

## Guide and / or I.M. Revision Notice

**To:** Cities, Counties, and Consultants

**Date:** February 21, 2008

**From:** Office of Local Systems

**Revision Notice Number:** 2008-01

The Federal-aid Project Development Guide (Guide) and / or Instructional Memorandums to Local Public Agencies (I.M.s) have been revised as indicated below. This revision notice identifies all new or revised documents and includes a summary of the significant changes. Where appropriate, it also references the existing Project Development Information Packet (Packet) or County Engineers I.M. documents that have been replaced or superseded.

The Iowa DOT does not provide paper copies of the Guide or I.M.s. Since these documents are updated frequently, we recommend using the on-line version of the [Guide and I.M.s](#) for reference. However, if you prefer using paper copies, all new or revised documents have been included in this file for convenient printing. If you maintain a paper copy of these documents, please remove the old documents and replace them with the new documents. Note: This file is designed for double-sided printing; therefore, all documents with an odd number of pages will be followed by a blank page.

For more information and additional download options, refer to the [Guide and I.M.s](#) web page. If you have any questions concerning these revisions, please contact Charlie Purcell at [Charlie.Purcell@dot.iowa.gov](mailto:Charlie.Purcell@dot.iowa.gov) or 515-239-1532.

**\*\*\* PLEASE NOTIFY ALL AFFECTED PERSONNEL OF THIS CHANGE \*\*\***

Document Title or I.M. Number Revision Date	Summary of Significant Revision(s)
<b>I.M. Table of Contents</b> February 21, 2008	The I.M. Table of Contents has been revised to reflect new or revised I.M.s, as indicated below. Other revisions include: <ul style="list-style-type: none"> <li>• A note was added to explain the transition from the Packet and County Engineers I.M.s. to the Guide and new I.M.s.</li> <li>• I.M.s that are referenced by the Guide have been marked with an asterisk (*).</li> </ul>
<b>I.M. 1.070</b> February 21, 2008	I.M. 1.070, Title VI and Nondiscrimination Requirements, is new. This I.M. provides guidance for understanding and complying with the requirements of Title VI and related nondiscrimination laws and regulations that are applicable to Federal funding assistance that is passed through the Iowa DOT.
<b>I.M. 1.080</b> February 21, 2008	I.M. 1.080, ADA Requirements, is new. This I.M. provides guidance for understanding and complying with the requirements of Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the regulations associated with these laws, as they apply to pedestrian facilities.
<b>I.M. 3.140</b> February 21, 2008	I.M. 3.140, Storm Water Permits, is new. This I.M. also replaces the following documents, which were previously included in Index No. 8 of the Packet: <i>Storm Water Permits</i> , dated Mar 22, 2005, and the <i>Sample Pollution Prevention Plan</i> , dated Dec 6, 2002.



# Instructional Memorandums To Local Public Agencies

## Table of Contents



Some I.M.s are written either to counties or cities; others are written to both counties and cities. The intended audience is indicated in the "To:" field of the I.M. as well as the Table of Contents below. Many of the I.M.s are referenced by the Federal-aid Project Development Guide (Guide). These I.M.s are marked with an asterisk (\*). For more information about the relationship between the Guide and I.M.s, refer to the [Guide and I.M.s web page](#).

**Note:** The I.M.s are currently in the process of being transitioned into a new format and numbering system. New or updated I.M.s will use the new format. Existing I.M.s will remain in the old format until they are revised or updated. Some of the I.M.s are not yet complete, as shown in light grey text. Some incomplete I.M.s will be based on an existing Project Development Information Packet document, some will be based on an existing County Engineers I.M. that will be renumbered, and some will include entirely new content. Where applicable, a reference and link to the existing Packet document or County Engineers I.M. is provided.

No.	Subject	Revision Date	Written To
<b>Chapter 1 – General Information</b>			
<b>Section 1.0 -- General</b>			
<a href="#">1.010</a>	County Road Embargoes on the Iowa Detour and Road Embargo Map	November 2001	Counties
<a href="#">1.020</a>	Pavement Friction Evaluation Program	August 2003	Counties
<a href="#">1.030</a>	Ordering Forms and Supplies From the Iowa Department of Transportation	November 2001	Both
<a href="#">1.050</a>	Manuals, Guides and Instructional Information Available to Counties	December 2002	Both
<a href="#">1.070*</a>	Title VI and Nondiscrimination Requirements	February 21, 2008	Both
<a href="#">1.080*</a>	ADA Requirements	February 21, 2008	Both
	Attachment A – Sample Curb Ramp Transition Plan ( <a href="#">Word</a> ) ( <a href="#">PDF</a> )	February 21, 2008	Both
<b>Section 1.1 -- References</b>			
<a href="#">1.120</a>	References to the Iowa Code	August 2003	Counties
<b>Chapter 2 – Administration</b>			
<b>Section 2.0 -- Finance</b>			
<a href="#">2.010</a>	Transfer of Local Secondary Road Use Tax Funds to the Farm-to-Market Fund	November 2001	Counties
	Attachment A - Local to FM Fund Transfer Resolution ( <a href="#">Word</a> )	November 2001	Counties
<a href="#">2.020</a>	Federal and State Bridge Replacement and Rehabilitation Programs	August 2004	Counties
<a href="#">2.030</a>	Transfer of Farm-to-Market Funds to the Local Secondary Road Fund	April 12, 2007	Counties
<a href="#">2.040</a>	Temporary Allocation of Farm-to-Market Funds	November 2001	Counties
2.050	Procedure to Change a County Secondary Road Construction Program (see <a href="#">I.M. 3.11</a> , dated March 2003)	(future)	Counties
	Attachment A – Add FM or Local Project Resolution (see attachment to I.M. 3.11, dated March 2003) ( <a href="#">Word</a> )	(future)	Counties
	Attachment B - Advance Local Project Resolution (see attachment to I.M. 3.11, dated March 2003) ( <a href="#">Word</a> )	(future)	Counties
<a href="#">2.071</a>	Secondary Road Budget Accounting Code Series	July 2005	Counties
<b>Section 2.1 -- Maintenance</b>			
<a href="#">2.110</a>	Maintenance of County Roads at Intersections, Interchanges, and Grade Separations with the Primary Highway System	June 1998	Counties

No.	Subject	Revision Date	Written To
<b>Section 2.2 -- Traffic Service and Control</b>			
<a href="#">2.210</a>	Engineering and Traffic Investigations – Speed Limit Study	March 2002	Counties
	Attachment A - Speed Restriction Ordinance ( <a href="#">Word</a> )	March 2002	Counties
	Attachment B - Amendment to Speed Restriction Ordinance ( <a href="#">Word</a> )	March 2002	Counties
	Attachment C - Resolution for Establishing Speed Limits ( <a href="#">Word</a> )	March 2002	Counties
<a href="#">2.220</a>	Establishing and Signing Area Service B and Area Service C Roads	January 2004	Counties
	Attachment A - Area Service "B" Ordinance ( <a href="#">Word</a> )	March 2002	Counties
	Attachment B - Area Service "B" Resolution ( <a href="#">Word</a> )	March 2002	Counties
	Attachment C - Area Service "C" Ordinance ( <a href="#">Word</a> )	January 2004	Counties
	Attachment D - Area Service "C" Resolution ( <a href="#">Word</a> )	January 2004	Counties
<a href="#">2.230</a>	Signing for Low Cost Stream Crossings	June 2002	Counties
	Attachment A - Resolution for Low-Water Stream Crossing ( <a href="#">Word</a> )	June 2002	Counties
2.240	Iowa DOT Traffic Counts	(future)	Both
<b>Section 2.3 -- Agreements</b>			
<a href="#">2.310</a>	Construction Agreements Between City and County on Secondary Road Extensions	April 2002	Both
	Attachment A - Resolution for Construction Agreement between City and County on Secondary Road Extensions ( <a href="#">Word</a> )	April 2002	Both
<b>Chapter 3 – Project Development</b>			
<b>Section 3.0 -- General</b>			
<a href="#">3.002*</a>	Federal-aid Project Scheduling	February 16, 2007	Both
<a href="#">3.005*</a>	Project Development Submittal Dates and Information	August 6, 2007	Both
<a href="#">3.010</a>	Project Development Outline -- Federal-Aid Funding (BRS, BHS, BROS, BHOS, STS-S, STP-A, STP-E, STP-ES)	February 2002	Both
<a href="#">3.020</a>	Project Development Outline -- Farm-to-Market Funding (FM)	February 2002	Counties
<a href="#">3.030</a>	Project Development Outline -- Local Funding (L)	February 2002	Both
<a href="#">3.050*</a>	In-Kind Contributions	April 12, 2007	Both
3.060	Project Numbers (see <a href="#">I.M. 3.14</a> , dated December 2002)	(future)	Both
<b>Section 3.1 -- Environmental Reviews and Permits</b>			
3.105*	Concept Statement Instructions (see Packet, Index No. 6, <a href="#">Concept Statement Instructions</a> )	(future)	Both
	Attachment A – Example Concept Statement	(future)	Both
3.110*	Environmental Data Sheet Instructions (see Packet, Index No. 6, <a href="#">Environmental Datasheet Instructions</a> )	(future)	Both
	Attachment A – Example Environmental Data Sheet	(future)	Both
3.112*	FHWA Environmental Concurrence Process (see Packet, Index No. 6, <a href="#">NEPA Project Classification Process</a> )	(future)	Both
	Attachment A - Environmental Concurrence Process Overview (see Packet, Flowcharts, <a href="#">Chart No. 6 – Environmental Process Overview</a> )	(future)	Both
	Attachment B - Environmental Assessment / FONSI Process (see Packet, Flowcharts, <a href="#">Chart No. 6A – Environmental Assessment / FONSI Process</a> )	(future)	Both
	Attachment C - Environmental Impact Statement / ROD Process (see Packet, Flowcharts, <a href="#">Chart No. 6B – Environmental Impact Statement / ROD Process</a> )	(future)	Both
	Attachment D - Section 106 Process (see Packet, Flowcharts, <a href="#">Chart No. 6C – Section 106 Process</a> )	(future)	Both

