

Draft City of Gig Harbor ADA Transition Plan for the Public Right-of-Way



Appendix A

Federal and Washington State Regulations

28 CFR Part 35 Documentation

Nondiscrimination on the Basis of Disability in State and Local
Government Services Subpart D - Program Accessibility Sections

35.150 - 35.151

Washington Local Agency Guidelines Manual Chapter 29

November 2021

Prepared by



Transportation Solutions

INNOVATIVE | PRACTICAL | EQUITABLE

28 CFR § 35.150 - Existing facilities.

§ 35.150 Existing facilities.

(a) **General.** A [public entity](#) shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not -

(1) Necessarily require a [public entity](#) to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a [public entity](#) to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a [public entity](#) to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the [public entity](#) believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a [public entity](#) has the burden of proving that compliance with [§ 35.150\(a\)](#) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a [public entity](#) or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a [public entity](#) shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the [public entity](#).

(b) *Methods* -

(1) **General.** A [public entity](#) may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A [public entity](#) is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A [public entity](#), in making alterations to existing buildings, shall meet the accessibility requirements of [§ 35.151](#). In choosing among available methods for meeting the requirements of this section, a [public entity](#) shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2)

(i) **Safe harbor.** Elements that have not been altered in existing facilities on or after March 15, 2012 and that comply with the corresponding technical and scoping specifications for

those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to [41 CFR part 101-19.6](#) (July 1, 2002 ed.), [49 FR 31528](#), app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

(ii) The safe harbor provided in [§ 35.150\(b\)\(2\)\(i\)](#) does not apply to those elements in existing facilities that are subject to supplemental requirements (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows -

(A) **Residential facilities dwelling units**, sections 233 and 809.

(B) **Amusement rides**, sections 234 and 1002; 206.2.9; 216.12.

(C) **Recreational boating facilities**, sections 235 and 1003; 206.2.10.

(D) **Exercise machines and equipment**, sections 236 and 1004; 206.2.13.

(E) **Fishing piers and platforms**, sections 237 and 1005; 206.2.14.

(F) **Golf facilities**, sections 238 and 1006; 206.2.15.

(G) **Miniature golf facilities**, sections 239 and 1007; 206.2.16.

(H) **Play areas**, sections 240 and 1008; 206.2.17.

(I) **Saunas and steam rooms**, sections 241 and 612.

(J) **Swimming pools, wading pools, and spas**, sections 242 and 1009.

(K) **Shooting facilities with firing positions**, sections 243 and 1010.

(L) **Miscellaneous**.

(1) Team or player seating, section 221.2.1.4.

(2) Accessible route to bowling lanes, section 206.2.11.

(3) Accessible route in court sports facilities, section 206.2.12.

(3) **Historic preservation programs**. In meeting the requirements of [§ 35.150\(a\)](#) in [historic preservation programs](#), a [public entity](#) shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include -

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of [historic properties](#) that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(4) *Swimming pools, wading pools, and spas.* The requirements set forth in sections 242 and 1009 of the 2010 Standards shall not apply until January 31, 2013, if a [public entity](#) chooses to make structural changes to existing swimming pools, wading pools, or spas built before March 15, 2012, for the sole purpose of complying with the program accessibility requirements set forth in this section.

(c) *Time period for compliance.* Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(d) *Transition plan.*

(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a [public entity](#) that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A [public entity](#) shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a [public entity](#) has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the [Act](#), including [State](#) and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum -

(i) Identify physical obstacles in the [public entity](#)'s facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a [public entity](#) has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the [Rehabilitation Act of 1973](#), then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

(Approved by the Office of Management and Budget under control number 1190-0004)

[[56 FR 35716](#), July 26, 1991, as amended by Order No. 1694-93, [58 FR 17521](#), Apr. 5, 1993; AG Order No. 3180-2010, [75 FR 56180](#), Sept. 15, 2010; AG Order 3332-2012, [77 FR 30179](#), May 21, 2012]

28 CFR § 35.151 - New construction and alterations.

§ 35.151 New construction and alterations.

