

Federal Planning Regulations for State DOT and MPO Self Certification for ADA and Section 504

Alabama City County Management
Association Winter Conference

February 27, 2015



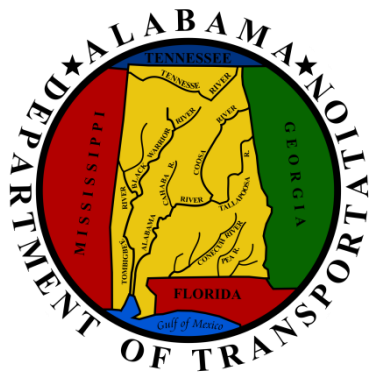
Delegation of Authority



Anthony Foxx
Secretary of Transportation



Greg Nadeau
FHWA Administrator



ALDOT



Mark Bartlett
FHWA Alabama
Division Administrator

USDOT ADA Regulation 49 CFR 27

❖ USDOT delegates to FHWA and FTA

❖ 23 U.S.C. 134 and 135, 49 U.S.C. 5303 -and 5304, 23 CFR Part 450

❖ 49 CFR Part 27

❖ **Ensure Federal-Aid Recipients comply with Section 504 and ADA**

❖ **Ensure compliance is a condition of receiving Federal financial assistance**

❖ **Ensure facilities are accessible to and usable by persons with disabilities through stewardship and oversight of planning process.**

Legal Background

- Architectural Barriers Act (ABA - originated 1968)
 - Required with use of Federal Funds
- Rehabilitation Act (1973) – Section 504 (49 CFR Part 27)
 - Prohibited discrimination in programs and activities funded with Federal funds. i.e. applicable to Federal recipients and sub-recipients
 - Curb Ramps first required
- Civil Rights Restoration Act (1987)
 - extended the reach of Section 504 to the **entire operation** of Federal recipients/subrecipients.
- Americans with Disabilities Act (ADA) (1990)
 - Non-Discrimination Law
 - The ADA applies to all entities (public, private, et al) regardless of funding source.

Why the American Disabilities Act (ADA) Exists

- 21 percent (or approximately 52 million) of the U.S. population over the age of 15 has a disability (2010 Census)



Why the American Disabilities Act (ADA) Exists

- 8 million Americans have vision disability (2010 Census)
- Visual disability can range from total blindness to low vision.
- The National Council on Disabilities estimates that 70 percent of our country's population will eventually have a temporary or permanent disability that makes climbing stairs impossible.



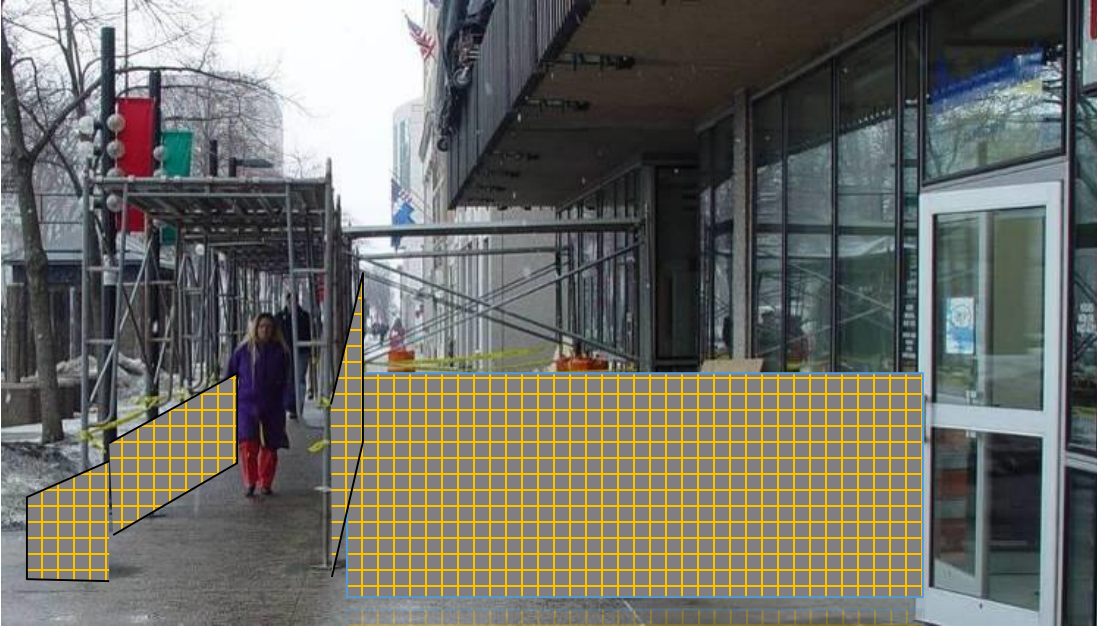
Characteristics of Pedestrians

- People with mobility disabilities may have limited agility, speed, endurance
- They benefit from
 - Firm level surfaces
 - Adequate clear width
 - Curb ramps
 - Limited cross slope