No.	Subject	Revision Date	Written To
	Attachment E - Section 4(f) Process (see Packet, Flowcharts, <a href="#">Chart No. 6D – Section 4(f) Process</a> )	(future)	Both
3.114*	Cultural Resource Regulations (see Packet, Index No. 6, <a href="#">Cultural Resource Regulations</a> )	(future)	Both
3.120*	Farmland Protection Policy Act Guidelines (see Packet, Index No. 6, <a href="#">Farmland Protection Policy Act Guidelines</a> )	(future)	Both
	Attachment A - Farmland Protection Policy Act Process Flowchart (see Packet, Flowcharts, <a href="#">Chart No. 6E – Farmland Protection Policy Act Process</a> )	(future)	Both
<a href="#">3.130*</a>	404 Permit Process	September 2005	Both
	<a href="#">Appendix A</a> - Permit Application Checklist	January 2004	Both
	<a href="#">Appendix B</a> - List of Environmental Consultants	September 2005	Both
<a href="#">3.140*</a>	Storm Water Permits	February 21, 2008	Both
	Attachment A – Sample Pollution Prevention Plan ( <a href="#">Word</a> ) ( <a href="#">PDF</a> )	February 21, 2008	Both
<a href="#">3.150*</a>	Highway Improvements in the Vicinity of Airports or Heliports	December 3, 2007	Both
<a href="#">3.160*</a>	Asbestos Inspection, Removal, and Notification Requirements	April 12, 2007	Both
	Attachment A – Notification of Demolition form ( <a href="#">Word</a> ) ( <a href="#">PDF</a> )	April 12, 2007	Both
<b>Section 3.2 -- Design Guidelines and Exceptions</b>			
3.205*	Urban Design Guidelines (see Packet, Index No. 5, <a href="#">Application of Design Criteria</a> , <a href="#">Urban Design Aids</a> , <a href="#">Alternative Urban Design Guides</a> , and <a href="#">Design Exception Process for City Federal-aid Projects</a> )	(future)	Cities
<a href="#">3.210*</a>	Design Criteria – New Construction or Complete Reconstruction on Federal-aid Projects	May 2003	Counties
<a href="#">3.211</a>	Rehabilitation of Existing Surfaces	November 2001	Counties
<a href="#">3.213*</a>	Traffic Barriers (Guardrail and Bridge Rail)	November 2001	Both
<a href="#">3.214*</a>	3R Guidelines for Federal-aid Projects	May 2003	Counties
<a href="#">3.215*</a>	Clear Zone	February 2002	Counties
<a href="#">3.216*</a>	Economic Analysis (Benefit-to-Cost Ratio)	October 2001	Counties
<a href="#">3.218*</a>	Design Exception Process	December 2002	Counties
	Attachment A – Design Exception Process Flowchart (see Packet, Flowcharts, <a href="#">Chart No. 4 – Design Exception Process</a> )	(future)	Both
3.220*	Design Exception Information for Bridges Narrower than Approach Pavement (see <a href="#">I.M. 3.132</a> , dated February 2002)	(future)	Both
<b>Section 3.3 -- Consultant and In-House Design</b>			
<a href="#">3.305*</a>	Federal-aid Participation in Consultant Costs	August 29, 2006	Both
	<a href="#">Attachment A</a> – Federal-Aid Consultant Checklist	August 29, 2006	Both
	<a href="#">Attachment B</a> – Guidelines for Federal-Aid Consultant Contracts	August 29, 2006	Both
	<a href="#">Attachment C</a> – Payment Methods	August 29, 2006	Both
	<a href="#">Attachment D</a> – Sample Consultant Contract ( <a href="#">Word</a> )	August 29, 2006	Both
3.310*	Federal-aid Participation in In-House Engineering Costs (see Packet, Index No. 2, <a href="#">In-House Engineering Guidelines</a> and <a href="#">Steps to Utilize Federal-aid for In-House Engineering</a> )	(future)	Both
3.315	Farm-to-Market Funded Consultant Contracts	(future)	Counties
<b>Section 3.4 -- Preliminary Design</b>			
3.405*	Preliminary Plans (see <a href="#">I.M. 3.12</a> , dated June 2002)	(future)	Both
	Attachment A – Preliminary Plan Guidelines (see Packet, Index No. 7, <a href="#">Preliminary Plan Guidelines</a> )	(future)	Both
	Attachment B – Preliminary Plan Checklist (see Packet, Index No. 7, <a href="#">Preliminary Plan Checklist</a> )	(future)	Both

No.	Subject	Revision Date	Written To
	Attachment C – Preliminary Plan Process Flowchart (see Packet, Flowcharts, <a href="#">Chart No. 7 – Preliminary Plan Process</a> )	(future)	Both
3.410*	Preliminary Bridge or Culvert Plans (see <a href="#">I.M. 3.131</a> , dated May 2003)	(future)	Both
<b>Section 3.5 -- Final Design</b>			
<a href="#">3.505</a> *	Check and Final Plans	February 16, 2007	Both
	<a href="#">Attachment A</a> – Check and Final Plan Guidelines	February 16, 2007	Both
	<a href="#">Attachment B</a> – Check and Final Plan Checklist	February 16, 2007	Both
	<a href="#">Attachment C</a> – Check and Final Plan Process Flowchart	February 16, 2007	Both
<a href="#">3.510</a> *	Check and Final Bridge or Culvert Plans	February 16, 2007	Both
	<a href="#">Attachment A</a> – Bridge or Culvert Plan Supplementary Checklist	February 16, 2007	Both
3.520*	Electronic Bid Item Information (see Packet, Index No. 8, <a href="#">BIAS 2000 Information</a> )	(future)	Both
<b>Section 3.6 -- Right-of-Way, Utilities, and Railroads</b>			
<a href="#">3.605</a> *	Right-of-Way Acquisition	June 18, 2007	Both
	<a href="#">Attachment A</a> – Compensation Estimate Procedures	June 18, 2007	Both
	<a href="#">Attachment B</a> – FHWA Authorization of Right-of-Way Costs Flowchart	June 18, 2007	Both
	<a href="#">Attachment C</a> – Early Right-of-Way Acquisition Process Flowchart	June 18, 2007	Both
3.640*	Utility Accommodation and Coordination	(future)	Both
<a href="#">3.650</a> *	Federal-aid Participation in Utility Relocations	June 18, 2007	Both
	<a href="#">Attachment A</a> – Utility Relocation Federal-Aid Eligibility Flowchart	June 18, 2007	Both
	<a href="#">Attachment B</a> – FHWA Authorization of Utility Relocation Costs Flowchart	June 18, 2007	Both
<a href="#">3.670</a> *	Work on Railroad Right-of-Way	May 1, 2007	Both
	<a href="#">Attachment A</a> – Notification and Agreement of Maintenance Work in Railroad Right-of-Way ( <a href="#">Word</a> )	May 1, 2007	Both
	<a href="#">Attachment B</a> – Notification of Construction Work in Railroad Right-of-Way ( <a href="#">Word</a> )	May 1, 2007	Both
	<a href="#">Attachment C</a> – Work on Railroad Right-of-Way Flowchart	May 1, 2007	Both
<a href="#">3.680</a> *	Federal-aid Projects Involving Railroads	May 1, 2007	Both
	<a href="#">Attachment A</a> – FHWA Authorization of Railroad Costs Flowchart	May 1, 2007	Both
<b>Section 3.7 -- Lettings and Contracts</b>			
3.705	Local Letting Process – State or Local Funded (see <a href="#">I.M. 3.41</a> , dated September 2005; <a href="#">I.M. 3.42</a> , dated March 2002; and <a href="#">I.M. 3.43</a> , dated September 2002)	(future)	Both
<a href="#">3.710</a> *	DBE Guidelines	June 18, 2007	Both
<a href="#">3.720</a> *	Local Letting Process – Federal-aid	April 12, 2007	Both
	<a href="#">Attachment A</a> – Pre-Award Checklist and Certification	April 12, 2007	Both
	<a href="#">Attachment B</a> – Post-Award Checklist and Certification	April 12, 2007	Both
	<a href="#">Attachment C</a> – Supplemental Agreement	April 12, 2007	Both
	<a href="#">Forms Packet</a> Note: The documents included in the Forms Packet are not actually a part of I.M. 3.720 or its attachments. However, for convenient download, these documents are bundled together in a self-extracting executable file (forms.exe).	N/A	Both
3.730*	Iowa DOT Letting Process (see <a href="#">I.M. 3.44</a> , dated September 2005)	(future)	Both
	Attachment A – Iowa DOT Letting Process Flowchart (see Packet, Flowcharts, <a href="#">Chart No. 12 – DOT Pre-letting Process</a> and <a href="#">Chart No. 13 – DOT Post-letting Process</a> )	(future)	Both
<a href="#">3.750</a> *	Project Development Certification Instructions	December 3, 2007	Both
	<a href="#">Attachment A</a> – Project Development Certification Process Flowchart	December 3, 2007	Both
	<a href="#">Attachment B</a> - Sample Project Development Certification Form	December 3, 2007	Both