(a) *Design and construction.*

(1) Each [facility](#) or part of a [facility](#) constructed by, on behalf of, or for the use of a [public entity](#) shall be designed and constructed in such manner that the [facility](#) or part of the [facility](#) is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(2) *Exception for structural impracticability.*

(i) Full compliance with the requirements of this section is not required where a [public entity](#) can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the [facility](#) that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(b) *Alterations.*

(1) Each [facility](#) or part of a [facility](#) altered by, on behalf of, or for the use of a [public entity](#) in a manner that affects or could affect the usability of the [facility](#) or part of the [facility](#) shall, to the maximum extent feasible, be altered in such manner that the altered portion of the [facility](#) is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(2) The path of travel requirements of [§ 35.151\(b\)\(4\)](#) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of [§ 35.150](#).

(3)

(i) Alterations to [historic properties](#) shall comply, to the maximum extent feasible, with the provisions applicable to [historic properties](#) in the design standards specified in [§ 35.151\(c\)](#).

(ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or [facility](#), alternative methods of access shall be provided pursuant to the requirements of [§ 35.150](#).

(4) Path of travel. An alteration that affects or could affect the usability of or access to an area of a [facility](#) that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(i) Primary function. A “primary function” is a [major](#) activity for which the [facility](#) is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the [public entity](#) using the [facility](#) are carried out.

(A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops.

(B) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(ii) A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the [facility](#), and other parts of the [facility](#).

(A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(B) For the purposes of this section, the term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.

(C) Safe harbor. If a [public entity](#) has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the [public entity](#) is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

(iii) Disproportionality.

(A) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(B) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(1) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;

(2) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(3) Costs associated with providing accessible telephones, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY); and

(4) Costs associated with relocating an inaccessible drinking fountain.

(iv) Duty to provide accessible features in the event of disproportionality.

(A) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(B) In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order -

(1) An accessible entrance;

(2) An accessible route to the altered area;

(3) At least one accessible restroom for each sex or a single unisex restroom;

(4) Accessible telephones;

(5) Accessible drinking fountains; and

(6) When possible, additional accessible elements such as parking, storage, and alarms.

(v) Series of smaller alterations.

(A) The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(B)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(2) Only alterations undertaken on or after March 15, 2011 shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

(c) Accessibility standards and compliance date.

(1) If physical construction or alterations commence after July 26, 1992, but prior to September 15, 2010, then new construction and alterations subject to this section must comply with either UFAS or the 1991 Standards except that the elevator exemption contained at [section 4.1.3\(5\)](#) and [section 4.1.6\(1\)\(k\)](#) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the [facility](#) or part of the [facility](#) is thereby provided.

(2) If physical construction or alterations commence on or after September 15, 2010 and before March 15, 2012, then new construction and alterations subject to this section may comply with one of the following: The 2010 Standards, UFAS, or the 1991 Standards except that the elevator exemption contained at [section 4.1.3\(5\)](#) and [section 4.1.6\(1\)\(k\)](#) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the [facility](#) or part of the [facility](#) is thereby provided.

(3) If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.

(4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.

(5) Noncomplying new construction and alterations.

(i) Newly constructed or altered facilities or elements covered by [§§ 35.151\(a\)](#) or (b) that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards.

(ii) Newly constructed or altered facilities or elements covered by [§§ 35.151\(a\)](#) or (b) that were constructed or altered before March 15, 2012 and that do not comply with the 1991 Standards or with UFAS shall, on or after March 15, 2012, be made accessible in accordance with the 2010 Standards.

APPENDIX TO [§ 35.151\(C\)](#)

Compliance dates for new construction and alterations	Applicable standards
Before September 15, 2010	1991 Standards or UFAS.
On or after September 15, 2010 and before March 15, 2012	1991 Standards, UFAS, or 2010 Standards.
On or after March 15, 2012	2010 Standards.

(d) Scope of coverage. The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Unless specifically [stated](#) otherwise, the advisory notes, appendix notes, and figures contained in the 1991 Standards and the 2010 Standards explain or illustrate the requirements of the rule; they do not establish enforceable requirements.

(e) Social service center establishments. Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to this section shall comply with the provisions of the 2010 Standards applicable to residential facilities, including, but not limited to, the provisions in sections 233 and 809.

