

# Disability Rights Legislation and Accessibility Guidelines and Standards in the United States

The Americans with Disabilities Act of 1990 (ADA) is a landmark civil rights law that both identifies and prohibits discrimination on the basis of disability. The Act prohibits discrimination in employment, telecommunications, transportation, access to facilities and programs provided by State and local government entities, and access to the goods and services provided by places of public accommodation such as lodging, health, and recreation facilities. People who design and construct buildings and facilities are responsible under the ADA to make them accessible to and usable by people with disabilities.

## 1.1 Accessibility Legislation and Access Design Standards Prior to the ADA

Although the ADA is the most comprehensive Federal law protecting the rights of people with disabilities, several important pieces of legislation and accessible design standards helped pave the way for passage of the ADA. Major milestones in the evolution of accessibility regulations are listed in Table 1-1.

### 1.1.1 American National Standards Institute (ANSI) A117.1

In 1959, the President's Committee on Employment of the Physically Handicapped and the National Society for Crippled Children co-sponsored the development of ANSI A117.1, the first national standard for accessibility (PLAE, Inc., 1993). ANSI standards are developed through a consensus process involving all directly and materially affected interests. Compliance with ANSI Standards is voluntary (ANSI A117.1, Council of American Building Officials, 1992).

The technical provisions of ANSI A117.1 are intended for "the design and construction of new buildings and facilities," as well as the "remodeling, alteration, and rehabilitation of existing conditions" (ANSI A117.1, Council of American Building Officials, 1992). Technical provisions delineate how features should be designed and installed. Technical information in ANSI A117.1 is largely based on anthropometric, ergonomic, and human performance data. ANSI A117.1 does not include scoping provisions, which describe where accessibility is appropriate; when it is required; and what features of a building, facility, or site must be accessible.

ANSI A117.1 was first published in 1961 and reaffirmed without changes in 1971. A completely new and more comprehensive version of ANSI A117.1 was published in 1980. Later editions were published in 1986, 1992, and 1998.

Although ANSI A117.1 is a voluntary standard, it has been adopted as an enforceable code by many State and local agencies that regulate the design and construction of built facilities. The technical requirements in ANSI A117.1 are also referenced in the model building codes established by regional organizations such as the following:

- Building Officials and Code Administrators International (BOCA)
- International Conference of Building Officials (ICBO)
- Southern Building Code Congress International (SBCCI)

Agencies and organizations that reference ANSI A117.1 must establish scoping specifications because the ANSI guidelines

contain only technical requirements. ANSI A117.1 has served as the basis for most of the accessibility standards subsequently adopted by Federal and State governments.

### **1.1.2 The Architectural Barriers Act (ABA)**

Congress passed the Vocational Rehabilitation Amendment Act of 1965 to encourage public facilities to comply with ANSI A117.1. The Act established the National Commission on Architectural Barriers to Rehabilitation of the Handicapped to study how and to what extent architectural barriers impeded access to or use of facilities in buildings, and what, if anything, was being done to eliminate barriers. The Commission concluded that the public was largely ignorant of disability access problems and that little was being done to provide access (PLAE, Inc., 1993).

Recognizing the ineffectiveness of voluntary compliance, Congress passed the Architectural Barriers Act (ABA) in 1968. The ABA requires that buildings and facilities designed, constructed, or altered with Federal funds, or leased by a Federal agency, must comply with standards for physical accessibility. The ABA signaled the first time physical access to buildings was required by Federal law.

The ABA required the U.S. Department of Defense (DoD), the U.S. Department of Housing and Urban Development, the U.S. General Services Administration, and the U.S. Postal Service to develop accessibility standards for all buildings and facilities covered by the ABA. Initially, ANSI A117.1 1961/71 was referenced as the accessibility standard, until 1984, when the four agencies published the Uniform Federal Accessibility Standards (UFAS).

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**Table 1-1:**

***Developments in Disability Rights Legislation and Accessibility Guidelines from 1961 to 1998***

1961	ANSI publishes ANSI A117.1, Making Buildings Accessible to and Usable by the Physically Handicapped.
1965	Congress passes the Vocational Rehabilitation Amendment Act (P.L. 89-333).
1968	Congress passes the Architectural Barriers Act (ABA) (P.L. 90-480).
1973	Congress passes the Rehabilitation Act (P.L. 93-112).
1978	Sections 502 and 504 of the Rehabilitation Act of 1973 (P.L. 93-112) are amended.
1980	ANSI publishes a revised version of ANSI A117.1, designated ANSI A117.1-1980.
1982	U.S. Access Board publishes Minimum Guidelines and Requirements for Accessible Design (MGRAD).
1984	Federal ABA rule-making agencies publish Uniform Federal Accessibility Standard (UFAS).
1986	ANSI publishes revised version of ANSI A117.1, designated ANSI A117.1-1986.
1988	Congress passes the Fair Housing Amendments Act (P.L. 100-430).
1990	Congress passes the Americans with Disabilities Act (P.L. 101-336).
1991	U.S. Access Board publishes Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).
1991	U.S. Departments of Justice and Transportation publish the ADA Standards for Accessible Design.
1992	ANSI publishes a revised version of ANSI A117.1, designated CABO/ANSI A117.1-1992.
1995	Congress passes the Congressional Accountability Act.
1998	ANSI publishes a revised version of ANSI A117.1, designated CABO/ANSI A117.1-1998.
1998	Congress reauthorizes the Rehabilitation Act.

