

## WILDERNESS WATCH

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ADA NPRM  
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Re: Department of Justice 28 CFR Part 35 [CRT Docket No. 105; AG Order No. 2967–2008] RIN 1190–AA46 Nondiscrimination on the Basis of Disability in State and Local Government Services in Federal Register / Vol. 73, No. 117 / Tuesday, June 17, 2008 / Proposed Rules

To Whom It May Concern:

Wilderness Watch is providing these comments on the proposed rule to adopt enforceable accessibility standards under the Americans with Disabilities Act of 1990 (ADA). Wilderness Watch is a national, non-profit conservation organization dedicated to protecting the wild character of the National Wilderness Preservation System (NWPS) and its wild rivers and encouraging appreciation and careful stewardship of them. We believe the proposed rule has important implications for the NWPS now and in the future.

Wilderness Watch supports the use of wheelchairs in Wilderness as provided for in the ADA. The proposed rule, however, could cause confusion for wilderness managers and visitors alike. Due to the ever-increasing types of power-driven mobility devices being used today, and the unforeseen and unpredictable types of devices on the horizon, the proposed rule as written could lead to damage to some of our nations sensitive wildlands. The NWPS includes over 107 million acres—roughly 20 percent of all public lands in the United States—and it continues to grow. Thus, the effect of the proposed rule on Wilderness and wildlands is due special consideration in the proposed rule.

The Wilderness Act coupled with the ADA set clear standards for providing access for persons with disabilities to lands within the NWPS. The Wilderness Act states:

“Except as specifically provided for in this Act...there shall be no road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any [Wilderness] areas.” 16 U.S.C. 1133(c).

In 1990, in section 507(c) of the ADA, Congress provided specific direction for allowing the use of wheelchairs in Wilderness, and it provided a definition of “wheelchair”:

(1) IN GENERAL- Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION- For 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.

The supplementary information to the proposed rule acknowledges this congressional direction (Fed. Reg. p. 34479) and adds, “The Department believes that while this definition is appropriate in the limited context of federal wilderness areas, it is not specific enough to provide clear guidance in the array of settings covered by title II.” Be that as it may, we believe that any conflicting or contrary definition of wheelchair will lead to confusion about what is or is not an appropriate mobility aid in Wilderness. **We recommend that the final rule reaffirm that the definition of wheelchair in Section 507 of the ADA is the only definition applicable in units of the National Wilderness Preservation System.**

In addition to the NWPS, Congress and the federal land management agencies, by law, policy, or regulation have set aside many other lands that must be administered to protect their wilderness character, or where motorized travel is restricted. These include large areas of our national parks that are designated as potential, proposed or recommended wilderness, areas of the national forest system that are wilderness study areas or recommended wilderness, large areas of the national wildlife refuge system, and roughly 20 million acres of wilderness study areas administered by the Bureau of Land Management. Similarly, many States have established wilderness areas on State-owned lands (e.g. Adirondack State Park in New York, California’s State Wilderness system, etc.). While the management direction for this wide array of areas is to preserve their wild character, Section 507 of the ADA does not technically apply to many of these lands. Wilderness Watch is concerned that adopting a new definition for “wheelchair” or allowing “other power-driven mobility devices” in these areas will reverse the protections they now enjoy, and create unnecessary confusion and conflict with the current and future administration of these lands. **Wilderness Watch recommends the final rule apply the ADA Section 507 definition of wheelchair to federal, state and local government lands where motorized or mechanized travel is generally prohibited. We further recommend that power-driven mobility devices that do not meet this standard be prohibited in these areas.**

Finally, the proposed rule asks the question, “should the Department expand its definition of “wheelchair” to include Segways®?” Wilderness Watch believes the answer is an unequivocal “no.”

Thank you for considering our comments and concerns relating to the proposed rule. Please don't hesitate to contact Wilderness Watch should you have any questions about our comments.

Sincerely,

George Nickas  
Executive Director