No.	Subject	Revision Date	Written To
<a href="#">3.760*</a>	Public Interest Findings	December 3, 2007	Both
3.770	Paving Point Requirements	(future)	Counties
<b>Section 3.8 -- Construction</b>			
3.805*	Construction Inspection (see <a href="#">I.M. 3.51</a> , dated September 2002)	(future)	Both
3.810*	Federal-aid Construction by Local Agency Forces (see Packet, Index No. 3, <a href="#">Force Account Construction Guidelines</a> and <a href="#">Steps to Utilize Federal-aid for Force Account Construction</a> )	(future)	Both
3.870	Farm-to-Market Voucher Process	(future)	Counties
<b>Section 3.9 -- Project Close-out and Audits</b>			
<a href="#">3.910*</a>	Final Review, Audit, and Close-out Procedures for Federal-aid Projects	December 3, 2007	Both
	<a href="#">Attachment A</a> – Project Close-out Process Overview Flowchart	December 3, 2007	Both
	<a href="#">Attachment B</a> – Final Review and Audit Process Flowchart – Highway or Bridge Construction	December 3, 2007	Both
	<a href="#">Attachment C</a> – Final Review and Audit Process Flowchart – Non-highway Construction, DOT Specifications	December 3, 2007	Both
	<a href="#">Attachment D</a> – Final Review and Audit Process Flowchart – Non-highway Construction, Non-DOT Specifications	December 3, 2007	Both
	<a href="#">Attachment E</a> – Pre-audit Checklist	December 3, 2007	Both
	<a href="#">Attachment F</a> – Final Forms Packet Checklist	December 3, 2007	Both
3.920	Final Review, Audit, and Close-out Procedures for State-aid Projects	(future)	Both
<a href="#">3.930*</a>	Interest Payment Procedures	December 3, 2007	Both
	<a href="#">Attachment A</a> – Sample Interest Payment Information Form	December 3, 2007	Both
<a href="#">3.940</a>	County Engineer Resolution	December 3, 2007	Counties
	<a href="#">Attachment A</a> – Sample County Engineer Resolution ( <a href="#">Word</a> )	December 3, 2007	Counties
<b>Chapter 4 – Systems Classification And Identification</b>			
<b>Section 4.0 -- General</b>			
<a href="#">4.010</a>	Procedures to Modify the Secondary Road Route Numbering System	September 2002	Counties
<a href="#">4.030</a>	County Road Vacations	September 2002	Counties
	Attachment A - Resolution for Road Vacation Public Hearing ( <a href="#">Word</a> )	September 2002	Counties
	Attachment B - Notice of Public Hearing ( <a href="#">Word</a> )	September 2002	Counties
	Attachment C - Resolution to Vacate a County Road ( <a href="#">Word</a> )	September 2002	Counties
<b>Section 4.1 -- (Reserved)</b>			
<b>Section 4.2 -- Farm-to-Market System</b>			
<a href="#">4.210</a>	Modification of the Farm-to Market (FM) System	March 2002	Counties
	Attachment A - FM Review Board Application Resolution ( <a href="#">Word</a> )	March 2002	Counties
<a href="#">4.220</a>	Farm-to-Market Review Board Advisory Opinions on Proposed Jurisdictional Transfers	April 2002	Counties





# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: February 21, 2008
From: Office of Local Systems	I.M. No. 1.070
Subject: Title VI and Nondiscrimination Requirements	

**Contents:** This Instructional Memorandum (I.M.) provides guidance for a Local Public Agency (LPA) to understand and comply with the requirements of Title VI and related nondiscrimination laws and regulations that are applicable to Federal funding assistance that is passed through the Iowa Department of Transportation (Iowa DOT).

### Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. 2000d)

The Civil Rights Act of 1964 (the Act) is a fundamental piece of legislation that forms the basis for a wide array of subsequent laws, executive orders and regulations, all designed to prohibit discrimination. Technically, Title VI covers race, color and national origin. However the term “Title VI” is also used more generically to refer to non-discrimination on any basis.

There are eleven titles in the Act covering a variety of activities, for example: Title I – Voting Rights, Title II – Public Accommodations, and Title VII – Equal Employment Opportunity. Title VI of the Act deals specifically with Nondiscrimination in Federally Assisted Programs and Activities.

The Act has broad application. It prohibits discrimination in impacts, services, benefits of, access to, participation in, and treatment under a Federal-aid recipient’s programs or activities. Title VI of the Act is not limited to a particular program or issue. Title VI can surface at any phase of a transportation project with potentially significant impacts. Because of this, preventing discrimination is everyone’s responsibility. It is not a duty that can be delegated or assigned entirely to an individual or a team. It is important for all staff to have some awareness of non-discrimination concepts so they can be observant for prohibited actions as they conduct their daily routine.

There are some important points to take note of. The Act does not mention a specific race (e.g. Hispanic), color (e.g. Black) or national origin (e.g. Chinese). It prohibits discrimination against *any* race, color or national origin. There is no “reverse discrimination”, only discrimination. For example, denying services to a white male because of race is also discrimination. Also, the Act uses the language...“No person in the United States...” it does not mention citizenship. It applies to all people in the U.S, citizen or not, with regard to any program or activity to which they are otherwise eligible for.

### Discrimination

To help understand Title VI impacts and application it is useful to define discrimination and identify how it may surface.

The Federal Highway Administration (FHWA) regulations which implement Title VI and the related statutes define discrimination as “That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.” (23 CFR 200.5 (f)).

Discrimination is evidenced primarily in two fashions, disparate treatment and disparate impact.

Disparate treatment occurs when a person is treated differently (discriminated against) because of their race, color, national origin, etc. This is a more obvious form of intentional discrimination that occurs when the person’s race or protected class status are known, and when a decision is made (at least in part) on a prohibited basis. For example, a contractor or supplier is not used, or is held to a different standard, because

of their race. Disparate treatment involves the inconsistent application of rules or policies to one group of people or another.

Disparate impact is more unintentional discrimination. This occurs when a policy or program, while neutral on its face, has the unintended consequence of being discriminatory. For example, a public transit system ends service at 10:00 P.M., yet late night customers are primarily Hispanic because many people in the Hispanic community depend on public transportation for late shift employment. On the surface the policy is neutral; service ends for all riders at a designated time. Yet, unintentionally, the Hispanic community bears a disproportionately large negative impact. This type of discrimination is more subtle and difficult to identify. However, to comply with Title VI regulations it must be avoided.

