ADA Requirements when Roads are Resurfaced

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Welcome – Candace Groudine
Introductory Remarks – Nichole McWhorter
Legal Framework – Jim Esselman
Overview of Joint Technical Assistance – Patrick Gomez
Highlights of Q&As – Elizabeth Hilton
Assisting with questions - Brooke Struve
Background

- DOJ and DOT issued joint technical assistance in June 2013
- FHWA held webinars on Aug. 20 and 21, 2013 that provided an overview of the joint technical assistance and how it was developed
- FHWA staff can access the recorded webinar at https://connectdot.connectsolutions.com/p2lz0u6bt16/
Joint DOJ/DOT Authority to Enforce Title II of the ADA

- ADA Directs DOJ to effectuate Title II of ADA through regulations (28 CFR Part 35)

- DOJ delegated responsibility for implementing DOJ’s ADA Title II regulations to DOT for all programs, services, and regulatory activities related to transportation

- Both DOJ and DOT have enforcement authority
DOJ Regulations: Alterations

- Alteration is a change that affects or could affect the usability of all or part of a facility (such as a road) [28 CFR 35.151(b)]

- Altered streets, roads, and highways must contain curb ramps where there are curbs or other barriers to a pedestrian walkway (i.e., sidewalk) [28 CFR 35.151(i)]

- DOJ Regulation does not identify specific road treatments that qualify as alterations versus treatments that qualify as maintenance
So Which Treatments are Alterations?

➢ Early DOJ guidance based on court decisions stated:
  o Paving, repaving, or resurfacing were generally considered alterations
  o Filling a pothole was not considered to be an alteration

➢ Early DOJ guidance did not provide more specific examples of maintenance activities

➢ Interpretations varied, introducing agency risk
How Did This Joint DOJ/DOT Technical Assistance Come About?

Alterations vs. Maintenance

- DOJ and DOT (FHWA) met in 2012 to 2013
- Desire to provide clarity and consistency
- Based on feedback (comments/questions) from States, local governments, disability rights advocates, citizens
Joint TA distinguishes alterations from maintenance based on the type of road treatment.

**MAINTENANCE**
- Chip Seals
- Crack Filling and Sealing
- Diamond Grinding
- Dowel Bar Retrofit
- Fog Seals
- Joint Crack Seals
- Joint repairs
- Pavement Patching
- Scrub Sealing
- Slurry Seals
- Spot High-Friction Treatments
- Surface Sealing

**ALTERATION**
- Addition of New Layer of Asphalt
- Cape Seals
- Hot In-Place Recycling
- Microsurfacing / Thin-Lift Overlay
- Mill & Fill / Mill & Overlay
- New Construction
- Open-graded Surface Course
- Rehabilitation and Reconstruction
Resurfacing Project

Maintenance
- Proceed w/ Work

Alteration
- Does resurfacing alter any crosswalks (marked or unmarked)?
  - No
    - Proceed w/ Work
  - Yes
    - Are curb ramps that meet the standard in place at time of construction present?
      - Yes
        - Proceed w/ Work
      - No
        - Install/Update Curb Ramps
Application of Technical Assistance

- This is a single Federal policy that identifies specific pavement treatments that are alterations:
  - Alterations require the installation of curb ramps at the time of the resurfacing improvement
  - Maintenance applications do not require curb ramps at the time of the improvement
- Consistent approach among States
- Refer to the companion Glossary of Terms, on the web
- Update Pavement Preservation/Resurfacing Programs
- Update any existing resurfacing ADA policies
Qs & As on Resurfacing TA released in December 2015

- Responds to frequently asked questions
- Applicable requirements of Section 504 of the Rehabilitation Act of 1973 that apply to public entities receiving Federal funding from DOT, either directly or indirectly, are also discussed.
- Not a standalone document and should be read in conjunction with the 2013 Joint Technical Assistance.
- Was coordinated with DOJ
- https://www.fhwa.dot.gov/civilrights/programs/ada.cfm
Q1: Do existing curb ramps have to be upgraded to meet current standards when the roadway is altered?

A: It depends on whether the existing curb ramp meets the appropriate accessibility standard that was in place at the time it was newly constructed or last altered.
Q2: Is a “mill and fill” project that results in a final pavement that is the same thickness as the original pavement considered an Alteration?

A: Mill and fill projects are considered Alterations because they are a change to the road surface that affects or could affect the usability of the pedestrian route (crosswalk). Affected crosswalks must be made accessible.
Q3: If a roadway resurfacing alteration project does not span the full width of the road, do I have to put in curb ramps?

A: It depends on whether the resurfacing work affects a pedestrian crosswalk. If the resurfacing affects the crosswalk, then curb ramps must be provided at both ends of the crosswalk.
Q4: What if the public entity doesn’t own the right-of-way needed to install the required curb ramps?

A: Plan ahead when scoping the project! If the public entity does not control sufficient right-of-way, it should seek to acquire the necessary right-of-way.
Q11: When will utility trench work require compliance with ADA curb ramp requirements?

A: Repaving to cover utility trench work limited to a portion of the pavement, even including a portion of the crosswalk, is typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Repaving must not reduce accessibility.
Q13: Are there any additional requirements for entities that receive Federal financial assistance from DOT?

A: Yes, DOT’s Section 504 requirements apply even if the road alteration project at issue does not use Federal funds.
Q15: Other than road resurfacing, are there other requirements that trigger the obligation to provide curb ramps?

A: Yes. Curb ramps must be provided:
* at newly constructed or altered roads or sidewalks to eliminate barriers between the two;
* as a means of providing program accessibility; and
* as a reasonable modification under title II or a reasonable accommodation under Section 504.
Go to https://www.fhwa.dot.gov/civilrights/programs/ada.cfm to find the following documents:

- 2013 Joint Technical Assistance
- Glossary of Terms
- Questions/Answers