
OPDMD

Rules and Requirements under the ADA

Presenter:

Janet Zeller, U.S. Forest Service



OPDMD =

Other Power Driven Mobility Devices



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.)



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....



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?

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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)”.



Is it a Wheelchair?

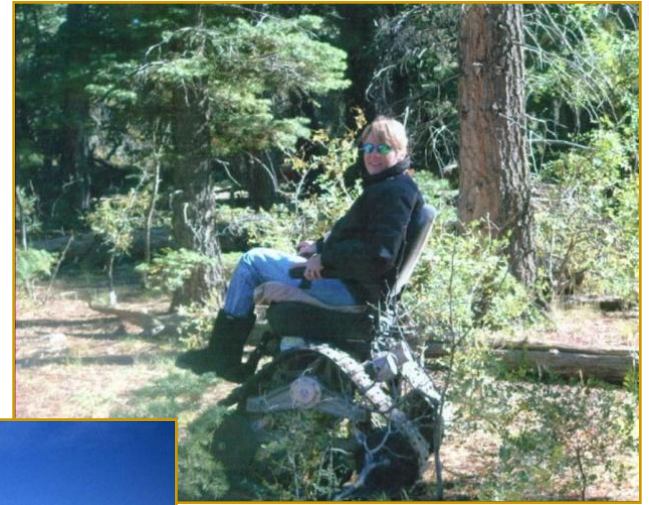




Is it a Wheelchair?



Is it a Wheelchair?



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.

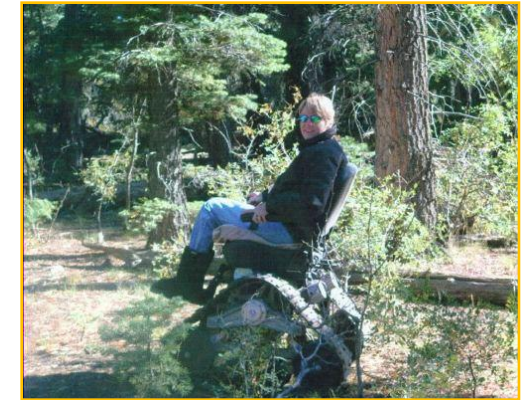


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= Other Power-Driven Mobility Devices (OPDMD)



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,



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- **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.”



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)

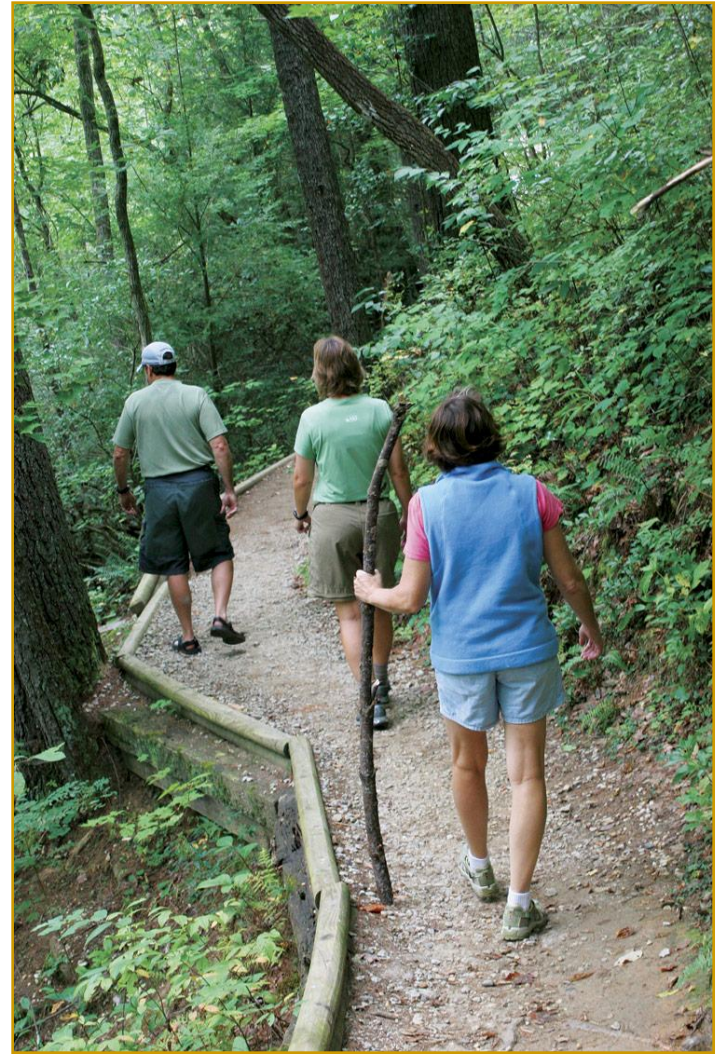
(iii) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user)



§ 35.137 and 36.311.

DOJ Assessment Factor (iv)

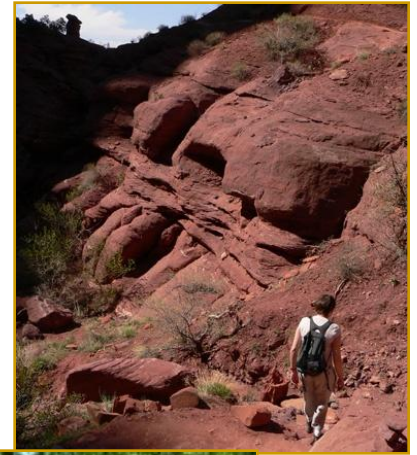
(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and



§ 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....