(1) In sleeping rooms with more than 25 beds covered by this section, a minimum of 5% of the beds shall have clear floor space complying with [section 806.2.3](#) of the 2010 Standards.

(2) Facilities with more than 50 beds covered by this section that provide common use bathing facilities shall provide at least one roll-in shower with a seat that complies with the relevant provisions of section 608 of the 2010 Standards. Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in [sections 608.3](#) and [608.4](#) for residential dwelling units are not permitted. When separate shower facilities are provided for men and for women, at least one roll-in shower shall be provided for each group.

(f) Housing at a place of education. [Housing at a place of education](#) that is subject to this section shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 subject to the following exceptions. For the purposes of the application of this section, the term “sleeping room” is intended to be used interchangeably with the term “guest room” as it is used in the transient lodging standards.

(1) Kitchens within housing units containing accessible sleeping rooms with mobility features (including suites and clustered sleeping rooms) or on floors containing accessible sleeping rooms with mobility features shall provide turning spaces that comply with [section 809.2.2](#) of the 2010 Standards and kitchen work surfaces that comply with [section 804.3](#) of the 2010 Standards.

(2) Multi-bedroom housing units containing accessible sleeping rooms with mobility features shall have an accessible route throughout the unit in accordance with [section 809.2](#) of the 2010 Standards.

(3) Apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty, and do not contain any public use or common use areas available for educational programming, are not subject to the transient lodging standards and shall comply with the requirements for residential facilities in sections 233 and 809 of the 2010 Standards.

(g) Assembly areas. Assembly areas subject to this section shall comply with the provisions of the 2010 Standards applicable to assembly areas, including, but not limited to, sections 221 and 802. In addition, assembly areas shall ensure that -

(1) In stadiums, arenas, and grandstands, [wheelchair](#) spaces and companion seats are dispersed to all levels that include seating served by an accessible route;

(2) Assembly areas that are required to horizontally disperse [wheelchair](#) spaces and companion seats by [section 221.2.3.1](#) of the 2010 Standards and have seating encircling, in whole or in part, a field of play or performance area shall disperse [wheelchair](#) spaces and companion seats around that field of play or performance area;

(3) [Wheelchair](#) spaces and companion seats are not located on (or obstructed by) temporary platforms or other movable structures, except that when an entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, [wheelchair](#) spaces and companion seats may be placed in that section. When [wheelchair](#) spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;

(4) Stadium-style movie theaters shall locate [wheelchair](#) spaces and companion seats on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria -

(i) It is located within the rear 60% of the seats provided in an auditorium; or

(ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).

(h) Medical care facilities. Medical care facilities that are subject to this section shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805. In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by [section 223.2.1](#) of the 2010 Standards in a manner that is proportionate by type of medical specialty.

(i) Curb ramps.

(1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

(j) Facilities with residential dwelling units for sale to individual owners.

(1) Residential dwelling units designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with the requirements for residential facilities in the 2010 Standards, including sections 233 and 809.

(2) The requirements of paragraph (1) also apply to housing programs that are operated by public entities where design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.

(k) Detention and correctional facilities.

(1) New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with [section 807.2](#) of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells in a [facility](#). Cells with mobility features shall be provided in each classification level.

(2) **Alterations to detention and correctional facilities.** Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with [section 807.2](#) of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a [facility](#) shall provide mobility features complying with [section 807.2](#). Altered cells with mobility features shall be provided in each classification level. However, when alterations are made to specific cells, detention and correctional [facility](#) operators may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that each substitute cell -

(i) Is located within the same prison site;

(ii) Is integrated with other cells to the maximum extent feasible;

(iii) Has, at a minimum, equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and participation in other programs that the [facility](#) offers to inmates or detainees; and

(iv) If it is technically infeasible to locate a substitute cell within the same prison site, a substitute cell must be provided at another prison site within the corrections system.

(3) With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 Standards technical and scoping requirements for those facilities irrespective of whether those facilities are licensed.

