



DISABILITY RIGHTS ADVOCATES FOR TECHNOLOGY
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USDA Forest Service,
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Disability Rights Advocates For Technology, DRAFT, represents people with disabilities who are, by virtue of new developments in technology and more widespread use of the principles of universal design finding the opportunity to more fully participate in our society and enhance the quality of their lives. Access to "Wilderness Areas" and other areas under the management of the Forest Service, or the National Park Service are treasured opportunities to be enjoyed by every American citizen, including those with disabilities. The USDA Forest Service acknowledges the need for a commitment to a policy of universal design which will ensure the integration of all people in programs and facilities without segregation.

The stated regulations and guidance in the proposed **Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG)** and the **Forest Service Trails Accessibility Guidelines (FSTAG)** however contain definitions of a wheelchair or mobility aid which do not comply with section 504 of the Rehabilitation Act of 1973 as amended in 1998. This Act defines a protected assistive device as *"any item, piece of equipment, or product system, whether acquired commercially, modified, or customized that is used to increase, maintain, or improve functional capabilities of individuals with disabilities."*

In 2003 an assistive mobility device designed utilizing the principles of universal design was introduced. Classified as a consumer product, it is a self-balancing, nontandem two wheeled device. The Segway HT. Prior to its introduction the only practical mobility devices available to people with disabilities required them to be seated in order to operate them. With its introduction people who could no longer walk, but could stand found a device which would solve many of their mobility problems while allowing them to remain standing. The ability to remain standing for as long as possible has both physical and psychological benefits that are well-documented in medical literature. Many disabled individuals have received prescriptions from their doctors for the Segway HT.

One of the primary tenet's of disability rights requirements is that, to the highest degree reasonable, people with disabilities should be able to participate in the same programs and activities available to everyone else in the most integrated setting possible. In the case of a disabled person who has the ability to stand but has difficulty walking and requires a mobility aid, being forced to sit in either a wheelchair or a scooter is unreasonable and unlawful.

The Segway HT is fully protected as an assistive mobility device as defined by the United States Congress. It is usable in all indoor areas. The tires on the Segway HT generate no shear force and have

less soil compression force than a human footprint. The Segway HT poses less likelihood of impairing the landscape and environment through soil compaction and rutting than manual wheelchairs or motorized wheelchairs.

Indeed the Segway HT is less likely to leave evidence of its presence than a pedestrian. It requires no more accommodation than that of a wheelchair, and in most cases less, it is more maneuverable than wheelchairs or scooters and allows its user to participate in the enjoyment of our National Wilderness Areas and National Parks in the same manner as everyone else; standing.

The USDA Forest Service, the National Park Service, and the Access Board should take immediate steps to bring their policies, regulations and guidance into accordance with the laws passed by the United States Congress.

HISTORY

Wilderness Act

In 1964 the United States Congress passed the "Wilderness Act" seeking to preserve for the enjoyment of present and future generations the benefits of an enduring resource of wilderness. These wilderness areas were to be administered for the use and enjoyment of the American people so that they were left unimpaired for future use and enjoyment as wilderness. It was intended that these areas which were untrammelled by man, after being visited by man would exhibit as little evidence as possible that the visit had ever occurred. ***Only the United States Congress can designate federal lands for protection under the "National Wilderness Preservation System".***

The "Wilderness Act" did not make allowances for exceptions from the Act's prohibition of the use of motorized equipment when used by people with disabilities for mobility. In 1964 many people with disabilities who required wheelchairs, either manual or motorized were often confined to their homes because of the lack of accessibility in their community. There were no curb cuts making streets and sidewalks accessible, there were few level entries or ramps which would make buildings both governmental and commercial accessible. All but the most adventurous individuals with disabilities needed an attendant, a friend or family member to help them navigate the hostile environment which awaited them outside their home. There was little reason or opportunity to visit wilderness areas when they were unable to participate in society within their own neighborhoods.

Architectural Barriers Act

Beginning in 1965 an increasing awareness regarding the barriers of accessibility facing people with disabilities in the United States prompted the passage of the 1968 Architectural Barriers Act, aimed at making federal facilities fully accessible to people with disabilities and hoping to set an example for state, local governments and private industry.

The Rehabilitation Act of 1973

In 1973 the United States Congress finding that people with disabilities constituted one of the most disadvantaged groups in society passed "The Rehabilitation Act of 1973" promising that people with disabilities would enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society and to help them achieve equality of opportunity, wherever and whenever possible. Section 502 of this law created the Architectural and Transportation Barriers Compliance Board (Access Board) charged with ensuring federal agency compliance with the ABA and proposing solutions to the environmental barrier problems addressed in the ABA.

