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**Date:** August 4, 2010

**Route To:**

**Subject:** Department of Justice Issues Final Rule Including Direction on Wheelchairs and Other Power Drive Mobility Devices

**To:** Regional Wilderness and Wild and Scenic River Directors

I am pleased to announce that after more than two years of discussions and comments on the applicability of the Department of Justice (DOJ) rule under the Americans with Disabilities Act, that the rule has been published with no effect to our current direction on wilderness areas. My thanks goes out to many of you who provided valuable comments on the issue and in particular to our National Accessibility Program Manager, Janet Zeller who gave us insight into the potential interpretations, changes and implications along with persistently working to monitor progress of the proposed rule changes. Please see more detailed description of what this means for restrictions pertaining to DOJ's rule concerning wheelchairs/mobility devices that are allowed to be used in Federal wilderness areas.

It is my belief that this will continue the intent of the Wilderness Act to provide the benefits of an enduring resource of wilderness for all citizens.

The U.S. Department of Justice (DOJ) has posted a final rule under the Americans with Disabilities Act (ADA) that includes a slightly revised definition of a wheelchair and a new category, "other power-driven mobility devices (OPDMD)" for people who have mobility limitations. This rule will become effective 90 days after it is published in the *Federal Register*. However this DOJ rule does not change the restrictions pertaining to wheelchairs/mobility devices that are allowed to be used in Federal wilderness areas.

The DOJ rule, which implements the ADA, applies to state and local governments and to businesses that are open to the public, not to federal agencies which are under the Architectural Barriers Act (ABA) and Section 504 of the Rehabilitation Act, with the exception of wheelchair use in federally designated wilderness as detailed in ADA, Title V Section 508 (c). Despite the DOJ rule, that exception remains in place as follows.

"Federally Designated Wilderness

(1) IN GENERAL – Congress reaffirms that nothing in the Wilderness Act prohibits wheelchair use in a wilderness area by an individual whose disability requires its use. The Wilderness Act requires no agency to provide any form of special treatment or accommodation or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

(2) Definition – for the purposes of paragraph (1), the term wheelchair means a device designed solely for use by a mobility impaired person for locomotion, that is suitable for use in an indoor pedestrian area."



Application: This is a two part definition. “Designed solely for use by a mobility-impaired person” means that the original design and manufacture of the device was only for the purpose of mobility by a person who has a limitation on their ability to walk. A wheelchair or mobility device, even one that is a battery powered, that meets this definition is allowed anywhere foot travel is allowed. “Suitable for indoor pedestrian use” means the device would be allowed to be used inside a mall, the food court, etc.

The DOJ has clarified that this rule does not change the criteria for the types of devices that constitute a wheelchair which is allowed in Federal wilderness, by incorporating that direction into both of the following definitions within this DOJ rule.

**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. 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).

**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. 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).

This DOJ definition of a wheelchair also does not change the U.S. Forest Service definitions of a wheelchair or mobility device that is allowed anywhere in the National Forest System where foot travel is allowed other than in Federal wilderness. Those definitions remain as follows.

36 Code of Federal Regulation (CFR) 212.1

“Motor Vehicle. Any vehicle which is self-propelled, other than:

- (1) a vehicle operated on rails; and
- (2) any wheelchair or mobility device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.”

Forest Service Manual 2353.05

“Wheelchair or Mobility Device. A device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area. A person whose disability requires use of a wheelchair or mobility device may use a wheelchair or mobility device that meets this definition anywhere foot travel is allowed.”

Regional Wilderness and Wild and Scenic River Directors

If a decision is made to construct a facility in wilderness, for example a pit toilet for environmental management reasons, etc., that structure is required to be in compliance with

ABA and the Forest Service Outdoor Accessibility Guidelines. Those guidelines are available at <http://www.fs.fed.us/recreation/programs/accessibility>. The structure is to be of a basic design appropriate to that setting but adjusted to be accessible.

If you have any questions about this issue, please contact Janet Zeller, U.S. Forest Service Accessibility Program Manager at (202) 205-9597, or Terry Knupp, U.S. Forest Service Wilderness Program Manager at (202) 205-1414.

/s/ Terry Knupp {for}

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