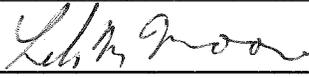




Highway Division Maintenance Operational Notice

Number	Supersedes	Effective Date	Cancellation Date
MG 100 thru 107-1	N/A	January 1, 2015	Until Further Notice
Subject		Issuing Body	
Guidelines for Maintenance Activities and their impact on ADA requirements.		 <hr/> Luci Moore, State Maintenance and Operations Engineer	

PURPOSE:

The purpose of this notice is to define maintenance activities that do and do not trigger the need to upgrade curb ramps so that maintenance forces can make informed decisions as they scope and plan their work. The purpose of this guidance is to ensure compliance with Title II of the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Section 504).

BACKGROUND:

The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. The ADA is codified in the Code of Federal Regulations Title 28, Chapter 1, Part 35 (28 CFR 35).

The Federal Highway Administration (FHWA) is responsible for implementation of pedestrian access requirements from the ADA and Section 504. This is accomplished through stewardship and oversight over public agencies that build and maintain highways and roadways, regardless of fund source.

The ADA requires upgrading existing curb ramps in projects that alter streets, roadways or highways. Clarification for this requirement was provided in a June 28, 2013 memorandum of joint technical assistance (https://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm) by the US Department of Justice (USDOJ) and FHWA. It describes when maintenance activities such as resurfacing are considered alterations, triggering the requirement for curb ramp upgrades.

This recent memorandum has direct impacts on traditional maintenance activities such as full lane grind-and-inlay through an intersection or crosswalk. These activities would now be considered *alterations* triggering curb ramp upgrades at not only the near corner but likely all corners of the affected intersection, thus increasing the scope and cost of a routine maintenance project. This increase may be significantly magnified if ROW or utility relocates are required for the new curb ramps.

The US DOJ / FHWA memorandum defines an *alteration* as:

“... a change that affects or could affect the usability of all or part of a building or facility. Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect. Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.”

The guidance below should be used in early planning, where feasible, to facilitate inclusion of potential ADA upgrade work considering ROW and utility impacts on scope, schedule, and budget.

SCOPE AND TIMING OF ADA UPGRADES

The recent US DOJ / FHWA guidance indicates that curb ramp upgrades are required at not only the near corner impacted but at all corners of the intersection.

FHWA encourages upgrades to be constructed as part of the triggering maintenance project, however when extenuating circumstances exist, the upgrade work may be deferred for completion in separate projects.

FHWA allows public agencies to create a Transition Plan that must include a schedule for completion. Districts should coordinate with their Region Tech Center to program deferred upgrades into the Region Transition Plan or STIP as appropriate.

There are funds programmed in the STIP for ADA upgrades in 1R and maintenance projects that can be used for concurrent or deferred upgrades.

GUIDANCE:

MAINTENANCE ACTIVITIES THAT **DO NOT TRIGGER** REVIEW FOR ADA UPGRADES

1. Work adjacent to driveway ramps and curb cuts that do not facilitate pedestrian access.
2. Work through crosswalks where there are no prepared surfaces for pedestrian use (sidewalks).
3. Work through crosswalks (or between curb ramps) that slows further deterioration and preserves and maintains the condition of the roadway without increasing structural capacity, such as:
 - a. Crack filling and sealing
 - b. Surface sealing
 - c. Chip seals¹
 - d. Slurry seals
 - e. Fog seals
 - f. Scrub sealing
 - g. Joint crack seals
 - h. Joint repairs
 - i. Dowel retrofits
 - j. Spot high friction treatments
 - k. Diamond Grinding
 - l. Pavement patching
 - i. Rut filling
 - ii. Blade patching
 - iii. Wheel path grind and inlay (slot paving)
 - iv. Spot grind and inlay

¹ Chip Seals involve placing graded stone (chips) on liquid emulsified asphalt sprayed on pavement surface. The surface is rolled to enable seating of chips.

MAINTENANCE ACTIVITIES AND SITUATIONS THAT **TRIGGER** REVIEWS FOR ADA UPGRADES

1. Curb ramps may not need to be upgraded if they are “functional” and meet 1991 ADA Accessibility Guidelines. ODOT Technical Services Branch issued an advisory, RD13-01(A) effective January 1, 2014 that describes how to evaluate compliance with ADA standards. Qualified Region Tech Center staff should be consulted to provide this evaluation.
2. Work conducted through crosswalks (or between curb corners or ramps), such as:
 - a. Reconstruction
 - b. Rehabilitation
 - c. Open-graded surface course
 - d. Micro-surfacing²
 - e. Thin lift overlays
 - f. Cape seals
 - g. In-place asphalt recycling
 - h. Full lane width or wider grind and inlay

It is not the intent of this document to suggest maintenance activities considered as alterations, or triggering activities, should stop at crosswalks and start again immediately after as a way to avoid triggering ADA upgrades.

SUGGESTED APPROACH WHEN PROPOSED SCOPE IS A TRIGGERING ACTIVITY

1. Work with Tech Center or TSB staff to evaluate existing ramps against current standards and for functionality (meet 1991 standards).
2. If ramps are compliant, proceed with work.
3. If ramps are not compliant or nonexistent, plan upgrades as part of work.
4. If extenuating circumstances exist consider modifying the work to avoid triggering upgrades or consider the deferring the upgrade work. These circumstances include, but are not limited to, the following:
 - a. Rate of deterioration precludes early planning.
 - b. Cost estimates due to ROW needs or utility impacts exceed budget availability.
 - c. Schedule durations due to ROW needs or utility impacts result in pushing out the scoped work such that safety is impacted.
5. If deferring ...
 - a. If a ramp does not meet current standard but is “functional”, defer to the Transition Plan. Work with the Region Tech Center to obtain a design exception from Roadway Section of Technical Services Branch to defer the work. This allows them to track the deferred work in the Transition Plan.
 - b. If a ramp does not meet current standard and is not “functional”, coordinate with the Region Tech Center to program the work in the STIP.
6. Where ramp upgrades are technically infeasible, a design exception to remove the requirement to upgrade may be sought. Work with the Region Tech Center to evaluate feasibility and submit an exception.

² Microsurfacing involves spreading a properly proportioned mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives on a paved surface. It differs from a slurry seal in that it can be used on high volume roadways to correct wheel path rutting.