) Information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with 40 U.S.C. 11302 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A–130; and

(b) Information and communication technology by or for the use of agencies or for the use of the public, unless an exception (see 39.204) or an exemption (see 39.205) applies. See 36 CFR 1194.1.

39.101 [Amended]

■ 10. Amend section 39.101 by removing from paragraph (a)(1)(i) ''accommodations'' and adding ''accessibility'' in its place.

■ 11. Revise subpart 39.2 heading to read as follows:

Subpart 39.2—Information and Communication Technology

* * * * *

■ 12. Amend section 39.201 by revising paragraph (a), and removing from paragraph (c) ''EIT'' and adding ''ICT'' in its place to read as follows:

39.201 Scope of subpart.

(a) This subpart implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and incorporates the U.S. Access Board's information and communication technology (ICT) accessibility standards at 36 CFR 1194.1.

* * * * *

■ 13. Revise sections 39.203 and 39.204, and add section 39.205 to read as follows:

39.203 Applicability.

(a) *General.* Unless an exception at 39.204 or an exemption at 39.205 applies, acquisitions for ICT supplies and services shall meet the applicable ICT accessibility standards at 36 CFR 1194.1.

(b) *Indefinite-quantity contracts.* Confirmation of an exception or a determination of an exemption is not required prior to award of an indefinite-quantity contract, except for requirements that are to be satisfied by initial award. The contract must identify which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (*e.g.,* vendor's or other exact website location).

(c) *Task or delivery order.* At the time of issuance of a task or delivery order against an indefinite-quantity contract, the requiring and ordering activity shall ensure compliance with the ICT accessibility standards and document an exception or exemption if applicable. Any task or delivery order, or portion thereof, issued for a noncompliant ICT item shall be supported by the appropriate exception or exemption.

(d) *Commercial items.* When acquiring commercial items, an agency must comply with those ICT accessibility standards that can be met with supplies or services that are available in the commercial marketplace and that best address the agency's needs, but see 39.205(a)(3).

(e) *Legacy ICT.* Any component or portion of existing ICT (*i.e.* ICT that was procured, maintained, or used on or before January 18, 2018) is not required to comply with the current ICT accessibility standards if it—

(1) Complies with an earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), which is set forth in Appendix D to 36 CFR 1194.1); and

(2) Has not been altered (*i.e.,* a change that affects interoperability, the user interface, or access to information or data) after January 18, 2018.

(f) *Alterations of legacy ICT.* When altering any component or portion of existing ICT, after January 18, 2018, the component or portion must be modified to conform to the current ICT accessibility standards in 36 CFR 1194.1.

39.204 Exceptions.

(a) The requirements in 39.203 do not apply to acquisitions for—

(1) *National security systems.* ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a);

(2) *Incidental contract items.* ICT acquired by a contractor incidental to a contract, *i.e.,* for in-house use by the contractor to perform the contract; or

(3) *Maintenance or monitoring spaces.* Status indicators and operable parts for ICT functions that are located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.

(b) The contracting officer shall receive, as a part of the requirements documentation, written confirmation from the requiring activity that an exception, in accordance with paragraphs (a)(1), (2), or (3) of this section applies to the ICT supply or service. This documentation shall be maintained in the contract file.

39.205 Exemptions.

(a) An agency may grant an exemption for the following:

(1) *Undue burden.* When an agency determines the acquisition of ICT conforming with all the applicable ICT accessibility standards would impose an undue burden on the agency, compliance with the ICT accessibility standards is only required to the extent that it would not impose an undue burden. In determining whether conformance to one or more ICT accessibility standards would impose an undue burden, an agency shall consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT supply or service is being procured.

(2) *Fundamental alteration.* When an agency determines that acquisition of ICT that conforms with all applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT, such acquisition is required to conform only to the extent that conformance will not result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* Where there are no commercial items that fully conform to the ICT accessibility standards, the agency shall procure the supplies or service available in the commercial marketplace that best meets the ICT accessibility standards consistent with the agency's needs.

(b) *Alternative means of access.* An agency shall provide individuals with disabilities access to and use of information and data by an alternative means to meet the identified needs when an exemption in paragraphs (a)(1), (2), or (3) of this section applies.

(c) *Documentation.* When an exemption applies, the contracting officer shall obtain, as part of the requirements documentation, a written determination from the requiring activity explaining the basis for the exemption in paragraphs (a)(1), (2) or (3) of this section. This documentation shall be maintained in the contract file.

(1) *Undue burden.* A determination of undue burden shall address why and to what extent compliance with applicable ICT accessibility standards constitutes an undue burden.

(2) *Fundamental alteration.* A determination of fundamental alteration shall address the extent to which compliance with the applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* A determination of commercial items nonavailability shall include—

(i) A description of the market research performed;

(ii) A listing of the requirements that cannot be met; and

(iii) The rationale for determining that the ICT to be procured best meets the ICT accessibility standards in 36 CFR 1194.1, consistent with the agency's needs.

[FR Doc. 2020–05867 Filed 3–30–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 273

[Docket No. FRA–2019–0069]

RIN 2130–AC85

Metrics and Minimum Standards for Intercity Passenger Rail Service

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. Consistent with the statutory mandate, FRA and Amtrak jointly developed the proposed metrics and minimum standards.

DATES: Written comments on this proposed rule must be received on or before June 1, 2020. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA intends to hold a public hearing to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. The date and location of the hearing will be set forth in a forthcoming notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by the docket number FRA–2019–0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; or
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC85). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in