UNITED STATES ACCESS BOARD
Advancing Full Access and Inclusion for All

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August 21, 2023

Mark Baker
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9450 SW Gemini Drive PMB 44671
Beaverton, OR 97008
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Re: Petition for Rulemaking to Publish Accessibility Requirements for LED Products pursuant to 21 U.S.C. §360ii.

Dear Petitioner,

Thank you for filing a petition for rulemaking requesting the U.S. Access Board (Access Board or Board) to coordinate with the Food and Drug Administration (FDA) to issue regulations regarding LED products.

In the petition, you requested that the Access Board consult and liaison with the FDA to develop "techniques to evaluate the visible radiation emitted by LEDs and to publish performance standards to minimize exposure to LED visible radiation to ensure the comfort, health, safety, and equal access of those with disabilities as required by" 21 U.S.C. §360ii. The Access Board must deny this petition as the Board has no authority under 21 U.S.C. §360ii either to initiate rulemaking or to require the FDA, were they to do so, to coordinate with the Access Board. This statute directs the FDA to establish and carry out an electronic product radiation control program, to include issuing performance standards for electronic products pursuant to 21 U.S.C. §360kk and to:

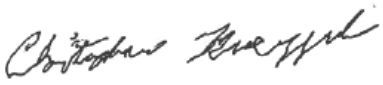
> consult and maintain liaison with the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, the Atomic Energy Commission, and other appropriate Federal departments and agencies on (A) techniques, equipment, and programs for testing and evaluating electronic product radiation, and (B) the development of performance standards pursuant to section 360kk of this title to control such radiation emissions.

21 U.S.C. §360ii(a)(6). The Access Board was not directed by Congress to participate in the development of these Standards and, as such, it is not within the Board's authority to require such a consultation. However, the Access Board does provide technical assistance regarding accessibility issues to other federal agencies upon request. Were we to receive such a request

from the FDA or another federal agency, we would provide assistance to the extent our resources and expertise allowed us to do so.

With respect to any revisions to the Access Board's Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities, the Board is a micro agency with fewer than 30 full-time staff members and currently has an aggressive rulemaking agenda. In the Spring Unified Agenda, the Access Board noticed that we are actively working on five rulemakings over the next year, to include: a final rule of the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (published on August 8, 2023); a proposed rule for Accessibility Guidelines for Electric Vehicle Charging Stations; a proposed rule for Accessibility Standards for Medical Diagnostic Equipment; a proposed rule for Accessibility Guidelines for Self-Service Transaction Machines; and a proposed rule revising the ADA Accessibility Guidelines for Transportation Vehicles; Rail Vehicles. We welcome you and other interested parties to submit comments for any of these open rulemakings during the public comment period.

Sincerely,



Christopher Kuczynski
General Counsel
U.S. Access Board