

New ADA Rules Take Effect for Use of Power Driven Mobility Devices in Municipal Facilities

The Department of Justice has issued revised Americans with Disabilities Act (ADA) Title II rules applying to state and local government programs. The new rules, which took effect March 15, 2011, provide a definition of a wheelchair and other power driven mobility devices (OPDMDs) and add additional provisions identifying where they can be used. 28 C.F.R. §§ 35.104, 35.137.

Under the new rules, a wheelchair is defined as 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. Individuals with mobility disabilities must be permitted to use wheelchairs and manually powered mobility aids – i.e., walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities – in any areas open to pedestrian traffic. 28 C.F.R. §§ 35.104, 35.137(a).

An OPDMD is any mobility device powered by batteries, fuel, or other engines that is used by individuals with mobility disabilities for the purpose of locomotion, whether or not it was designed primarily for use by individuals with mobility disabilities. OPDMDs may include golf cars, electronic personal assistance mobility devices, such as the Segway® Personal Transporter (PT), or any mobility device that is not a wheelchair, which is designed to operate in areas without defined pedestrian routes. 28 C.F.R. § 35.104

Under the new rules, municipalities must make reasonable modifications in their policies, practices, or procedures to permit individuals with mobility disabilities to use OPDMDs unless the municipality can demonstrate that the class of OPDMDs cannot be operated in accordance with legitimate safety requirements. 28 C.F.R. § 35.137(b)(1). The municipality must assess the following factors to determine whether a particular OPDMD can be allowed in a specific facility as a reasonable modification:

- The type, size, weight, dimensions, and speed of the device.
- The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year).
- 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).
- Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific facility.
- Whether the use of the OPDMD 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. 28 C.F.R. § 35.137(b)(2).

Municipalities may not ask an individual using a wheelchair or OPDMD questions about the nature and extent of his or her disability but they may ask the individual to provide a credible assurance that the mobility device is required because of the person's mobility disability. 28

C.F.R. § 35.137(c)(1),(2). If the municipality allows the use of a class of OPDMDs by individuals with mobility disabilities, it must accept the following as credible assurance:

- Presentation of a valid, state-issued disability parking placard or card, or other state-issued proof of disability. A valid disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of Issuance's requirements.
- A verbal statement, not contradicted by observable fact, that the OPDMD is being used for a mobility disability. 28 C.F.R. § 35.137(c)(2).

Although the new rules apply to all municipal facilities, they have generated the most interest for those responsible for management of recreational trails where OPDMDs might be used. Several trail-related OPDMD resources are available through the American Trails website, www.americantrails.org/enewsletter/accessible_Jan_2011.html

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