Forest Service & National Park Service

With the United States becoming more accessible people with disabilities were increasingly attempting to participate in society more fully. They were visiting national parks and wilderness areas in increasing numbers however in the 1980s some with disabilities were attempting to use fossil fuel powered six wheeled ATVs and other motor vehicles as mobility aids. Because of the lasting damage these devices could cause, and pollution concerns of the internal combustion engines, the USDA Forest Service & National Park Service, developed a definition for a wheelchair which would be permitted for use by mobility impaired persons in wilderness areas. They defined a wheelchair as ***"a device which is designed solely for and used by mobility impaired person for locomotion that is capable of and suitable for use in indoor pedestrian areas."*** Any device which was not suitable for use indoors would be considered a motor vehicle and therefore excluded from use within the NWPS.

It was stated ***"A key concept here is that the NPS treats people who use wheelchairs as pedestrians--not as operators of motor vehicles. As stated in 36CFR 1.2 (3)(e) "The regulations in this chapter are intended to treat a mobility-impaired person using a manual or motorized wheelchair as a pedestrian, and are not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same regulations." The use of All Terrain Vehicles (ATVs) and other devices that would not be allowed in elevators, of public buildings and private homes are not allowed in the NWPS."***

Americans with Disabilities Act

In 1990 Congress passed the Americans with Disability Act and in section 507 (c) (1) of the ADA, Congress reaffirmed that nothing in the Wilderness Act was to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair. Congress **only** for the purposes of this affirmation further described a wheelchair as ***"a device designed solely for use by a mobility impaired person for locomotion that is suitable for use in an indoor pedestrian area."*** The presumption that when Congress affirmed in Section 507 of the ADA "that nothing in the "Wilderness Act" was to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual with disabilities" that they meant only a wheelchair is inconsistent and incorrect. ***Any assistive device used by a mobility impaired person that would cause no greater impairment to the land and the environment than a motorized wheelchair would be permissible under the law.***

Access Board

On September 6, 1991, the Access Board published ADAAG for Transportation Facilities, which was identical to the earlier ADAAG except that it contained an additional chapter (Section 10) covering transportation facilities, including bus shelters and stations, rail stations, and airports. The Board also published on the same day ADAAG for Transportation Vehicles as a separate document. It covers buses and vans, rapid rail vehicles, light rail vehicles, commuter rail cars, intercity rail cars, automated guideway transit vehicles, high-speed rail cars, monorails and trams and similar vehicles. The Department of Transportation adopted the guidelines for transportation facilities and vehicles as enforceable standards in its ADA regulations.

In developing the minimum accessibility guidelines utilized in the ADAAG for Transportation Vehicles the Access Board relied upon a report prepared for them titled **"Securement of Wheelchairs and Other Mobility Aids on Transit Vehicles"** the report presented in September of 1990 utilized data and information received from the Southern California Rapid Transit District (SCRTD) who in August of 1987 utilized an analytical approach to assess the needs and establish policies to determine what types of wheelchairs could be safely accommodated on their buses. They tested 14 different wheelchair and

mobility aid devices on six different lift/bus types. The criteria that was measured was 1. Length of the wheelchair compared to the lift 2. Maneuverability on the lift and in the buses 3. Securement on the lift 4. Securement in the travel area

Of the 14 different wheelchair and mobility aid devices all had either three or four wheels. This is notable because in 1987 there were no mobility aids or wheelchairs produced which contained other than three or four wheels.

Based upon this study the access board developed a definition of a common wheelchair and mobility aid to allow for a standard to be used allowing for the development and deployment of lifts, ramps and securement areas in transportation vehicles.

“Common wheelchairs and mobility aids means belonging to a class of three or four wheeled devices, usable indoors, designed for and used by persons with mobility impairments which do not exceed 30 inches in width and 48 inches in length, measured 2 inches above the ground, and do not weigh more than 600 pounds when occupied.”

The action of the Access Board is noteworthy because they only attempt to define a “common wheelchair or mobility aid” in the ADAAG for Transportation Vehicles, to be used as a standard for the development lifts, ramps and securement areas. In the definition, the only reason the number of wheels is identified is because those were the number of wheels that existed on the tested wheelchairs and aids in the 1987 study. The number of wheels is irrelevant when utilizing the criteria of measurement in the 1987 study. There is no reference or attempt to define “common wheelchairs or mobility aids” in the ADAAG.

Assistive Technology Act of 1998

In 1998 United States Congress recognizing the importance of universal design and assistive technology to people with disabilities and the economic impact to the country passed the "Assistive Technology Act of 1998". In this act they defined Assistive Technology as technology designed to be utilized in assistive technology devices or assistive technology services. An assistive technology device was defined as ***"any item piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities."***

The Rehabilitation Act Amendments of 1973, As Amended

In 1998 United States Congress passed "The Rehabilitation Act Amendments of 1973, as amended" in that Act the term ***"assistive technology device" was defined as having the meaning given such term in section 3 of the assistive technology act of 1998 except that the reference in such section to the term "individuals with disabilities" shall be deemed to mean more than one individual with a disability as defined in paragraph (20) (A).***

Accessibility

The need to provide accessibility for people with disabilities to areas managed by the Forest Service and the National Park Service, including areas contained within the protections of the NWPS is undisputed provided this accessibility can be accomplished without impairing the lands within a wilderness area to facilitate this access. This distinction however is unique to those lands designated as wilderness areas by the United States Congress.