## **Related Non-discrimination Authorities**

### Right-of-way and Property Impacts

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)

“For the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal Financial assistance.”

This prohibits unfair or inequitable treatment of persons displaced or whose property will be acquired as a result of Federal and Federal-aid programs and policies. Note that this applies regardless of the source of funds used to purchase the property, Federal-aid or not.

### Disability

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)  
The Americans with Disabilities Act (P.L. 101-336)

“No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”

Discrimination because of a mental or physical disability is prohibited. At the time the legislation was initially developed, the term “handicap” was used; however, this has negative connotations. This term originates from the phrase, “cap in hand”, which was used to describe a beggar. As a result, the terms “disabled” or “disability” are preferred.

### Sex (Gender)

Federal-aid Highway Act of 1973 (23 U.S.C. 324)

“No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title.”

Discrimination because of sex (gender) is prohibited.

### Age

The Age Discrimination Act of 1975 (42 U.S.C. 6101)

“No person shall on the basis of age, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Discrimination on the basis of age is prohibited.

## The Civil Rights Restoration Act of 1987 (P.L. 100-259)

Non-discrimination requirements have been developed over time as evidenced by the dates listed previously. This I.M. only highlights the major actions that have significance to the transportation community. Non-discrimination efforts of the Federal government have been going on since the time of the Civil War.

Over the course of time the intent of this work became diffused, misinterpreted or misconstrued. The Restoration Act of 1987 clarifies the original intent of Congress in Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of Rehabilitation Act of 1973. This act restores the broad, institution-wide scope and coverage of the non-discrimination statutes to include all programs and activities of Federal-aid recipients, subrecipients and contractors, whether such programs and activities are Federally assisted or not.

What this means is that if an LPA receives even one dollar of Federal financial assistance, then all of the programs and activities of that LPA are covered by Title VI, whether all those programs and activities are Federally funded or not. For example, if a County Secondary Road Department receives Federal Highway Bridge Program funds to reconstruct a bridge, all of the activities and programs of the county government are covered by Title VI.

## Limited English Proficiency LEP (Executive Order 13166)

Executive order 13166 is titled, "Improving Access to Services for Persons with Limited English Proficiency," and was signed by President Clinton on August 11, 2000.

A person is considered to have limited English proficiency (LEP) if they do not speak English as their primary language and if they have a limited ability to read, speak, write or understand English. Programs and services normally provided in English must be accessible to persons with LEP in order to avoid national origin discrimination that is prohibited by Title VI.

Meaningful access is the key concept. The central goal of this presidential order is to provide meaningful access for LEP persons to programs and services offered by recipients of Federal financial assistance. Recipients continue to be subject to Federal non-discrimination requirements even though they may be in a jurisdiction where English has been declared as the official language. Federal requirements supersede State and local ones.

## Environmental Justice (Executive Order 12898)

Executive order 12898 is titled, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations." It was signed by President Clinton on February 11, 1994.

Environmental Justice (EJ) relates to the human environment and to human health in minority and low income populations. It says in part, "...each Federal agency shall make achieving Environmental Justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations..."

There are three fundamental principles of Environmental Justice:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The minority groups that Environmental Justice addresses are Blacks, Hispanics, Asian Americans, American Indians and Alaskan Natives. Low income is defined as a person whose household income is at or below the U.S. Department of Health and Human Services poverty guidelines.

A key component is to identify the populations impacted by transportation projects or services and to ensure they have full opportunity to participate in the decision making process.

An example of Environmental Justice concerns would be locating a highway through a low income neighborhood to avoid a more affluent area.

## **Program Applications and Impacts**

### Federal Financial Assistance

Application of many of the non-discrimination requirements is dependent upon the receipt of Federal financial assistance. Federal financial assistance is defined at 49 CFR 21.23 (c). In addition to grants or loans of Federal funds, it also includes Federal property and the detail of Federal personnel (e.g., a Federal employee providing training). Because of the Civil Rights Restoration Act of 1987, if a governmental department receives even one dollar of Federal assistance, then all of the programs and activities of that governmental department are covered by Title VI. Programs and activities are defined at 49 CFR 21.23 (e) and, in the case of assistance to a department of State or local government, it includes all of the operations of the department to which assistance is extended.

The ultimate beneficiaries of Federal assistance are not defined as recipients of Federal assistance. The ultimate beneficiary of Federal Highway Administration (FHWA) funding is the traveling public. For example, the people that drive on the roads and bridges built with that funding, but those persons are not prohibited from discriminating simply because they use a Federally funded project or service. In a related fashion, a contractor building a Federal-aid highway project does not receive Federal assistance. They are simply being paid for work completed. Nevertheless, contractors are prohibited from discriminating because of the standard Title VI assurances included in the contract.

### What Title VI Does

- Prohibits entities from denying an individual any service, financial aid, or other benefit.
- Prohibits entities from providing services or benefits that are different or inferior (either in quantity or quality) to those provided to others.
- Prohibits segregation or separate treatment in any manner related to receiving program services or benefits.
- Prohibits entities from requiring different standards or conditions as prerequisites for serving individuals.
- Encourages the participation of minorities as members of planning or advisory bodies for programs receiving Federal funds.
- Prohibits discriminatory activity in a facility built in whole or in part with Federal funds.
- Requires information and services to be provided in languages other than English when significant numbers of beneficiaries are of limited English speaking ability.
- Requires entities to notify the eligible population about applicable programs.
- Prohibits locating facilities in any way that would limit or impede access to a Federally funded service or benefit.
- Requires assurance of nondiscrimination in purchasing of services.

### Planning and Programming

The planning and programming of projects is a critical step in the delivery of transportation services to the public. Funding distribution and allocation can have a significant impact on opportunities for all persons. Those involved in these processes must have knowledge of non-discrimination requirements and how they impact their work.

#### Typical Assurance Activities:

- Take positive steps to identify impacted groups and to ensure full and fair participation by those groups in the development of the Transportation Improvement Program (TIP).
- Ensure that the planning and programming process results in a program which distributes benefits and mitigates disparate impacts equitably.
- Address complaints and concerns promptly.

#### Design and Project Development

The final design of individual projects is what ultimately impacts the public in a positive or negative fashion. Designers must recognize how non-discrimination affects the conceptual and technical components of a project.

#### Typical Assurance Activities:

- Identify minority and low income populations and ensure they have the opportunity for meaningful participation in the design process.
- Thoroughly examine design alternatives to ensure that environmental justice considerations are recognized and addressed during route location selection and final design.
- Consistently apply design standards to eliminate, minimize or mitigate adverse impacts among affected groups and to provide equitable levels of service.
- Provide opportunities for Disadvantaged Business Enterprise (DBE) firms on consultant contracts.
- Ensure that facilities are designed in accordance with current ADA accessibility requirements (for more information, refer to [I.M. 1.080](#), ADA Requirements).

#### Right-of-Way

No single element of the transportation system may have a greater impact on people than right-of-way activities. The taking or use of one's property can make a major change in their lives. Therefore, people involved in the right-of-way process must understand and practice non-discrimination in their work.

#### Typical Assurance Activities:

- Make every effort to ensure clear communications with persons who have limited English proficiency or who are hearing impaired. This includes the use of interpreters and translators when necessary.
- Appraisal, acquisition, condemnation and relocation procedures must be fair and impartial.
- Provide opportunities for DBE firms on consultant contracts.

#### Construction

Construction, including the letting and contract award process, provides opportunities for contractors and impacts property owners. Contract award and administration procedures must be fair and impartial.

#### Typical Assurance Activities:

- The following activities must be conducted equitably, without regard to race, color, national origin, or other protected basis: Prequalification of contractors; award of contract, subcontract, or extra work; level of inspection; enforcement of specifications; and treatment of adjacent property owners and tenants.

#### Consultants and Research

Local governments use consultants and other service providers to perform a variety of services. Because of the Restoration Act, non-discrimination applies to the selection and administration in all of the contracts.

#### Typical Assurance Activities:

- Provide opportunities and encourage the participation of DBE vendors in all categories of service.
- Fairly and equitably award and administer contracts.

