

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Parks, Recreation and Historic Preservation</p> <p>Section: Operations</p>	<p>Policy Title: Use of Other Power-Driven Mobility Devices in New York State Parks & Historic Sites</p> <p>Directive: OPR-POL-024</p> <p>Effective Date: 07/15/2015</p>
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Summary

On September 15, 2010 the United States Department of Justice (DOJ) revised its rules implementing the Americans with Disabilities Act (ADA). The revised rules went into effect on March 15, 2011. The new provisions allow devices defined by DOJ rules as *wheelchairs* to be used in any areas open to pedestrian use. The new rules also provide that a public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other types of power-driven mobility devices (OPDMD) by individuals with mobility disabilities, unless the entity can demonstrate that the class of OPDMD cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to the rule.

The New York State Office of Parks, Recreation & Historic Preservation (OPRHP) is committed to enabling the use and enjoyment of the State park system by visitors with mobility limitations. To further this commitment, the Agency has created an OPDMD permit system to allow for the safe use of OPDMD on property managed by the Agency. Using this permit system, OPRHP will allow the use of OPDMD wherever it can do so in accordance with the criteria provided by DOJ, the Agency’s obligation to protect the safety of its visitors, and its statutory mandate to conserve its natural and cultural resources. The information provided herein will provide direction to the facility managers and regional directors responsible for issuing OPDMD permits to the public.

OPRHP anticipates that as technology advances, the use of OPDMD will evolve and impacts to facilities and resources will become apparent. As such, the Agency will continually reevaluate and reassess OPDMD use in certain facilities. In addition, DOJ and other stakeholders may provide guidance and best practices to improve OPRHP’s policy and permit system. Parties may participate in the further development of OPRHP’s OPDMD guidance by providing comments, suggestions and other feedback to OPRHP via the agency’s website <http://nysparks.com/accessibility/>.

Policy

Definitions

OPDMD: Under the DOJ rules, an OPDMD is defined as any mobility device (that is not a wheelchair) powered by batteries, fuel, or other engines (whether or not designed primarily for use by individuals with mobility limitations) that is used by individuals with mobility limitations for the purpose of locomotion. This definition includes, but is not limited to, golf carts, electronic personal assistance mobility devices such as the Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes.

As used in this Guidance document:

Gas-powered device: any mobility device powered by a gas-fueled engine using natural gas, gasoline, diesel, synthetic or bio fuel, or a combination thereof, including all-terrain vehicles (ATV), carts, off-road bikes, motor scooters, motorcycles, tractors and vehicles (whether two, three, or four wheeled).

Electric-powered device: any mobility device powered by batteries, including multiple passenger carts, electronic personal assistance mobility devices (such as the Segway PT), and battery-powered bikes.

Tandem wheel device: any two, three or four-wheeled mobility device where the wheel alignment is parallel along one or more axles.

Inline wheel device: any two-wheeled mobility device where the wheel direction of travel are aligned in the same plane.

Assessment Factors: DOJ Rule 28 C.F.R. § 35.137(b)

In accordance with DOJ regulations, OPRHP will consider the following factors in determining whether a particular OPDMD can be used in a specific part of an OPRHP facility by a person with a mobility disability:

- i. The type, size, weight, dimensions, and speed of the device;
- ii. The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- 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);
- 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

- 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 land management laws and regulations.

Assessments will be conducted at the facility level and shall be based on the actual on-site conditions observed by the assessor as well as seasonal conditions known to OPRHP staff (e.g. flooding, rock slides, wild fires, crowds, etc.). Consideration should be given to established ways for public use in addition to areas where pedestrians are allowed including, but not limited to, beaches, pool decks, lawn areas, and roadways open to public motorized vehicles (e.g. campground roads).

OPDMD Interim Assessments and Limitations

Gas-powered OPDMD: The use of all gas-powered mobility devices (for all trail categories) will be allowed pursuant to an OPDMD permit when the assessment factors indicate that OPDMD use is possible at the site. In addition to the information required by the permit, the facility manager must confirm the motorized device is for use because of a disability, require proof of vehicular insurance, and set safety precautions that anticipate the risk of fire. Such permits shall be issued with reasonable facility-based terms and conditions to ensure, to the greatest extent practicable, the health, safety and welfare of the operator, other park users, and staff, and to protect the environmental and cultural resources of the facility in accordance with the DOJ assessment factors.

Considerations (pursuant to 28 CFR § 35.137(b)): OPRHP facilities possess significant natural topographical features and ecological resources that are managed to support a wide range of plant and animal communities in harmony with public recreation. As reflected by statutory and regulatory restrictions on ordinary use of gas-powered mobility devices in parks, the devices may present a substantial risk of harm to operators, visitors, and the immediate environment due to their internal combustion engines and relatively large dimensions, weight, driving range and/or horsepower. Additional risks posed by gas-powered devices are detailed below.

- Volatile fuels present a risk of fire created by ignition systems and the heat of engine combustion.
- Fuel tanks may leak or fuel may spill during refueling. Fuel leaks damage the environment and may cause fire.
- Engine noise can produce a significant zone of disturbance to native wildlife and can negatively impact visitor experience. Noise presents a health risk to park users when it exceeds 70dB, which the World Health Organization has set as a maximum safe noise level in the work place. Many gas-powered devices, such as ATV and motor bikes, have the capacity to routinely exceed this threshold level under otherwise normal operating conditions.
- Under certain conditions, the exhaust of small internal combustion engines may pose an air quality risk for park visitors and employees.