The USDA Forest Service in its "Wilderness Access Decision Tool" speaks to the need of its Federal Wilderness Managers to use common sense and good judgment regarding access to areas within the NWPS by people with disabilities. The criteria suggested to be considered for a decision are:

1. Determine if the person making the request has a disability as defined by the Americans with Disability Act

2. Determine if the request reflects a need directly related to that disability and the person subsequent ability to safely utilize the National Wilderness Preservation System (NWPS), or if it is strictly a matter of convenience and comfort.
3. Determine if granting the request to will have a tangible in effect on the wilderness. No law encourages negative impacts on the NWPS.
4. Determine if there are other means of meeting the request which have less impact on the wilderness resource.

The use of the Segway HT when used by a qualified person with a disability satisfies these criteria more favorably than a wheelchair or any other mobility device. It would be difficult however for the Federal Wilderness Managers to use common sense and good judgment when constrained by a definition which is not lawful.

The National Park Service in its document titled "Management Policies regarding Accessibility for Disabled Persons", under the section titled wilderness preservation Management, stated that "**as a general rule, public use of motorized equipment or any form of mechanical transport will be prohibited in wilderness areas... mobility impaired persons may use wheelchairs (as defined in 36 C.F.R. 1.4) in wilderness.**" The National Park Service in January 1990 defined a wheelchair as that "**propelled by human power or a self-propelled wheelchair device, designed solely for and used by a mobility impaired person for locomotion that is capable and suitable for use in indoor pedestrian areas**" this regulation (while flawed, scooters not designed solely for mobility impaired persons have been afforded the same protections) may have been workable in 1990, but today it is completely unsuitable and unworkable for implementing the laws and protections afforded people with disabilities under the ADA and the 1973 Rehabilitation Act as amended in 1998.

To further complicate matters some within the National Park Service and the USDA Forest Service have incorrectly chosen to apply the unique distinction created by Congress specifically for areas contained within the NWPS, to all lands under their jurisdiction and management. **The United States Congress when passing the ADA specifically addressed the definition of the "wheelchair" as having application solely for the purposes of access to "Wilderness Areas".**

In a document titled "Policies on Accessibility to Specific National Park Functions" the NPS comments on accessibility for disabled persons in park facilities: **In accordance with the mandates of the Architectural Barriers Acts of 1968 and section 504 of the Rehabilitation Act of 1973 as amended in 1978, it is the policy of the National Park Service to provide the highest level of accessibility in all visitor and management buildings and facilities as is possible and feasible, consistent with the nature of the area and facility. The degree of accessibility provided will be proportionately related to the degree of man-made modifications made to the area or facility and to the significance of the facility.**

Defining Assistive Devices

One of the dangers of definitions are that they may be imprecise with ever-growing changes in technology, indeed in 1991 Attorney General Richard Thornburgh in publishing the first regulations implementing the ADA consistently said that "**there would be no exhaustive list of devices and services protected under the ADA because any attempt to do so would omit the new devices that would become available with emerging technology.**"

Just as a carpenter when building a home who sets an angle slightly out of square, while this mistake is almost imperceptible at its point of origin, as the two walls extend away from that point the inaccuracy becomes glaring. Those agencies, including the USDA Forest Service, the National Park Service, and even the Access Board in the development of minimum guidelines used in the ADAAG for Transportation Vehicles; have crafted a definition in the early 1990s of a common wheelchair or mobility aid which no longer has relevance or accuracy in the real world for the implementation of the law.

DRAFT recognizes and supports the efforts to provide protections to lands contained within the National Wilderness Preservation System and to all lands under the management of the Forest Service, National Park Service, U.S. Fish and Wildlife Service, and the Bureau of Land Management. We support the prohibition of the use of internal combustion engines in areas where they would have a negative impact on the environment. DRAFT also encourages the use of common sense and good judgment when making decisions regarding accessibility.

The Segway HT when used by a qualified person with a disability attains the goal of protections to the environment at the highest level currently available. There is no other means of mobility available today including the wheelchair, scooter, horse, or even the human footprint which will cause less damage to the environment and leave less evidence of its presence than the Segway HT. Its use by a qualified person with a disability is fully protected under the laws passed by the United States Congress.

In 1998 the United States Congress clarified and codified the definition of an assistive device in the amendments to The Rehabilitation Act of 1973, when they defined an assistive technology device as ***"any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities."***

Those agencies charged with implementing regulations to enforce the laws providing protections to people with disabilities must implement changes in existing regulations, policy and guidance in order to comply with the law.

Sincerely,

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