#### Female/Minority Participation and DBE Goals

Title VI and related statutes require that females and minorities be afforded full opportunity to participate in covered contracts. Because of the Restoration Act of 1987 all programs and activities of a Federal-aid

recipient are covered by Title VI, whether those programs and activities are Federally funded or not. Female and minority contractors must have every opportunity to submit bids and may not be discriminated against in consideration for award in all contracts, Federal-aid or not. This does not mean that all contracts should have goals for female/minority participation.

Contract goals are often established as part of the DBE program in order for the Iowa DOT to achieve its Annual DBE Goal. It is important to note that the DBE program applies only to Federal-aid contracts. DBE contract goals must not be established on non-Federal-aid contracts, unless a disparity study has been conducted to ensure they are warranted.

The Iowa DOT sets goals for construction contracts let through the Iowa DOT. However, for Federal-aid consultant contracts and locally-let Federal-aid construction contracts, the LPA is responsible for setting goals for DBE participation, subject to Iowa DOT review and approval. For more information, refer to [I.M. 3.710](#), DBE Guidelines.

## Compliance Actions

The goal of the U.S. Department of Transportation, the FHWA, and the Iowa DOT is voluntary compliance with non-discrimination requirements. This is achieved through an on going process of education, analysis, implementation, and evaluation. The guidance provided in this I.M. is a first step in the education process. It can be used to raise awareness among staff of local governments.

Compliance requires more than simply recognizing these issues exist however. Some action must be taken. In order to begin the process, the Iowa DOT recommends that local governments take the following actions as minimum and initial effort:

- Recognize that preventing discrimination is everyone's responsibility. Share this I.M. and other non-discrimination information with all staff so they can be aware of the various requirements and work to achieve compliance.
- Ensure the required Standard DOT Title VI assurances, adapted as appropriate, are included in all Federal-aid contracts and subcontracts. A Federal-aid contract is one in which the cost of the work, services, material, etc. obtained by the contract will be reimbursed with Federal funds. To assist LPAs with this compliance action, the Iowa DOT has already incorporated the Standard DOT Title VI assurances into the bidding and contract documents which have been developed for use with LPA Federal-aid construction contracts let through the Iowa DOT.

For other types of Federal-aid contracts, such as those for locally let construction contracts, consultant contracts, railroad work, utility relocations, acquisition of property rights, permits, or licenses; the LPA shall include the applicable Standard DOT Title VI assurances in all such contracts and subcontracts. The Standard DOT Title VI assurances are included in Appendix B to the FHWA Office of Civil Rights training manual titled, ["Preventing Discrimination in the Federal Aid Program: Systematic Interdisciplinary Approach Reference Notebook"](#).

- The following standard non-discrimination notification, modified as appropriate, shall be included in all solicitations for bids and in all requests for negotiated agreements, whether Federal-aid will be used or not:

"The (name of LPA), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all (bidders / consultants) that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit (bids / proposals) in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

- Recognize and respond to LEP issues. Current guidance from U.S. DOT is available on the Federal Register (FR) at 70 FR 74087 (12/14/05). This includes a four factor analysis to determine the appropriate response, and defines a "safe harbor" for measuring compliance with written translations.

- Address any complaints. Informal reports of discrimination should be investigated and resolved promptly. Formal written complaints against a local government must be forwarded to the Contracts Engineer, Iowa DOT, 800 Lincoln Way, Ames, IA 50010.

### **Resources and References**

[28 CFR 35](#) – Department of Justice’s regulations governing nondiscrimination on the basis of disability in state and local government services

[49 CFR 21](#) – United States Department of Transportation’s regulation on implementing Title VI of the Civil Rights Act of 1964

[23 CFR 200](#) – Federal Highway Administration’s regulation on implementing Title VI of the Civil Rights Act of 1964

[Federal Highway Administration Office of Civil Rights webpage](#) – This webpage also provides links to several resources related to some specific areas of Title VI compliance, including:

[Executive Order 12898, Environmental Justice](#)

[Executive Order 13166, Limited English Proficiency](#)

[Americans with Disabilities Act \(ADA\) Questions and Answers](#)

[United States Access Board](#) – A Federal Agency Committed to Accessible Design





# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: February 21, 2008
From: Office of Local Systems	I.M. No. 1.080
Subject: ADA Requirements	

**Contents:** This Instructional Memorandum (I.M.) provides guidance for a Local Public Agency (LPA) to understand and comply with the requirements of Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the regulations associated with these laws, as they apply to pedestrian facilities. This I.M. also includes the following attachment:

[Attachment A](#) – Sample Curb Ramp Transition Plan ([Microsoft Word](#))

### Introduction

The accessibility requirements of the ADA and Section 504 apply to many different aspects of an LPA's programs, services, and facilities. However, because the I.M.s are written for transportation-related projects, this I.M. will focus on how these requirements apply to pedestrian facilities in the public right-of-way and pedestrian facilities that are constructed or altered as part of a transportation project. Examples of such pedestrian facilities include streets, sidewalks, walkways, and shared use paths (i.e., facilities designed for both bicycles and pedestrians). For accessibility guidance related to other services, facilities, or programs, refer to the Additional Resources section at the end of this I.M.

### Applicable Laws and Regulations

Title II of the [ADA](#) and its associated regulations ([28 CFR 35](#)) prohibit discrimination on the basis of disability in State and local government programs and activities, regardless of whether the agency is a recipient of Federal financial assistance or not. Providing streets, sidewalks, and shared use paths are considered a program; therefore, all LPA projects involving these facilities are subject to the requirements of the ADA.

Section 504 of the Rehabilitation Act of 1973 (now codified at [23 U.S.C. 794](#)) and its associated regulations ([49 CFR 27](#)) also prohibit discrimination on the basis of disability. However, Section 504 applies specifically to those programs, activities, and services that receive Federal Financial assistance. This means LPA transportation projects that receive Federal funding through the Iowa Department of Transportation (Iowa DOT) must comply with the Section 504 requirements.

### Accessibility Standards and Guidelines

The standards used to determine whether facilities comply with the Section 504 and ADA laws are based on guidelines developed by the United States Access Board (Access Board). After these guidelines are developed, they are usually adopted by means of the Federal rule-making process, either in whole or in part, by the United States Department of Justice (U.S. DOJ) and the United States Department of Transportation (U.S. DOT). After the Access Board guidelines are adopted, they become the legally enforceable accessibility standard. The U.S. DOT, through the Federal Highway Administration (FHWA), is responsible for overseeing the implementation of the Section 504 and ADA laws, as they apply to pedestrian facilities in the public right-of-way. In this capacity, the U.S. DOT has adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAG) as the standard for ADA compliance.

However, ADAAG does not address many of the design considerations associated with construction or alterations to pedestrian facilities in the public right-of-way. In response, the Access Board is in the process of developing new guidelines specifically for the public right-of-way, referred to as the [Revised Draft Guidelines for Accessible Public Rights-of-Way](#). These guidelines have not yet been adopted by the U.S. DOT as the legally enforceable standard. However, they represent the current best practices of accessible design, and in the future, they will likely become the accessibility standard for pedestrian facilities in the public right-of-way. Therefore, these guidelines should be used for all new construction and alteration to pedestrian facilities.

## Accessibility Requirements

### New Construction and Alterations

All new construction of and alterations to pedestrian facilities shall be made accessible to persons with disabilities, to the maximum extent it is technically feasible, without regard to cost. These improvements shall be made at the time of the construction or alteration project.

The FHWA has defined alterations as follows: "An alteration is a change to a facility in the public right-of-way that affects or could affect access, circulation, or use. Projects altering the use of the public right-of-way must incorporate pedestrian access improvements within the scope of the project to meet the requirements of the ADA and Section 504. These projects have the potential to affect the structure, grade, or use of the roadway. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect." (FHWA Office of Civil Rights, Questions and Answers about ADA / Section 504, no. 17. See link under Additional Resources section below.)

When the scope of a transportation project includes alterations to existing pedestrian facilities, those facilities must be brought up to current accessibility standards. For example, if a project resurfaces the street, for accessibility purposes, the curbs and pavement at the pedestrian crosswalk (whether it is marked or not), are in the scope of the project, but the sidewalks are not. Any of the features disturbed by the construction must be replaced so that they are accessible. In addition, if curb ramps already exist but do not meet the current accessibility standards, those ramps must be either reconstructed or retrofitted to meet the current accessibility standards.

Accessibility improvements that are outside the scope of the alteration project may be deferred to a later date. For more information, refer to the discussion of transition plans below.