NEED A



Information for everyone but more important for some>



- Design Information everyone needs but more important to some: blind, low vision or cognitive ability (children are in this category)
- Audible/vibrotactile crossing information
- Tactile indication of boundary between ped and vehicular way
- Clearly defined pathways
- High color contrasts



The Pedestrian Environment



Examples of Movement Barriers

A



B



C



Examples of Information Barriers



Movement Barriers

Restrict a person's ability to physically move or progress along or within an environment



Self Certification requirements in 23 CFR 450.334

- ❖ State DOT and MPOs required to self-certify compliance with various federal laws
 - ❖ 23 U.S.C. 134 and 135, 49 U.S.C. 5303 -and 5304
 - ❖ Title VI of the Civil Rights Act of 1964
 - ❖ Disadvantage Business Enterprises
 - ❖ Equal Employment Opportunity on Federal Aid
 - ❖ **American Disabilities Act of 1990**
 - ❖ Older Americans Act
 - ❖ Section 324 prohibition of gender discrimination
 - ❖ **Section 504 of the Rehabilitation Act of 1973**
 - ❖ Clean Air Act

Five Titles of ADA

Title I Employment

Title II State & Local Governments (28 CFR Part 35)

Title III Public Accommodations (retail, commercial, sports complexes, movie theaters, et al) (28 CFR Part 36)

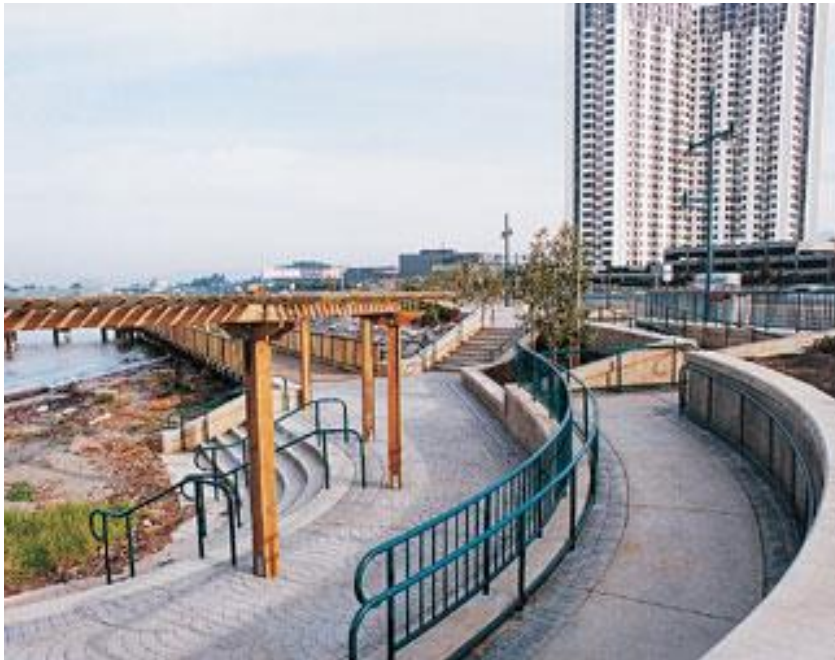
Title IV Telecommunications

Title V Misc., including requirements for the U.S. Access Board to develop design guidelines

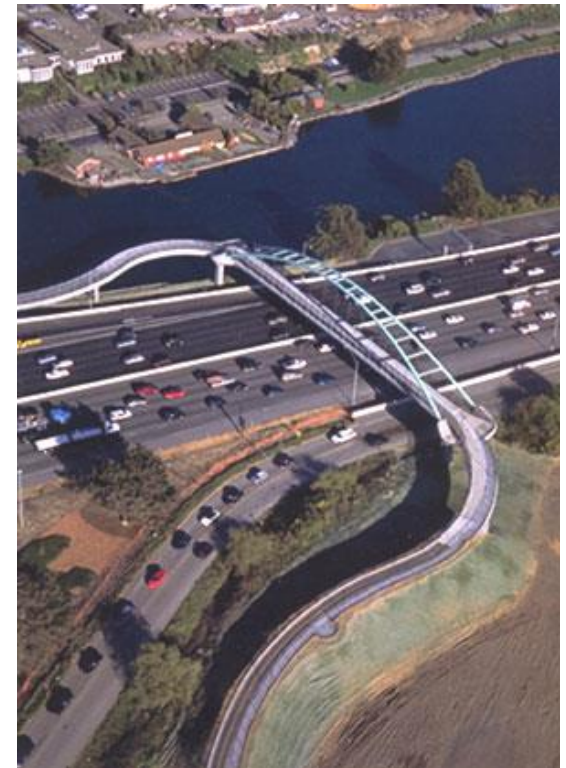
Title II – New Construction

New Construction 28 CFR 35.151

- New construction (and altered facilities) must be designed and constructed to be accessible to and usable by persons with disabilities.