The risks associated with gas-powered devices warrant an individualized assessment of the device's operating condition, operator's knowledge of existing conditions and restrictions, and the intended itinerary. This will reduce the risk of safety hazards arising from conflicting use of facilities and trail conditions. Obtaining a permit should not present an unreasonable burden to users; virtually all state park facilities are staffed and have the capacity to issue a permit on-site without undue delay.

Factors to be considered as permit conditions should include the weight, speed and condition of the device (including fuel tanks, backfire/ flame arrestors, mufflers, and mirrors and other safety equipment), the volume and type of patrons using the trail, as well as the nature and condition of the trail to be accessed and variations in the suitability of terrain due to weather, erosion, and wildlife activity. The permit process will also serve as a log book or intended itinerary for patrons and will facilitate response to calls for assistance and/or search and rescue efforts.

Electric-powered OPDMD: OPRHP has assessed a range of a range of OPDMD and concludes that the use of most electric-powered mobility devices should be allowed through an OPDMD permit subject to any restrictions deemed necessary by the facility manager.

Considerations (pursuant to 28 CFR § 35.137(b)): In general, electric-powered mobility devices present less risk of serious harm to operators, park visitors and the immediate environment than gas powered devices. Electric-powered devices do not use volatile fuels, ignition, or internal combustion engines and they usually have reduced horsepower, range and speed capacity compared to gas-powered devices. Moreover, these devices present virtually no noise or air quality issues. Accordingly, electric-powered devices will generally be allowed on trails and bikeways under the specific trail type categories as established herein. Users of these devices are required to observe the applicable speed limit, accommodate other trail users, and stay within authorized trails. All OPDMD may be restricted from narrow or single track trails that do not provide appropriate terrain or lack adequate space for the safe passage of other users.

Preliminary Outdoor Developed Areas and Trail Assessments by Category

OPRHP facility managers are assessing outdoor developed areas and trails based on DOJ guidelines. Outdoor developed areas include sidewalks, pathways, plazas, maintained lawns, picnic areas, and any other maintained open area. Trails have been categorized into four different groups with specific limitations on OPDMD listed below.

I. Paved Trails:

Typical examples of this type of trail are Bicycle Class I (Greenway Trails) and developed or interpretive hiking trails. Paved trails are typically multi-use trails but in some high-use areas may be designated for foot traffic only. Tread width can vary from 5 to 14 feet with additional shoulder width. In-line and tandem wheel OPDMD should not exceed 36" inches in maximum width. Considering 28 C.F.R. § 35.137,

characteristics of OPDMD could affect other trail users based on the volume of pedestrian traffic and operational characteristics of the trail. These trails are typically high capacity, high volume, two-way traffic areas, where a width restriction allows for safe passing of other OPDMD, bicycles and pedestrians.

II. Wide Unpaved Trails:

Typical examples of this type of trail are natural surface (unpaved) fire and park roads, carriage roads, and mowed trails, usually greater than 8 feet in width. To protect other users on the trails as well as their natural resources, in-line and tandem devices should not exceed 36" inches in maximum width. These trails are typically wide enough for one-way vehicle traffic, and this width restriction allows for safe passing of other OPDMD, bicycles, and pedestrians on unpaved roads.

III. Multi-use Single Track Trails:

These trails include natural surface (unpaved), narrow gauge trails (generally 18-36" tread width and maximum 6' corridor width), suitable for multiple trail-use activities, including hiking, mountain biking, and/or horseback riding. To protect other users on the trails as well as their natural resources, in-line devices should not exceed 26" inches in maximum width and have a maximum wheel width of 6" inches. These are typically narrow trails; two-way traffic would require users to venture off-trail at risk of personal injury and harm to natural resources when overtaking or allowing passage of OPDMD larger than 26" inches wide.

IV. Pedestrian Single Track Trail:

These trails include unpaved and unimproved narrow gauge trails (generally 18-30" tread width and 4-6' corridor width) for hiking only. This type of trail is typically found in natural or remote areas with steep or uneven terrain; in these areas environmental or topographic constraints may mandate caution and minimal user impacts to natural resources. To protect patrons and the area's natural resources, OPDMD will typically not be permitted on these trails or will be subject to seasonal or other restrictions.

VI. Other Notes:

- OPRHP employees shall not ask an individual using a wheelchair or OPDMD questions about the nature or extent of the individual's disability; they may ask for a credible assurance that the mobility device is required because of a disability.
 - OPRHP will accept the presentation of a valid, state-issued, disability parking placard or other state-issued proof that the OPDMD is needed for the individual's mobility disability.
 - In lieu of a state-issued proof of disability, OPRHP shall accept a verbal representation, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.
- OPRHP facilities may post speed limits that depend upon trail conditions.
- OPDMD must yield to other non-powered users.

- OPDMD must stay on designated trails or bikeways at all times. Exceptions can be made when crossing turf areas to leave or rejoin a trail as necessary.
- Unless designated otherwise, OPDMD are not permitted in historic structures, ruins or other sensitive historic or cultural areas.
- When required by New York State Law, OPDMD users shall wear an appropriate helmet while operating.

Forms

Office of Parks, Recreation and Historic Preservation Special-Use Permit, OPDMD

Other Related Information

No other related information.

History

07/15/2015 This policy is effective.