### Maintenance Activities

Routine maintenance activities are not considered an alteration, and therefore do not require simultaneous accessibility improvements to pedestrian facilities. Maintenance activities are actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the facility. This would include, but not be limited to: thin surface treatments (e.g., seal coat, slurry seals, or chip seals), joint repair, pavement patching (e.g., filling potholes or limited areas of pavement replacement), shoulder repair, pavement markings, minor signal upgrades, and repairs to drainage systems.

### Maintenance of Pedestrian Facilities

Where pedestrian facilities are provided, they must be maintained so that they are readily accessible and useable by persons with disabilities. Therefore, the LPA should adopt policies that ensure sidewalks and other pedestrian facilities will be properly maintained and free of obstructions. Examples of obstructions include: street furniture, utility poles, tree roots, potted plants, snow or ice, debris, or inoperable elevators and lifts. Temporary obstructions and isolated instances of mechanical failures would not necessarily be considered a violation of the ADA or Section 504; however, if these situations are prolonged, they may become a violation.

### Technical Feasibility

As noted above, construction or alterations to pedestrian facilities shall be made accessible to the maximum extent it is technically feasible. According to ADAAG 4.1.6(j), technical infeasibility "Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility." For a transportation project, an analogous situation might be removal of a bridge pier in order to provide the width required for a fully accessible trail or sidewalk. If an LPA believes that construction or alterations to a pedestrian facility cannot be made fully accessible, it should document what has been done to provide accessibility to the maximum extent feasible.

## Transition Plans

Neither the ADA nor Section 504 require pedestrian facilities to be constructed where there currently are none. However, where pedestrian facilities are provided, they must be made accessible to persons with disabilities. Toward that end, all LPAs with 50 or more employees and all LPAs with 15 or more employees that are recipients of Federal funds are required to prepare a transition plan, if structural changes are required in order to make its programs, services, or facilities accessible. The ADA regulations (23 CFR 35.150(c)) require a transition plan to have been prepared by July 26, 1992, and all improvements identified in the plan to have been completed by January 26, 1995.

When required, the transition plan must address all facilities and programs owned or operated by the LPA. Because the scope of this I.M. is limited to transportation facilities, the following guidance has been tailored to specifically address curb ramps in the public right-of-way. If facilities other than curb ramps are found not to be in compliance, those facilities should also be included in the LPA's transition plan.

The ADA regulations (28 CFR 35.150(d)), require the transition plan to address each of the numbered items below. The bullet points underneath each numbered item provide guidance in complying with the requirements.

1. Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities.
  - This should include an inventory of all locations where structural changes are needed to make facilities accessible. The inventory should also identify the types of improvements required to provide accessibility. For curb ramps, this should include a list of all locations where existing sidewalks intersect the curb and no curb ramp is provided.
  - The inventory of facilities to be modified shall be prioritized in the following order:
    - a) State and local government offices and facilities (e.g., city hall, schools, etc.)
    - b) Places where government services and transit facilities are provided (e.g., bus stops, train stations, etc.)
    - c) Places where the public is accommodated (e.g., employers, shops, etc.)
    - d) All other areas (e.g., residential or other)
2. Describe in detail the methods that will be used to make the facilities accessible.
  - This should include a description of how the public was involved in reviewing and / or developing the transition plan. This should include the names of advisory committees, task forces, or other groups representing persons with disabilities that were provided an opportunity to comment.
  - This should include a description of the funding sources and amounts that will be annually budgeted for making the improvements associated with the transition plan.
  - This should also describe how accessibility improvements will be incorporated as a part of other projects involving construction or alterations to pedestrian facilities.
3. 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.
  - The schedule should include milestones that can be used to evaluate progress towards completion. For curb ramps, this should include the number of ramps that will be constructed each year, and the total number of years required to complete the plan.
4. Indicate the official responsible for implementation of the plan.
  - This should include the name, title, office address, phone number, and e-mail address of the LPA official responsible for the coordination, development, and implementation of the transition plan.

The ADA regulations also require the LPA to provide an opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. In addition, a copy of the transition plan shall be made available for public inspection.

The Iowa DOT has observed that many LPAs have a transition plan, but sometimes their transition plans do not address the accessibility improvements required in the public right-of-way; specifically, curb ramps. In order to provide assistance to LPAs that need to modify or update their transition plan to include curb ramps, the Iowa DOT has developed a Sample Curb Ramp Transition Plan\*, as shown in [Attachment A](#) (also available in [Microsoft](#)

[Word](#) format). If used, the LPA should complete the information indicated by the yellow, bracketed text and make other modifications as appropriate.

**\*Disclaimer:** Even though the Sample Curb Ramp Transition Plan has been reviewed by the Iowa DOT and the FHWA Iowa Division, neither the Iowa DOT nor the FHWA can guarantee this sample will be sufficient for every situation. This document is provided as a guide only and additional modifications may be necessary.

## **Other Requirements**

### Self Evaluation

All LPAs must perform a self-evaluation. An LPA self-evaluation should include a comprehensive review of its policies, services, communications, and practices, as well as an analysis of how they affect persons with disabilities. The purpose of the self-evaluation is to identify any policies and practices that do not comply with the ADA and Section 504 requirements and modify those policies and practices to bring them into compliance.

### Complaint Procedures

All LPAs with 50 or more employees and all LPA recipients of Federal funds with 15 or more employees must develop, adopt, and publish grievance or complaint procedures. These procedures should provide for a prompt and equitable resolution of complaints that allege violation of the ADA and Section 504 laws. LPAs should make all possible efforts to resolve complaints on the local level.

Complaints may also be filed with the U.S. Department of Justice. In such cases, complaints that relate to pedestrian facilities in the public right-of-way are referred to the U.S. DOT, which in turn are forwarded to the FHWA and Iowa DOT. Upon receipt of a complaint against an LPA, the FHWA and the Iowa DOT will investigate and prepare a report. The report will summarize the findings and make recommendations to resolve the complaint. The report and recommendations will be forwarded to the FHWA Office of Civil Rights for final review and acceptance. If accepted, the LPA will be required to address the report recommendations in the timeframe specified. If the LPA is uncooperative or fails to address the complaint in a timely manner, the case may be referred to the U.S. Department of Justice for possible litigation.

### ADA and Section 504 Coordinator

All LPAs with 50 or more employees and all LPA recipients of Federal funds with 15 or more employees are required to designate at least one employee to coordinate compliance with these laws and regulations. The LPA shall make available to all interested parties the name, office address, and telephone number of its ADA and Section 504 Coordinator.

There are a number of other requirements associated with the ADA and Section 504. This I.M. has only addressed a few of them. For more comprehensive guidance, refer to the Additional Resources listed below.

## **Additional Resources**

[U.S. Access Board](#) Homepage of the Access Board. Provides a variety of guidelines and resources related to accessible design.

[Public Rights-of-Way Homepage](#) An Access Board web page that provides information focused to their public rights-of-way guidelines, including the rule making history, current public rights-of-way guidelines, and other resources.

[FHWA Office of Civil Rights](#) Home page for the FHWA Office of Civil Rights. Provides a variety of information related nondiscrimination laws and regulations, including Title II of the ADA and Section 504.

[Questions and Answers About ADA/Section 504](#) FHWA Office of Civil Rights' guidance concerning implementation of the ADA and Section 504 requirements.

## Sample Curb Ramp Transition Plan

City of [city name], Iowa  
[date approved]

### Purpose

It has been determined that in some locations, curb ramps have not been provided at the intersections of public sidewalks and streets, as required by the Americans with Disabilities Act (ADA) and Title 28 of the Code of Federal Regulations (CFR), Part 35, which implement the ADA law. In other locations, curb ramps have been provided, but they no longer meet current ADA accessibility requirements. In response, the City has prepared this curb ramp transition plan in order to outline the steps it will take to provide new curb ramps or upgrade existing curb ramps as required by the ADA and its implementing Regulations.

### Methods to Achieve Accessibility

#### Public Involvement

Public input was obtained in the development of this plan by soliciting comments from [include any advisory committees, task forces, organizations that represent persons with disabilities, or any other groups that were provided an opportunity to comment here], the City Council, and the general public.