[[56 FR 35716](#), July 26, 1991, as amended by Order No. 1694-93, [58 FR 17521](#), Apr. 5, 1993; AG Order No. 3180-2010, [75 FR 56180](#), Sept. 15, 2010; [76 FR 13285](#), Mar. 11, 2011]

29.1 General Discussion

This chapter summarizes the regulations and implementing requirements local agencies shall follow regarding services, programs, and activities in or that affect the public right of way.

Section 504 of the Rehabilitation Act of 1973 (Section 504) states that no person with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal funding. This includes both transportation and non-transportation funding. Transportation funding includes funding from the United States Department of Transportation (USDOT) or the operating administrations under it (Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Federal Aviation Administration, Research and Special Programs Administration, National Highway Traffic Safety Administration, or the U.S. Coast Guard).

Section 504 extends to the entire operations of a recipient or subrecipient, regardless of the specific funding source of a particular operation. Section 504 Regulations ([49 CFR Part 27.5](#)) define a recipient as any public entity that receives Federal financial assistance from the USDOT or its operating administrations either directly or through another recipient. An example of a recipient is WSDOT an example of a subrecipient is a local agency receiving USDOT funds through WSDOT, for projects/programs/activities administered by the local agency.

All public entities shall follow *the Americans with Disabilities Act of 1990 (ADA)*, regardless of funding sources. The ADA is mirrored after Section 504 but extends the reach of Federal accessibility laws to include those agencies that are not recipients or subrecipients of Federal funding. Title II ([28 CFR Part 35](#)) of the ADA specifically pertains to state and local governments.

The respective Federal funding agency (FHWA) and WSDOT will ensure that local agencies comply with Section 504 and the ADA. For more information about Section 504 and the ADA, please see WSDOT Equal Opportunity ADA website: www.wsdot.wa.gov/EqualOpportunity/ADA.htm

Local agency public works staff should also refer to Chapter 42 of the Local Agency Guidelines (LAG) for technical information specific to public right-of-way facilities.

29.2 Assurances

Each local agency that receives Federal funding from the USDOT or its operating administrations (such as FHWA) shall submit a written assurance that all of its services, programs, and activities will be conducted in compliance with Section 504 and the ADA. The assurance shall be signed by the Agency Executive, and submitted to each agency (such as WSDOT) administering funds for the USDOT or an operating administration.

Federal aid projects administered through WSDOT require a Local Agency Agreement between the local agency and WSDOT. That agreement may serve as the local agency's assurance of compliance with Section 504 and the ADA as long as it is signed by the Agency Executive and states the following:

In accordance with Section 504 and the ADA, the Agency shall not discriminate on the basis of disability in any of its programs, services, or activities.

29.3 Administrative Requirements

The following list and [Appendix 29.11](#) summarize some of the key requirements of Section 504 and the ADA. Note that when a requirement cites a number of employees, that number is the number of paid permanent, temporary, and contract employees regardless of whether the employees are full or part time.

- Each agency, regardless of the number of employees and funding sources, shall ensure that its services, programs, and activities are accessible to persons with disabilities. Some things this includes are:
 - Transportation and community evacuation elements of emergency management programs/plans
 - Communications. Communications with persons with disabilities shall be as effective as communications with other persons. This applies to all forms of communications, including information posted on an agency's website (ref. Section 508 of the Rehabilitation Act and the ADA), emergency services communications, pedestrian signal systems, etc.
 - Maintenance of programs and facilities. This includes maintaining accessibility of pedestrian facilities that may be impacted by overgrown vegetation, snow/ice, severe heaving/cracking of surfaces, construction work zones, etc. Pedestrian signals/pushbuttons must also be accessible and maintained in working order.
 - New construction and altered facilities.
- Each agency regardless of the number of employees shall designate at least one person as its ADA/504 Coordinator. The individual designated as the ADA/504 Coordinator is responsible for coordinating ADA/Section 504 compliance throughout the agency. The agency shall provide the name, office address, and telephone number of the ADA/504 Coordinator both internally and externally. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page, etc.).
- Each agency regardless of the number of employees shall adopt and publish grievance/complaint procedures. These procedures shall be posted internally and externally and be made available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page).