Caltrans



Title II – Existing Facilities

Undue Burden 28 CFR 35.150(a)(3)

- Based on all resources available for a program
- Claims must be proven and accompanied by a written statement of reasons and signed by the head of the public entity
- What constitutes undue burden will often be decided in courts



Title II - Alterations

Alterations – 28 CFR 35.151

- DOJ and court decisions consider roadway resurfacing an alteration (1993)
- Roadway resurfacing triggers requirement for curb ramp installations/retrofits (to current standards)



Title II – Maintaining Accessibility

28 CFR 35.133

- State & local governments must maintain the accessible features of facilities in operable working conditions
- Maintenance examples: sidewalks that are in disrepair; overgrown landscaping, snow accumulation; broken elevator; work zone accessibility (if construction activity affects pedestrian facilities – provide alternate route if more than temp. disruption)



"Grandfather" Clause or Small Entity Exemption

- There is **no "grandfather" clause** in the ADA. However, the law is flexible. City governments must comply with Title II of the ADA, and **must provide program access** for people with disabilities to the whole range of city services and **programs**.
- Similarly, there is **no exemption** from Title II requirements for small municipalities. While public entities that have less than 50 employees are not required to comply with limited sections of the Department of Justice's regulations, such as maintaining self-evaluations on file for three years and designating a grievance procedure for ADA complaints, no general exemption applies. **All public entities, regardless of size, must comply with Title II's requirements. 28 C.F.R. § 35.104.**

U.S. Department of Justice

Civil Rights Division

Disability Rights Section

The ADA and City Governments:

Common Problems

Title II - State and Local Governments

Basic Requirements:

- Must ensure that individuals with disabilities are not excluded from all programs, services, and activities
- Barden vs. City of Sacramento –
 - January 2004 Approved in Court
 - Set a **NATIONWIDE PRECEDENT**



What has changed since 1993?

- January 26, 1993 - SELF EVALUATION COMPLETE
- JANUARY 2004 - BARDEN VS. SACRAMENTO
- AUGUST 2013 -Department of Justice/Department of Transportation Joint Technical Assistance¹ on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing
 - **RESURFACING DEFINED AS AN ALTERATION**
 - **CURB RAMPS REQUIRED ON OR BEFORE RESURFACING PROJECTS**
 - **REGARDLESS OF FUNDING SOURCE**

Barden vs. Sacramento Conclusion

- Decided after passage of the American Disabilities Act
- Clarified Title II's prohibition of discrimination in the provision of public services applies to the **maintenance of public sidewalks, which is a normal function of a municipal entity.**
- Settlement agreement: Sacramento to spend **20% of its transportation funding for pedestrian facilities** for up to 30 years.

“Self Evaluation” – “Transition Plan” – ”Program Access”

- **All public Entities - Self Evaluation**
 - All public entities must have a self evaluation
 - Identifies non-compliant programs with input from public
- **More than 50 employees – “Transition Plan”**
 - must have “transition plan” that identifies the steps and strategies to make necessary changes to the agency’s inventoried facilities with in the public rights of way and programs to bring them to ADA standards.
- **Less than 50 employees – Program Access** - Agencies with less then 50 employees **must have a plan** to address program access that describes how it will address non-compliant facilities.

28 CFR 35.105 Self-Evaluation

- **§35.105 Self-evaluation.**
- (a) A public entity shall, within one year of the effective date of this part, **evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements** of this part and, **to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.**
- (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

Self-Evaluation Basics

- All city governments were required to complete a self-evaluation of their facilities, programs, policies, and practices **by January 26, 1993**.
- The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements.
- **City governments often have not conducted thorough self-evaluations of their current facilities, programs, policies, and practices to determine what changes are necessary to meet the ADA's requirements, and have not developed transition plans to implement these changes.**

U.S. Department of Justice
Civil Rights Division
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9/8/2015

**The ADA and City Governments:
Common Problems**



SUMMARY - Title II – State and Local Governments

- **Required** for 50 or MORE employees but recommended for all governments regardless of employees:
 - Develop a Transition Plan
 - Designate an ADA Coordinator
 - Develop & post an ADA Policy Statement
 - Develop & post Grievance Procedures/Complaint Procedures

Transition Plan Elements

- Identify/list physical obstacles and their location
- Describe in detail the methods the entity will use to make the facilities accessible
- Provide a schedule for making the access modifications
- Provide a yearly schedule if the transition plan is more than one year long
- Name/position of the official who is responsible for implementing the Transition Plan

Transition Plan Elements

Pedestrian right-of-way facilities

- Curb ramps
- Sidewalks
- Parking lots
- Pedestrian signals
- Bus stops
- Shared use trails
- Parks/recreational facilities

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Bottom Line: How do MPOs and Local Governments meet ADA and 504?

- **Certify all applicable requirements listed in 23 CFR 450.334 are being met through the planning process.**
- **Construct Curb Ramps prior to all resurfacing projects.**
- **Have a self-evaluation to include all pedestrian facilities**
- **Have a “Plan” to maintain and bring facilities into compliance with ADA.**
- **Follow the plan.**

Questions?

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