#### Curb Ramp Program

The City has budgeted \$[amount] annually for its curb ramp program, which provides funds for the construction of curb ramps and other similar pedestrian accommodations to achieve compliance with the ADA. The City's curb ramp program will proceed as follows:

Using the funds allocated for this program, where no curb ramps are currently provided, curb ramps will be installed at all intersections of sidewalks with public streets, as shown on the attached Curb Ramp Inventory. Ramps will be constructed at the locations identified on the Curb Ramp Inventory according to the following priorities:

1. State and local government offices and facilities (city hall, public schools, public library, etc.)
2. Public transportation facilities (bus stops, train stations, etc.)
3. Places of public accommodation (central business district, public recreation areas, etc.)
4. Residential areas

From among the ramps identified for each of these priorities, the City will develop, with input from the [name of citizens advisory committee or other group(s)], an accomplishment list of specific locations to be constructed each construction season. Prior to the beginning of each construction season, the City will provide notice to the public that the accomplishment list and an updated Curb Ramp Inventory are available for inspection.

#### Other Projects

In addition to those ramps constructed by the curb ramp program, where no curb ramps are currently provided, curb ramps will also be constructed at the intersection of sidewalks and public streets as a part of other projects. The cost of these ramps will be paid for with the funds allocated for the street or sidewalk project. For the sake of cost effectiveness, these ramps will be constructed at the time of the street or sidewalk project, even if they are identified as a lower priority than other ramps that have yet to be constructed, as shown on the attached Curb Ramp Inventory.

Curb ramps will be installed as a part of projects that involve new construction, reconstruction, or alterations to pedestrian facilities in the public right-of-way. Such facilities include, but are not limited to, sidewalks, curbs, curb ramps, the portion of the street surface in the crosswalk area, pedestrian signals, and elevators or lifts provided in the public right-of-way. Alterations include activities that change the structure, grade, function, or use of the pedestrian facility. For streets and sidewalks, alterations include such activities as: full depth pavement replacement, widening, resurfacing, signal installation, pedestrian signal installation, and other projects of similar scale and effect.

Routine maintenance operations or other activities that are intended to preserve or retard future deterioration of the facilities are not considered an alteration. Examples of maintenance activities associated with streets and sidewalks include, but are not limited to: thin surface treatments (slurry seals, chip seals, etc.), joint repair, patching (limited pavement replacement in isolated areas), and repairs to drainage structures.

### Existing Curb Ramps

In many locations, curb ramps already exist at the intersections of sidewalks and public streets. However, the ADA requirements for accessible design may have changed since some of these ramps were constructed. In such cases, existing curb ramps will be reconstructed or retrofitted to meet current ADA requirements for accessible design, including detectable warning surfaces, when the street or sidewalk abutting these ramps is reconstructed or altered. The cost of this work will be paid for using funds allocated for the street or sidewalk project.

### **Schedule**

Based on the number of ramps identified for each priority below, the estimated cost of those ramps, and the funding levels identified above, the City estimates completion of the ramps listed on the attached Curb Ramp Inventory according to the following schedule:

#### Priority 1 Ramps

Number of ramps: [number]  
Estimated number of ramps constructed per year: [number]  
Construction season targeted for completion: [calendar year]

#### Priority 2 Ramps

Number of ramps: [number]  
Estimated number of ramps constructed per year: [number]  
Construction season targeted for completion: [calendar year]

#### Priority 3 Ramps

Number of ramps: [number]  
Estimated number of ramps constructed per year: [number]  
Construction season targeted for completion: [calendar year]

#### Priority 4 Ramps

Number of ramps: [number]  
Estimated number of ramps constructed per year: [number]  
Construction season targeted for completion: [calendar year]

These estimates are subject to change, based on changes to the number of ramps identified in the Curb Ramp Inventory, the estimated cost of those ramps, and the funding levels provided for the curb ramp program.

### **Responsible Parties**

Responsibility for the implementation of this plan rests with the [title of appropriate city official]. Responsibility for the funding of this plan rests with the City Council of the [city name], Iowa.

\_\_\_\_\_  
[name], [title]  
City of [city name]  
[street address]  
[city], IA [zip code]  
[office phone number]  
[e-mail address]

\_\_\_\_\_  
Date







# INSTRUCTIONAL MEMORANDUMS

## To Local Public Agencies



To: Counties and Cities	Date: February 21, 2008
From: Office of Local Systems	I.M. No. 3.140
Subject: Storm Water Permits	

**Contents:** This Instructional Memorandum (I.M.) includes guidelines and procedures for a Local Public Agency (LPA) to comply with the National Pollution Discharge Elimination System (NPDES) regulations, as they apply to LPA construction projects. This I.M. also includes the following attachments:

[Attachment A](#) – Sample Pollution Prevention Plan ([Microsoft Word](#))

### Introduction

The Environmental Protection Agency (EPA), through its storm water program, issues regulations to protect the water quality of the United States. These regulations implement the requirements of the Clean Water Act (CWA) of 1972. The EPA has taken a phased approach to implementing these regulations.

Phase I of the EPA's regulations uses the National Pollution Discharge Elimination System (NPDES) to govern storm water runoff from several activities. These activities include: (1) Municipal Separate Storm Sewer Systems (MS4s) that serve populations greater than 100,000; (2) construction activities that disturb 5 acres of land or greater; and (3) ten categories of industrial activity. LPAs that serve populations less than 100,000 were exempted from the Phase I requirements.

The EPA's Phase II regulations primarily address two activities: (1) MS4s operated by governments that serve a population less than 100,000; and (2) small construction activities that disturb greater than or equal to 1 acre and less than 5 acres. The Phase II regulations also removed the Phase I exemption for LPAs that serve a population of less than 100,000.

The combination of the Phase I and Phase II regulations has potential to affect all cities and counties in Iowa. However, only the regulations that pertain to construction activities are relevant to the development of LPA transportation construction projects. Therefore, this I.M. will focus only on the necessary permits, processes, and procedures required for LPA transportation construction projects that are currently subject to EPA's storm water regulations.

### Which projects will require a storm water permit?

The Phase I regulations govern construction activities that disturb greater than or equal to 5 acres, while the Phase II regulations govern construction activities that disturb 1 to 5 acres. Therefore, all construction projects that disturb greater than or equal to 1 acre of land will require a NPDES permit from the Iowa Department of Natural Resources (Iowa DNR).

Some LPA transportation projects are considered as maintenance under the NPDES regulations, and therefore do not require a permit. Maintenance of transportation facilities would include activities that maintain the original grade, slope, or hydraulic capacity. Examples would include resurfacing projects that only involve work on the roadway and / or shoulders and maintain the original roadway and / or shoulder width. In other words, the original roadway and / or shoulder footprint remains the same. Another example would be ditch cleaning that only removes accumulated sediment and returns the ditch to the original slope.

Nevertheless, appropriate erosion control measures should always be used, even if a permit is not required. If the Iowa DNR observes a problem on a project that does not require a permit, it has the authority to require a permit and suspend work until a permit is obtained.

### Which permit is required?

The Iowa DNR uses NPDES General Permit No. 2 for construction activities subject to the Phase I and Phase II regulations. Most LPA transportation construction projects should be able to obtain coverage under General

Permit No. 2. However, at its discretion, the Iowa DNR may require an individual permit. The Iowa DNR will notify the LPA if an individual permit is needed.

## General Permit No. 2 Requirements

What follows is a summary of the steps that the LPA should follow to comply with terms and conditions of General Permit No. 2. For all projects let by the Iowa DOT, and for all Federal-aid projects let locally, the LPA shall not make the contractor responsible for obtaining the applicable permit or filing the appropriate notices. For more detailed guidance, the LPA should carefully read the terms and conditions of [Iowa DNR NPDES General Permit No. 2](#).

### 1. Prepare Project Plans

The Iowa DOT requires the following items for project plans let through the Iowa DOT:

**Note:** For projects that are let locally, the LPA may wish to use the following list as a guide, since the NPDES storm water regulations may apply to any construction project, regardless of funding source and regardless of how the contract is let or administered.

#### A. Storm Water Permit Plan Note

Include a note on the title sheet indicating the project is subject to the conditions of Iowa DNR's NPDES General Permit No. 2. If an individual permit is required, specify the individual permit number instead.

This note is required because it is important that the bidders are aware of the project requirements with respect to storm water pollution prevention. It also notifies the Iowa DOT that the LPA has obtained (or will obtain) the permit. For the required text of this note, refer to [I.M. 3.505](#), Check and Final Plans, Attachment B.

General Permit No. 2 also requires that contractors and any applicable subcontractors sign a certification whereby they acknowledge that they understand and agree to comply with the terms and conditions of the General Permit No. 2. By signing such a certification, contractors and subcontractors become co-permittees along with the LPA. For projects let by the Iowa DOT, this certification will be included with the contract documents that are prepared by the Iowa DOT Office of Contracts. For projects that are let locally, the LPA shall include this certification to the contractor and any subcontractors with the contract documents. The contractor will return this certification to the LPA along with the other contract documents.

