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## Preamble to the Final Rule for Pedestrian Facilities in the Public Right-of-Way

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36 CFR Part 1190 Docket No. ATBCB 2011-0004 RIN 3014-AA26

### **ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

### **Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Final rule.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board or Board) issues its final rule that provides minimum guidelines for the accessibility of pedestrian facilities in the public right-of-way. These guidelines, once adopted, would ensure that facilities used by pedestrians, such as sidewalks and crosswalks, constructed or altered in the public right-of-way by federal, state, and local governments are readily accessible to and usable by pedestrians with disabilities. When the guidelines are adopted, with or without modifications, as accessibility standards in regulations issued by other federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with those enforceable accessibility standards is mandatory.

**DATES:** The final rule is effective October 7, 2023.

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PROWAG Guidelines training <https://youtu.be/wfUQzaZt8kl?si=-ipZnXSmaWzewbiO>

### **Executive Summary**

The Access Board began developing accessibility guidelines for pedestrian facilities in public rights-of-way shortly after the ADA was enacted in 1990. In 1992, the Board issued proposed guidelines for state and local government facilities, including pedestrian facilities in public rights-of-way, followed by interim guidelines in 1994 that also contained provisions for public rights-of-way. 57 FR 60612 The U.S. Access Board issues its final rule for accessibility guidelines for pedestrian facilities in public rights-of-way (PROWAG or guidelines). These guidelines are issued under Title II of the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). Title II of the ADA applies to State and local government facilities, among others. The ABA applies to facilities constructed or altered by or on behalf of the federal government, facilities leased by federal agencies, and some facilities built with federal funds.

The purpose of these guidelines is to ensure that pedestrian facilities located in the public right-of-way are readily accessible to and usable by pedestrians with disabilities. Despite on-going efforts to improve access, pedestrians with disabilities throughout the United States continue to face major challenges in public rights-of-way because many sidewalks, crosswalks, and other pedestrian facilities are inaccessible. Equal access to pedestrian facilities is of particular importance because pedestrian travel is the principal means of independent transportation for many persons with disabilities.

These minimum guidelines will become enforceable once they are adopted, with or without modifications, as mandatory standards under the ADA by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (USDOT), or the four federal agencies that set standards for the federal government under the Architectural Barriers Act – the U.S. Postal Service (USPS), General Services Administration (GSA), U.S. Department of Defense (DOD), and U.S. Department of Housing and Urban Development (HUD).

There are three major changes with the way alterations are treated in the final rule.

- First, any portion of a pedestrian facility that is altered must be altered to comply with these guidelines regardless of the intended *“scope of the project”* by the entity undertaking the alteration (R201.1). This approach is consistent with the way accessibility guidelines for buildings and sites are applied. The change is described in the Major Issues section below.
- Second, in the final rule, facilities and portions of facilities that are *“added”* to an existing, developed public right-of-way are *“alterations,”* and are subject to the requirements for altered facilities (See R104.3; R201.1;R202). This includes that compliance with the requirements is required to the maximum extent feasible where existing physical constraints make compliance with the applicable requirements technically infeasible (R202.3). In the proposed rule, added elements were treated as new construction and subject to full compliance with all applicable requirements regardless of existing physical constraints (NPRM R202.2). This change is addressed in the Major Issues section below.
- Third, altered facilities must be connected to an existing pedestrian circulation path by a pedestrian access route (R202.2). In the proposed rule, only select alterations required a connection; however, to ensure that pedestrians with disabilities can realize the benefits of an altered pedestrian facility that is made accessible consistent with these guidelines, the final rule requires all altered facilities to connect to a pedestrian circulation path.

In the final rule, the Board has defined *“alteration”* as *“a change to or an addition of a pedestrian facility in an existing developed public right-of-way that affects or could affect pedestrian access, circulation, or usability”* (R104.3). In so defining *“alteration,”* the Board has revised the requirements for added facilities, now allowing them to comply to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible (R202.3). The Board has also provided a definition for *“developed”* as *“[c]ontaining buildings, pedestrian facilities, roadways, utilities, or elements”* (R104.3). Taken together, the Board expects full compliance with the requirements for new construction on undeveloped land (i.e., greenfield), while any construction undertaken in an existing developed right-of-way is expected to comply to the maximum extent feasible where existing physical constraints make compliance with applicable requirements technically infeasible. The Board’s revised definition of *“alteration”* in the final rule omits the examples of specific roadway treatments, deferring to USDOT’s and DOJ’s joint technical assistance as to which treatments and types of construction are considered alterations for purposes of enforcement of their standards. However, the Board here clarifies that where a roadway treatment is determined to be an alteration, compliance with PROWAG is triggered and the technical requirements apply, regardless of the *“scope of the [alteration] project.”*

The expectation is that in the context of alterations, entities are responsible for compliance with applicable technical requirements to the maximum extent feasible where existing physical constraints make compliance with those requirements technically infeasible. The Board also eliminated *“right-of-way availability”* as an example of an existing physical constraint. The Board acknowledges that in many cases regulated entities have authority to acquire additional right-of-way, which made it a confusing example of an existing physical constraint.

In the final rule, the Board has also eliminated a provision that provided flexibilities for instances where compliance is precluded by laws intended to preserve threatened or endangered species, the environment, or archeological, cultural, historical, or significant natural features (SNPRMR302.5.5). Upon further consideration, the Board has concluded that while this exception was suitable for recreational trails in National Parks and other federal lands, is not appropriate for the construction of transportation facilities, including shared use paths, which should be designed to prioritize equitable transportation for all, and are already subject to environmental review.