- Each agency, regardless of the number of employees, shall provide public notice of its ADA provisions. This notice shall contain a brief description about how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints. This notice shall be placed in locations and/or facilities that are accessible internally and externally and be available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. Information placed on the agency's Web page counts as posting externally.
- Each agency, regardless of the number of employees, shall conduct a self-evaluation of its policies, programs, services, and activities to determine whether Section 504/ADA accessibility requirements are being met. This includes all public right-of-way facilities. See [Appendix 29.11](#). Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process.
- Each agency with 50 or more employees shall develop a transition plan (See Section 29.4) when structural modifications, identified through a self-evaluation process, are necessary to achieve program accessibility under the ADA. While Section 504 regulations contain similar requirements, there is no employee threshold and the regulation is not as descriptive as the ADA regulations. Therefore, each agency with fewer than 50 employees that is a recipient or subrecipient of Federal financial assistance shall develop a program access plan. See [Section 29.4](#) for the requirements of these plans.

An agency's self-evaluation and transition plan must cover all of the agency's programs (including facilities), services, and activities. The information contained in this chapter is intended to provide local agency transportation departments (i.e., public works) with guidance/expectations for addressing ADA accessibility requirements associated with public right-of-way facilities.

29.4 Transition Plan, Program Access Plan, and Accessible Pedestrian Signal and Pushbutton Policy

Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process to develop a transition plan or program access plan.

FHWA considers transition plans and program access plans to be living documents. The applicable plan should be used in conjunction with the planning and prioritizing of projects, and for monitoring progress on completing modifications. If the time period of the plan is longer than one year, the plan shall identify steps that will be taken during each year of the transition period. FHWA also recommends that the plan be updated annually until all planned modifications have been completed.

Transition Plan

As stated in [Section 29.3](#) of this chapter, agencies with 50 or more employees (ADA), regardless of funding source, shall develop a transition plan when structural modifications are necessary to achieve ADA compliance. Based on the agency's self-evaluation, at a minimum the plan shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.

- Describe in detail the methods that will be used to make the facilities accessible.
- Specify the schedule for each facility and/or obstacle to be retrofitted. FHWA recommends that an agency include the estimated cost of each modification as part of the schedule, to assist in the budget and/or Transportation Improvement Program (TIP) preparation.
- Identify the official responsible for implementation of the plan. This is typically the agency's Executive, or the agency's designated ADA/504 Coordinator who has the authority to act on behalf of the agency's Executive.

Program Access Plan

As stated in [Section 29.3](#), agencies with fewer than 50 employees and a recipient of Federal financial assistance are required to develop a program access plan. Similar to a transition plan, agencies shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.
- Describe in detail the methods/actions needed to make the facilities accessible.
- Specify a schedule (milestones) of when the agency plans to make the necessary modifications.

Accessible Pedestrian Signal and Pushbutton (APS) Policy

Based on input from the U.S. Department of Justice (DOJ), it is FHWA's policy to require recipients and subrecipients (of FHWA funding) to establish a "reasonable and consistent" policy for installing accessible pedestrian signals and pushbuttons (APS) on all alteration and new construction projects, consistent with the requirements of Title II of the ADA ([28 CFR Part 35.151](#)) and Section 504 regulations ([49 CFR Part 27.7\(c\)](#)). This policy should be part of a transition plan, program access plan, or a stand-alone document if a transition plan or program access plan has not yet been completed. FHWA and WSDOT will work with local agencies to ensure that all new and altered pedestrian signal and pushbutton installations are usable by persons with visual disabilities.

29.5 Requirements for New Construction and Alterations in the Public Right of Way

Title II of the ADA requires that new and altered facilities be designed and constructed to be readily accessible to and usable by persons with disabilities.

New Construction

New construction projects address the construction of a new roadway, interchange, or other transportation facility where none existed before. New construction is expected to meet the highest level of ADA accessibility unless it is structurally impracticable to achieve full compliance. Full compliance will be considered structurally impracticable only when, in rare circumstances, the unique characteristics of terrain prevent full compliance.