#### B. Storm Water Pollution Prevention Plan (PPP)

The project plans shall include a PPP that meets the requirements of General Permit No. 2. There are several resources that provide guidance in preparing an adequate PPP. Designers should consider the Iowa DNR's guide, titled, "[A Brief Guide to Developing Pollution Prevention Plans and Best Management Practices – Summary Guidance](#)." Also, Chapter 7 of the [Iowa Statewide Urban Design Standards Manual](#) provides an excellent guide to erosion and sediment control measures that should be considered as part of the PPP.

In addition, the Iowa DOT has developed a Sample Pollution Prevention Plan, which is included as [Attachment A](#) to this I.M. This sample PPP uses a "fill-in-the-blank" format and must be modified to fit project-specific conditions. The designer should carefully examine the needs of each project and determine if the sample PPP is adequate. The sample PPP is provided for guidance purposes only. The LPA assumes all responsibility for the accuracy and adequacy of the PPP shown on the project plans.

The Iowa DOT has also developed instructions for preparing a PPP, which are contained in [Section 10D-1](#) of the Iowa DOT Design Manual. When referring to these instructions, keep in mind they are written for Iowa DOT staff use, and as such they reflect "in-house" procedures. Nevertheless, the instructions related to preparation of the PPP may be helpful for LPA project designers.

#### C. Bid Items for Erosion Control Measures

The project plans shall include the appropriate bid items needed to carry out the contractors' obligations under the PPP. For projects that will be let by the Iowa DOT, refer to Sections 2601 and 2602 of the Iowa DOT Standard Specifications for the appropriate bid items corresponding to the various erosion control measures specified by the PPP. The Iowa DOT Standard Specifications are available on-line as part of the Iowa DOT's [Electronic Reference Library](#).

#### D. Plan Details

The project plans shall include tabulations, details, and plan sheets, as required by the complexity of the project, to show the erosion control measures specified by the PPP.

The amount of detail necessary will vary with each project. However, enough detail must be provided so that bidders can accurately estimate the cost of work required by the PPP. Insufficient detail in the plans can lead to inadequate control of soil erosion, disputes, claims for additional compensation, and costly project delays.

#### 2. Give Public Notice

Before applying for a permit, give public notice of intent to seek coverage under General Permit No. 2. This public notice must be published for at least one day in at least two newspapers with the largest circulation in the project area. The Iowa DNR has developed a sample [Public Notice of Storm Water Discharge](#) that may be used as a guide in preparing the required public notice.

#### 3. Apply for Permit

Application for General Permit No. 2 is made by submitting a [Notice of Intent](#) (NOI) form, proof of public notification, and the applicable fees to the Iowa DNR.

#### 4. Implement the PPP

The PPP must be carried out from time construction begins until the site has been stabilized. This includes making any necessary modifications to the PPP, inspection, and maintenance of the erosion control measures.

#### 5. Submit Notice of Discontinuation

After the project site has been stabilized, the Iowa DNR must be notified by submitting a [Notice of Discontinuation](#) (NOD) to the Iowa DNR.

### **Resource Information for Storm Water Regulations**

- [Iowa DNR, Storm Water Program Home Page](#). A directory of the Iowa DNR's on-line information relating to storm water regulations. Contains links to general information about storm water permits in Iowa, forms, permits, and guidance documents.
- [EPA Storm Water Program Home Page](#). Gives an overview of the types of activities that are regulated by EPA's Storm Water Program as implemented by the NPDES permitting system. Contains links to more information on the Phase I and Phase II regulations.
- [EPA Storm Water Phase II Final Rule Fact Sheet Series Index](#). The fact sheets give helpful summaries of all aspects of the Phase II regulations. Refer to [Fact Sheet 1.0](#) for an overview of the Phase II regulations as a whole. Refer to [Fact Sheet 3.0](#) for information specific to construction activities.



## Sample Pollution Prevention Plan

[Note: bracketed text indicates areas that should be modified for project-specific conditions]

All contractors/subcontractors shall conduct their operations in a manner that minimizes erosion and prevents sediments from leaving the highway right-of-way. The prime contractor shall be responsible for compliance and implementation of the Pollution Prevention Plan (PPP) for their entire contract. This responsibility shall be further shared with subcontractors whose work is a source of potential pollution as defined in this PPP.

### 1. SITE DESCRIPTION

This Pollution Prevention Plan (PPP) is for the construction of [enter project description here].

This PPP covers approximately [total project area] acres with an estimated [disturbed project area] acres being disturbed. The portion of the PPP covered by this contract has [disturbed project area under contract] acres disturbed.

The PPP is located in an area of [number of soil associations] soil association(s) ([list names of soil associations]). The estimated average NRCS runoff curve number for this PPP after completion will be [estimated NRCS number].

Refer to the project plans for locations of typical slopes, ditch grades, and major structural and non-structural controls. A copy of this plan will be on file at the project engineer's office. Runoff from this work will flow into [list receiving waters here].

#### POTENTIAL SOURCES OF POLLUTION:

Site sources of pollution generated as a result of this work relate to silts and sediment which may be transported as a result of a storm event. However, this PPP provides conveyance for other (non-project related) operations. These other operations have storm water runoff, the regulation of which is beyond the control of this PPP. Potentially this runoff can contain various pollutants related to site-specific land uses. Examples are:

##### Rural Agricultural Activities:

Runoff from agricultural land use can potentially contain chemicals including herbicides, pesticides, fungicides and fertilizers.

##### Commercial and Industrial Activities:

Runoff from commercial and industrial land use may contain constituents associated with the specific operation. Such operations are subject to potential leaks and spills which could be commingled with runoff from the facility. Pollutants associated with commercial and industrial activities are not readily available since they are typically proprietary.

### 2. CONTROLS

At locations where runoff can move offsite, silt fence shall be placed along the perimeter of the areas to be disturbed prior to beginning grading, excavation or clearing and grubbing operations. Vegetation in areas not needed for construction shall be preserved. As areas reach their final grade, additional silt fences, silt basins, intercepting ditches, sod flumes, letdowns, bridge end drains, and earth dikes shall be installed as specified in the plans and/or as required by the project engineer. This will include using silt fence as ditch checks and to protect intakes. Temporary stabilizing seeding shall be completed as the disturbed areas are constructed. If construction activity is not planned to occur in a disturbed area for at least 21 days, the area shall be stabilized by temporary seeding or mulching within 14 days. Other stabilizing methods shall be used outside the seeding time period.

This work shall be done in accordance with Section 2602 of the Standard Specifications. If the work involved is not applicable to any contract items, the work shall be paid for according to Article 1109.03 paragraph B.

As the work progresses, additional erosion control items may be required as determined by the engineer after field investigation. These may be items such as [list additional control measures that may be needed here] and other appropriate measures shall be installed by contractor, as directed by the engineer. The contractor will complete the construction with the establishment of permanent perennial vegetation of all disturbed areas.

### **3. OTHER CONTROLS**

Contractor disposal of unused construction materials and construction material wastes shall comply with applicable state and local waste disposal, sanitary sewer, or septic system regulations. In the event of a conflict with other governmental laws, rules and regulations, the more restrictive laws, rules or regulations shall apply.

#### **APPROVED STATE OR LOCAL PLANS:**

During the course of this construction, it is possible that situations will arise where unknown materials will be encountered. When such situations are encountered, they will be handled according to all federal, state, and local regulations in effect at the time.

### **4. MAINTENANCE**

The contractor is required to maintain all temporary erosion control measures in proper working order, including cleaning, repairing, or replacing them throughout the contract period. Cleaning of silt control devices shall begin when the features have lost 50% of their capacity.

### **5. INSPECTIONS**

Inspections shall be made jointly by the contractor and the contracting authority every seven calendar days and after each rain event that is one half inch or greater. The contractor shall immediately begin corrective action on all deficiencies found. The findings of this inspection shall be recorded in the project diary. This PPP may be revised based on the findings of the inspection. The contractor shall implement all revisions. All corrective actions shall be completed within 3 calendar days of the inspection.

### **6. NON-STORM DISCHARGES**

This includes subsurface drains (i.e. longitudinal and standard subdrains), slope drains and bridge end drains. The velocity of the discharge from these features may be controlled by the use of patio blocks, Class A stone or erosion stone.