Pedestrian access routes are a portion of the traversable pedestrian facilities in a public right-of-way that must comply with the accessibility requirements in these guidelines. In new construction, there will be a continuous

network of pedestrian access routes that connect all accessible elements, spaces, and pedestrian facilities (R203.2). In alterations, a continuous network of pedestrian access routes will be established piece-by-piece as pedestrian facilities are altered and brought into compliance with PROWAG. The final rule requires that pedestrian access routes connect accessible elements, spaces, and pedestrian facilities (R203.2). A pedestrian access route is comprised primarily of conforming portions of a pedestrian circulation path, which are defined as *“a prepared exterior or interior surface provided for pedestrian use in the public right-of-way”* (R104.3). It does not matter under the rule whether the pedestrian access route runs through a sidewalk, shared use path, shoulder intended for pedestrian use, or other type of prepared surface, as long as it meets the technical requirements for pedestrian access routes. Jurisdictions may meet the requirements of PROWAG using any of the available options.

As explained in the discussion of R203, pedestrian access routes in the public right-of-way function differently than accessible routes in buildings and on sites. Accessible routes in buildings and on sites are required to connect accessible facilities and elements to other accessible facilities and elements and may consist of various components. 36 CFR part 1191, Appx. D 206.2, 402.2. A pedestrian access route in the public right-of-way runs through nearly every traversable surface within the pedestrian facilities; thus, unlike the requirements for a building, every new and altered traversable surface in the public right-of-way, except for stairs and facilities that have been specifically excepted, must comply with pedestrian access route requirements.

The public right-of-way in this aspect is not analogous to buildings and sites. Every new or altered pedestrian facility must be made accessible. Thus, the Access Board clarifies that the requirements for pedestrian access routes are applicable to every newly constructed or altered pedestrian circulation path, crosswalk, pedestrian at-grade rail crossing, and pedestrian overpass and underpass, and the curb ramps, ramps, elevators, platform lifts, and doors and gates that connect pedestrian facilities with pedestrian access routes must also comply with the accessibility requirements of PROWAG.

Equity in the public right-of-way requires that persons with disabilities have equal access to crosswalks and information about whether a crosswalk is present. Where pedestrian crossing is permitted, curb ramps must be provided so that persons who use wheelchairs can access them. Where pedestrian crossing is prohibited at an intersection or is not intended midblock or at a roundabout, cane-detectable features must indicate to persons who are blind that this is not a place to cross. In the final rule, the Board is also requiring detectable warning surfaces on pedestrian circulation paths at driveways with stop or yield control to alert pedestrians who are blind or have low vision that they are walking into an active vehicular way. The Board has concluded that where there is sufficient vehicular traffic to provide stop or yield control (i.e., stop or yield signage) or traffic signals, there is a sufficient hazard to pedestrians who are blind or have low vision such that a detectable warning surface is warranted to advise individuals that they are entering an active vehicular way.

The Board acknowledges that there are costs involved in providing alternate pedestrian access routes and has assessed those costs in the FRIA. See FRIA at 126. However, equity in our public rights-of-way cannot be achieved without the provision of temporary accessible facilities where permanent accessible facilities are temporarily unavailable. A person without a disability may readily assess safety and traffic conditions and navigate around a closed pedestrian circulation path if an alternate facility is not provided. However, a pedestrian with a disability may not be able to see alternatives, assess traffic to step into a roadway, or have the ability to step on and off of the curb for a few feet around a closure. The Board thus maintains the requirement for the provision of alternate pedestrian access routes where pedestrian circulation paths are made inaccessible due to construction, maintenance operations, closure, or similar conditions. The technical requirements, now stated in R303, seek to provide minimum accessibility for alternate routes while minimizing the costs for regulated entities. The technical requirements are detailed in the discussion of section R303, below.

The requirements for clear width of pedestrian access routes have not changed from what the Board proposed, as modified by the SNPRM (SNPRM R302.3). Specifically, a 48-inch (1220 mm) continuous clear width is required for most portions of the pedestrian access route. Passing spaces must be provided at intervals of 200 feet (61 m) maximum where the clear width of the pedestrian access route is less than 60 inches (1525 mm). The passing spaces, which are 60 inches by 60 inches, are provided to allow sufficient space for two persons in wheelchairs to pass each other. Passing spaces must be added at intervals no greater than 200 feet, but jurisdictions have flexibility to place some passing spaces at shorter intervals to ensure that specific areas are avoided.

A transit stop is defined in the final rule as, *“An area that is designated for passengers to board or alight from buses, rail cars, and other transportation vehicles that operate on a fixed route or scheduled route, including bus stops and boarding platforms.”* An alteration to a transit stop will trigger these technical requirements, including alterations to bus stops that currently have no features other than signage. Boarding and alighting areas must have a clear length of 96 inches (2440 mm) minimum, measured perpendicular to the face of the curb or street edge, and a clear width of 60 inches (1525 mm) minimum, measured parallel to the street.

In new construction on undeveloped land, boarding and alighting areas and boarding platforms connect to pedestrian access routes in accordance with R203.2. In alterations, boarding and alighting areas and boarding platforms must connect to existing pedestrian circulation paths by pedestrian access routes complying with R302 (R309.1.3.2). This connection is required by R202.2 but also expressed here to ensure that jurisdictions understand that any altered boarding and alighting areas and boarding platforms must be connected to an existing pedestrian circulation path.

### **2013 Department of Justice/Department of Transportation Joint Technical Assistance<sup>1</sup> on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing**

<sup>1</sup> The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and local governmental entities. The Department of Justice and the Department of Transportation share responsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

#### **When is resurfacing considered to be an alteration?**

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

#### **What kinds of treatments constitute maintenance rather than an alteration?**

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.