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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).

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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)



Sampling of outtakes from Existing OPDMD policies



Do the following policies fit the DOJ Assessment Factors?

- Trails designated for hiking, interpretation, horseback-riding, cross-country skiing, biking, and mountain biking are open to individuals with mobility disabilities using wheelchairs, but not open to OPDMDs due to assessment factors (i), (ii), (iv) and (v). OPDMDs pose a legitimate safety threat to other individuals using the trails and they pose a substantial risk to the natural and cultural resources associated with the trails, and by their nature they disturb the intended trail experience.



Do the following policies fit the DOJ Assessment Factors?

ATVs, golf carts, or other power-driven mobility devices, are not recognized as appropriate devices for park trails, bike paths and greenway trails for the following reasons

- The slope of the natural terrain, which may exceed 5%.
- The congestion of foot traffic on the shared paths of the facility.
- Manufacturer's recommendation for helmet and protective equipment for riders.
- The unrealistic administrative burden of identifying FDA-approval or speed, weight and safety features of each device upon entry, including any form of assessment of rider abilities; or managing pedestrian traffic throughout the facility for separated movement.



Do the following policies fit the DOJ Assessment Factors?

- Devices that may meet the definition of "other power-driven mobility devices," including ATVs (all terrain vehicles) and other ORVs (off-road vehicles), are not appropriate types of recreation for City natural areas. The City has never allowed motorized wheel chairs; thus, trails have not been designed for ATV or other ORV use by the public. Use of ATVs and other ORVs poses considerable threat to the environment from noise, increased air pollution, impacts on other trail users (including horses), and trail degradation.



Do the following policies fit the DOJ Assessment Factors?

- **3) Multi-use Single-Track Trails:** Unpaved, narrow gauge trails, suitable for multiple activities, including motorcycles, hiking, mountain biking and equestrian riding.
- Persons with a mobility disability may use any electric or gas propulsion motorcycle or OPDMD that does not exceed 30 inches total width, has 12 inch or less tire tread width (total width of ground contact), and has brakes that enable the operator to make the wheels skid on dry, level and clean pavement. Other OPDMD's or non-qualifying devices are prohibited. Wheelchairs and manually-powered mobility aids are allowed.
- Justification: § 35.137 Assessment Factors (i, iii, iv and v) Characteristics of the device create a substantial risk of substantial harm to the environment or natural resources. These are narrow trails where one or two-way traffic would harm natural resources when allowing passage of an OPDMD larger than 30 inches wide.



(Summit County, CO)

Do the following policies fit the DOJ Prior Notification Requirements?

- Upon arriving at the site, individuals with mobility disabilities using OPDMDs must check in at the site office prior to use of the OPDMD on a trail or roadway to ensure its use is acceptable at that site.
-

- County may issue a permit to use an OPDMD in areas prohibited if it determines that a unique situation applies and special conditions can be placed on the use that would make it safe to operate the OPDMD or prevent serious harm to the environment or natural or cultural resources. In these situations, special circumstances permission should be requested 7 days in advance of arrival date.



Do the following policies fit the DOJ Prior Notification Requirements?

Natural Areas information about the devices that may be used is posted on the City Website <http://www.fcgov.com/naturalareas/recreation.php> so that the public can easily access the information before going to a particular natural area. The posted information includes the classes of devices that may be used, rules related to that use, and who to contact for more information. Rules may also be posted on the natural area site or at the trailhead.

(City of Fort Collins Natural Areas Trails & Facilities)



Do the following policies fit the DOJ Prior Notification Requirements?

“As technology advances and new devices are developed, public use patterns change, and impacts to natural and cultural resources are reevaluated. OC Parks may modify the type of OPDMD permissible within specific facilities on specific trails as necessary. Please check this site regularly for updates to these guidelines.”



Do the following policies fit the DOJ Identification Requirements?

- a permit system in which someone wanting to use an electric vehicle for the trail would apply and the person would be required to show a doctor's note about the disability.



Interim Policy Statement

“Special access requests will be processed on a case-by-case basis until the time in which an assessment of all public trails managed by the Authority has been conducted in accordance with federal guidelines.”

.....

“While these evaluations are in progress, we invite persons with mobility disabilities to contact us about use of devices that are currently prohibited to other park users (i.e., motorized OPDMDs) but may provide you with better access in a safe manner, considerate of natural resources. We are also in communication with state agencies and community park and recreation systems to develop a plan that may be consistently applied throughout the state.”



Additional Resources:

- American Trails website www.americantrails.org
 - Check the home page for alerts and new resources

- Dept. of Justice ADA website: <http://www.ada.gov>
 - Complete DOJ Rule with Preamble published in the *Federal Register* 9/15/2010.

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

- National Trails Training Partnership library:
www.americantrails.org/resources/index.html
 - Hundreds of articles and studies,
 - Resources on dozens of topics for trails and greenways

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