Alterations

The vast majority of construction projects undertaken by local agency public works/ transportation departments are classified as alterations. An alteration is a change that affects or could affect the usability of a facility or part of a facility. Alterations include reconstruction, major rehabilitation, widening, resurfacing (e.g., asphalt overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect. Alterations to existing facilities shall meet new construction standards unless it is technically infeasible to do so. If full ADA compliance cannot be achieved in an alteration, the agency shall alter the facility to provide the maximum degree of accessibility possible. The feasibility meant by this standard is physical possibility only. Neither cost nor schedule are factors in determining whether the ADA standards can be met, nor are they factors in determining the feasibility of complying with the standard.

An alteration project shall be planned, designed, and constructed so that the required accessibility improvements occur at the same time as the alteration. If a project involves resurfacing the street, connections between the sidewalk and street crossings (i.e., curb ramps) are considered to be within the scope of the alteration project. Any accessibility issues shall be addressed in conjunction with the resurfacing project, either prior to or at the same time as the resurfacing project. For the requirements for curb ramps during resurfacing projects, see USDOJ-USDOT's Joint Technical Assistance document, dated July 8, 2013 and the Supplement to this document, dated December 1, 2015; and a FHWA recorded webinar from FHWA, dated March 1, 2016.

Safe Harbor for Alterations

Both the Section 504 and ADA requirements contain a "safe harbor" provision. However, there is a difference in the timeline associated with the Section 504 safe harbor provision and the ADA safe harbor provision.

If an agency receives Federal financial assistance from USDOT – either directly or through another USDOT recipient (such as WSDOT), the agency is subject to the 2004 ADA Accessibility Guidelines (2004 ADAAG).

This became effective in 2006 when the USDOT adopted the 2004 ADA Accessibility Guideline (2004 ADAAG) into its Section 504 regulations. This document is known as the 2004 ADA Standards. The 2004 Standards have a "safe harbor" provision for curb ramps. The provision is that if a curb ramp was constructed or altered prior to November 29, 2006, and complies with either the 1991 ADA Standards for Accessible Design (1991 ADA Accessibility Guidelines) or the Uniform Federal Accessibility Standards (UFAS), it does not need to be modified as part of a roadway resurfacing project. If this is not the case, or if the curb ramp is in disrepair then the curb ramp and its detectable warnings (truncated domes) must shall be brought into compliance with the 2004 Standards) at the time of an alternation. As mentioned above in Section 29.1, if an agency receives Federal financial assistance from USDOT – either directly or through another DOT recipient (such as WSDOT), then the agency is subject to the 2004 ADAAG as part of the USDOT Section 504 regulations.

For those agencies who are not a recipient or subrecipient of Federal financial assistance from USDOT, the safe harbor provision in the 2010 ADA Standards for Accessible Design (2010 Standards) applies. Under the 2010 Standards' safe harbor provision, if curb ramps were built or altered (in existing facilities) prior to March 15, 2012 and if they

comply with the 1991 Standards or the UFAS, they do not need to be modified as part of a resurfacing project.

However, if an existing curb ramp does not comply with either the 1991 Standards or the UFAS (including if the curb ramp is in a state of disrepair), then the Safe Harbor provision does not apply and the curb ramp would need to be brought into compliance with the 2010 Standards at the time of roadway alteration.

When curb ramps or abutting sidewalks abutting ramps are altered, they shall be reconstructed to meet the 2010 Standards. For additional curb ramp design guidance, see LAG manual Chapter 42.

Documentation for Structural Impracticability and Maximum Extent Feasible

While ADA/Section 504 regulations do not require documentation of the application of structural impracticability nor maximum extent feasible, both FHWA and the U.S. Access Board recommend that these instances be documented so the agency can support its decisions if challenged at a later date. The documentation of these instances should reveal the standard of care that guided engineering judgments. While careful documentation will not protect an agency against complaint, evidence of the considerations that led to the specific project solution may be persuasive in discussions with stakeholders or in court.

As described in the *Design Manual* M 22-01, WSDOT has a documentation procedure for applications of maximum extent feasible in alteration projects on state routes. If a local agency applies maximum extent feasible to a pedestrian facility located on a state route, it is WSDOT's expectation that the agency follow the WSDOT documentation procedure described in the *Design Manual* M 22-01. The completed documentation should be contained in local agency project files to document the agencies design efforts in complying with the ADA/Section 504 requirements.

