
Department of Justice ADA Rule on Mobility Devices and How it Applies

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Department of Justice Acronyms

- Department of Justice = DOJ

- Other Power Driven Mobility Devices = OPDMD



During this session:

- Applying the DOJ rule to state, local, private, and federal lands.
 - Where and When
- Understanding potential use of ATVs and other motorized devices/vehicles.
 - What is a wheelchair? Where can it be used?
 - What are other devices? Where can they be used?
- Applying the DOJ assessments to specific trails/areas.
 - What does the rule Require? Allow?
- Informing land users and providing public notice.
 - What information? Where?
- Discuss a sampling of existing OPDMD policies



Applying the Department of Justice (DOJ) Rule

- **1990 Americans with Disabilities Act (ADA).**
 - A person is not to be denied the opportunity to participate in an activity just because they have a disability...
 - Unless their participation would require changes / impacts to be made that would “fundamentally alter” that program.
- **DOJ rule asks:** Can a person who has a mobility disability, use certain types of devices in specific places without resulting in a fundamental change to safety, the natural resource, etc. at that location?
- **Land/Trail Managers Responsibility:**
 - to proactively encourage the use of appropriate mobility devices,
 - while protecting all area and trail users and the natural resource from inappropriate use of motorized devices/vehicles.



Applying the DOJ rule:

4 Parts:

- Updates ADA Accessibility Guidelines for new or altered buildings. It does not deal with outdoor area or trail construction.
 - Effective date of ADA Guidelines part is 3/15/2012

Effective date of rest of rule = 3/15/2011

- Use of Mobility Devices
- Service Animals
- Ticket Sales(accessible seating, etc.)



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Applying the DOJ rule:

The rule applies to:

- All State and local government lands
 - under ADA Title II
- Privately or commercially managed lands that are open to the public
 - under ADA Title III
- OPDMD requirements are the SAME for both
- Does not apply directly to Federally managed lands
 - Fed. agencies are not under ADA – under similar 1968 (ABA) and 1973 (Section 504) laws.
 - However, federal agencies are reviewing....



Who has a “Disability”?

- Disability = “a substantial limitation to one or more of a person’s major life activities”,
 - such as “seeing, hearing, walking, breathing, thinking...,etc.”
 - 29 U.S.C. 794.
 - No person is to be asked about their disability.
 - 29 U.S.C 794 and 28 CFR part 35
 - Person with a disability – not “handicapped”
- 54 million people in the US have a disability.
 - 85% of disabilities are unseen such as breathing, heart, arthritis, etc.
 - Only 8 million people use wheelchair, crutches, canes, walkers, etc.



What the Rule Requires – Wheelchairs?

- **(a) Use of wheelchairs and manually-powered mobility aids.**

An entity shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

- No ID required



§ 35.137 (Title II) and 36.331 (Title III) Mobility devices.

What is a Wheelchair?

- **A wheelchair** “means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.



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- This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2)”.



§ 35.104 and 36.104 - Definitions





AXESS Outdoors website:
“helps disabled people see that they can
still enjoy the outdoors independently”



EZ Hiker website:



“EZ Hiker Chair makes the wilderness accessible for the disabled.”









Not a “wheelchair”



DOJ says it's an OPDMD

Not a “wheelchair”



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DOJ says it's an OPDMD

What is an Other Power Driven Mobility Device (OPDMD)?

- **Other power-driven mobility device** means any mobility device powered by batteries, fuel, or other engines--whether or not designed primarily for use by individuals with mobility disabilities--that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.



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= Other Power-Driven Mobility Devices (OPDMD)



Where are OPDMDs to be Allowed?

- **b)(1) Use of other power-driven mobility devices.** “An entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities,
- **unless** the entity can demonstrate that the **class** of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements.”



§ 35. 137 and 36.311.

DOJ Assessment Factors:

- **(2) Assessment factors.** In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, an entity shall consider--



DOJ Assessment Factor (i)

(i) The type, size, weight, dimensions, and speed of the device;



§ 35. 137 and 36.311.

DOJ Assessment Factor (ii)

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);



§ 35. 137 and 36.311.