If a local agency finds the need to apply maximum extent feasible to a pedestrian facility that is not located on a state route, the WSDOT documentation procedure does not need to be followed. However, it is highly recommended that the agency develop its own documentation protocol for such situations that is consistent with the FHWA and U.S. Access Board recommendations.

29.6 Monitoring and Enforcement

Responsibility for monitoring and enforcement of Section 504 rests with the Federal funding agency (such as FHWA). While USDOJ has the ultimate enforcement authority for ADA compliance, USDOJ has delegated monitoring and enforcement responsibility to several Federal executive agencies including the USDOT and its operating administrations (such as FHWA).

FHWA requires WSDOT to monitor and enforce the compliance with both Section 504 and the ADA of any entity receiving disbursement of either state or Federal funding through WSDOT. FHWA monitors WSDOT and local agency compliance through various means such as process and program reviews, construction inspections, PS&E reviews, and complaint investigations. If noncompliance is found, and the noncompliance is not corrected to FHWA's satisfaction, FHWA may terminate existing Federal funding or refuse to grant future funding.

29.7 Laws

- 29 USC 794 - Section 504 of the Rehabilitation Act of 1973 (as amended by the Civil Rights Restoration Act of 1987)
- 42 USC 12111 - Americans with Disabilities Act (Title II)

29.8 Regulations

- [28 CFR Part 35](#) (Title II) “Nondiscrimination on the Basis of Disability in State and Local Government Services”
- [49 CFR Part 27](#) (Section 504) “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance”
- [49 CFR Part 37](#) “Transportation Services for Individuals with Disabilities (ADA)”
- [49 CFR Part 38](#) “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles”

29.9 Resources

- Chapters [1510](#) and [1515](#) of the *Design Manual* M 22-01
- Chapter 42 of this manual

29.10 Appendices

- [29.11](#) ADA Title II and Section 504 Regulatory References

Appendix 29.11 ADA Title II and Section 504 Regulatory References

ADA Title II and Rehabilitation Act Section 504 Regulatory References	Requirements for agencies with less than 50 employees	Requirements for agencies with 50 or more employees
Programs, Services, and Activities: Ensure that programs, services, and activities are accessible to persons with disabilities. (28 CFR Part 35.150(a) and (c))	✓	✓
ADA/504 Coordinator: Designate at least one responsible employee (ADA/504 Coordinator) and make the name and contact information available internally and externally. (28 CFR Part 35.107(a) and 49 CFR Part 27.13(a))	✓	✓
Complaint/Grievance Procedures: Adopt and publish complaint/grievance procedures. (28 CFR Part 35.107(b) and 49 CFR Part 27.13(b))	✓	✓
Notice of ADA Provisions: Provide a public notice of how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints. (28 CFR 35.106)	✓	✓
Self-evaluation²: Evaluate all services, policies, and practices for barriers that restrict / limit persons with disabilities from access to services, programs, and activities. (28 CFR Part 35.105(a) and 49 CFR Part 27.11(c)(2)(i) and (v))	✓	✓
Self-evaluation²: Maintain the completed self-evaluation on file and make it available for public inspection for at least three years following its completion. (28 CFR Part 35.105(c) and 49 CFR Part 27.11(c)(3)(ii):	✓	✓
Transition Plan²/Program Access Plan: Develop a transition plan or program access plan that outlines the structural modifications that must be made to those services, programs, and activities that are not accessible. (28 CFR Part 35.150(d) and 49 CFR Part 27.11(c)(2)(ii))	✓ program access plan	✓ transition plan (post it on the agency's website)
Accessible Pedestrian Signal and Pushbutton (APS) Policy²: Develop a "reasonable and consistent" policy for installing accessible pedestrian signals and pushbuttons when a transition plan has not yet been completed. (28 CFR Part 35.130 and 35.160a(1) and 49 CFR Part 27.7(c))	✓	✓

Notes:

¹Employees include paid permanent, temporary, and contract employees regardless of whether the employees are full or part time.

²Complete self-evaluations, and develop transition plans, program access plan and APS policies by engaging persons with disabilities and/or their advocates (28 CFR Parts 35.105 and 35.150 and 49 CFR Part 27.11(c)(2)).