DOJ Assessment Factor (iii)

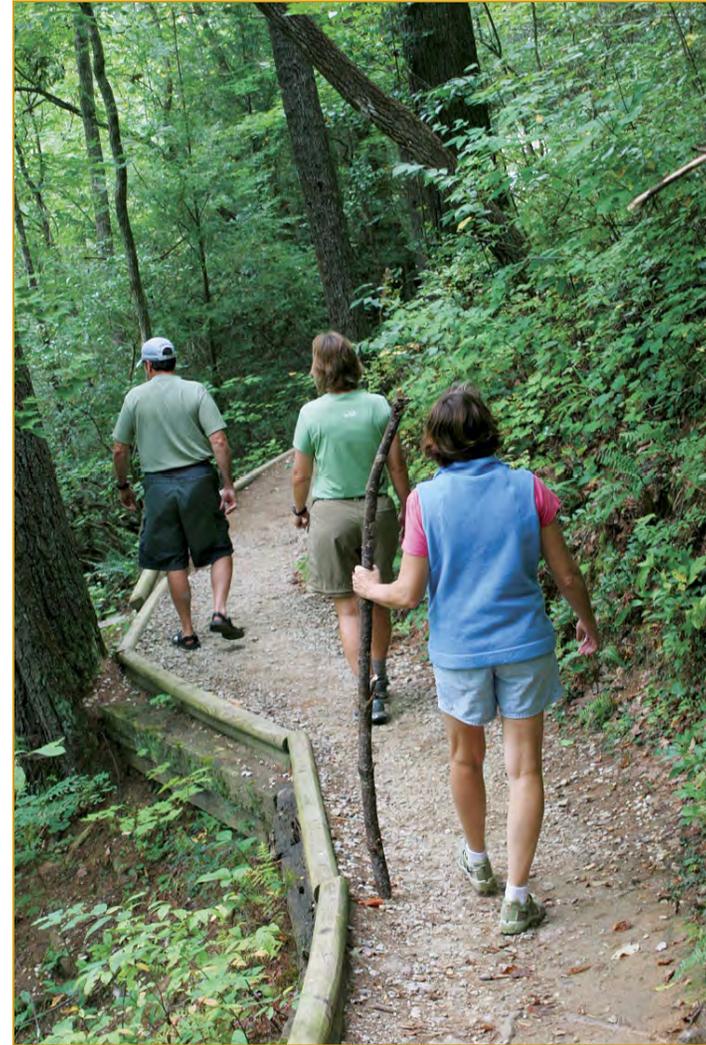
(iii) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user)



§ 35.137 and 36.311.

DOJ Assessment Factor (iv)

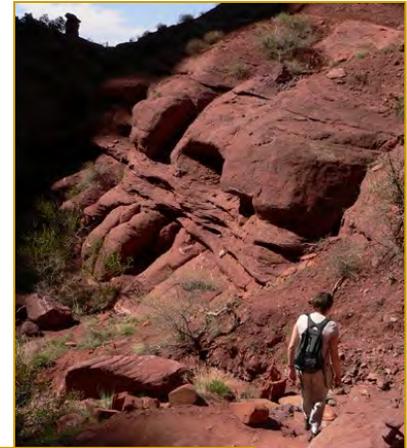
(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and



§ 35. 137 and 36.311.

DOJ Assessment Factor (v)

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.



§ 35.137 and 36.311.

Designated Uses on the land...

- What means of accessing the land or trail(s) is currently allowed?
- How was it decided that other classes/types devices were not to be allowed?
- Are those the same reasons as one or more of the DOJ Assessment Factors?
- Any safety based determinations “must be based on actual risks and not mere speculation regarding the device or how it will be operated”.



An OPDMD does not have to be allowed:

- Even if the person has identified that they are using the device due to a mobility disability....
- If, due to one or more of the assessment factors, the device in question is not allowed to be used on-site under any circumstances by anyone (e.g., because its use would create a substantial risk of serious harm to the immediate environment or natural or cultural resources).



**Federal Register / Vol. 75, No. 178 / Wednesday, September 15, 2010 / Rules and Regulations – Preamble – page 56200*



The DOJ Rule: “Provide advance information”

- Provide information about the classes or types of devices that are allowed where a person can get that information before they arrive on-site.*
 - Trail signs with this information are NOT required by the DOJ rule
- Remember a device that meets the definition of a wheelchair must be allowed wherever foot travel is allowed.
 - *Example of notice:*

Wheelchairs and devices that meet the following definition are allowed wherever foot travel is allowed:

Definition: A wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. (ADA Title II Part 35.104) or (ADA Title III Part 36.104)



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Additional Resources:

- American Trails website www.americantrails.org
 - Under “Resources” – click “Accessibility”
 - Also check the home page for alerts and new resources

- Dept. of Justice ADA website: www.ada.gov

- ADA Information Line: 800 -514-0301 (voice) 800-514-0383 (TTY)

- U.S. Forest Service Accessibility website:
 - www.fs.fed.us/recreation/programs/accessibility