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### 1.1.3 The Rehabilitation Act

The drive to achieve access for people with disabilities gained momentum with the passage of the Rehabilitation Act in 1973. The Act signaled a profound shift in Federal public policy for people with disabilities. It requires nondiscrimination in the employment practices of Federal agencies of the executive branch (Section 501) and Federal contractors (Section 503). In addition, it requires all federally assisted programs, services, and activities to be available to people with disabilities (Section 504).

The Rehabilitation Act recognized that unemployment, lack of education, and poverty were not inevitable consequences of physical limitation. The Act identified societal prejudices and the inaccessibility of the environment as the sources of many of these problems. In addition, for the first time, people with disabilities were considered a unified group rather than a collection of different groups separated by diagnosis. The Act recognized that people with disabilities, as a group, face similar discrimination in employment, education, and access to society, and as such, constitute a legitimate minority group deserving basic civil rights protection (Golden, Kilb, and Mayerson, 1993).

Section 504 of the Rehabilitation Act introduced the concept of program access to federally conducted programs by prohibiting discrimination in any program, service, or activity of the Federal government. Program access allows “recipients to make their federally assisted programs and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities, by offering those programs through alternative methods” (US DOJ, 1994b). There are many ways to achieve program access. For example, if a private interview is to be conducted on the third floor, a first-floor interview would be acceptable if a comparable level of privacy could be obtained. Structural

modifications are required only for program access if there is no other feasible way to make a program accessible (*ibid.*). The requirement for program access reappears in Title II of the ADA (see Section 1.2.3).

Each Federal agency applies a unique set of Section 504 regulations to its own programs. Agencies that provide Federal financial assistance also have Section 504 regulations covering entities that receive Federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities, program accessibility, effective communication with individuals who have disabilities, and accessible new construction and alterations. Each agency enforces its own regulations. Section 504, as it applies to entities that receive Federal assistance, also may be enforced through private lawsuits.

Section 502 of the Rehabilitation Act established the U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board or U.S. ATBCB) as an independent regulatory agency with authority to enforce the ABA. In addition to its enforcement role, the U.S. Access Board developed the guidelines that formed the Uniform Federal Accessibility Standards (UFAS) and works with the four Federal agencies that set accessibility standards under the ABA.

In 1982, the U.S. Access Board published the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD). The technical specifications of MGRAD were largely based on ANSI A117-1980. Scoping specifications were derived from State accessibility codes, U.S. Access Board research, public comment, and existing Federal agency standards. The four Federal agencies charged with developing accessibility standards for the ABA used the specifications in MGRAD to develop UFAS. All Federal agencies also have designated UFAS as the accessibility

standard for new construction and alterations under Section 504 of the Rehabilitation Act.

## 1.2 The Americans with Disabilities Act (ADA)

Passage of the Americans with Disabilities Act in 1990 gave civil rights protection to individuals with disabilities. The ADA defines an individual with a disability (ADA, 1990) as a person who

1. has a physical or mental impairment that substantially limits one or more major life activities,
2. has a record of such an impairment, or
3. is regarded by others as having such an impairment.

The ADA is divided into the following five titles, which prohibit discrimination on the basis of disability:

- Title I Employment
- Title II Public Services
- Title III Public Accommodations and Commercial Facilities
- Title IV Telecommunications
- Title V Miscellaneous

In 1995, Congress passed the Congressional Accountability Act, which extended the rights and protections of 11 employment and labor laws, including the ADA, to the legislative branch of the Federal government. The executive branch of the Federal government is not covered by the ADA but must comply with the Architectural Barriers Act and the Rehabilitation Act and must meet UFAS requirements.

### 1.2.1 Americans with Disabilities Act Accessibility Guidelines (ADAAG)

Title V of the ADA requires the U.S. Access Board to issue minimum guidelines for accessible design to ensure that

buildings, facilities, rail passenger cars, and vehicles are accessible in terms of architecture and design, transportation, and communication to individuals with disabilities (ADA, 1990, Section 504). The U.S. Department of Justice (US DOJ) and the U.S. Department of Transportation (US DOT) use the U.S. Access Board guidelines as a basis to establish accessibility standards. Although the DOJ and DOT may create standards that exceed the recommendations published by the U.S. Access Board, they must be consistent with the minimum guidelines. The DOJ and DOT standards are enforceable under the ADA; however, the U.S. Access Board guidelines are only advisory.

Sections 1–10 of ADAAG were completed by the U.S. Access Board in 1991 and were concurrently published by the DOJ and DOT as the ADA Standards for Accessible Design. The ADA Standards for Accessible Design are identical in content to ADAAG Sections 1–10; however, the ADA Standards for Accessible Design are enforceable under the ADA.

ADAAG is based on specifications established in UFAS and ANSI A117.1-1980 and -1986. In 1998, the U.S. Access Board published final guidelines for Section 11: *Judicial, Regulatory, and Legislative Facilities* and Section 12: *Detention and Correctional Facilities*. Section 13: *Accessible Residential Housing*, and Section 14: *Public Rights-of-Way*, which had been published previously as interim guidelines, were withdrawn and reserved for future rulemaking. To date, the DOJ or the DOT has not developed standards based on Sections 11 and 12.

ADAAG and UFAS provide specific information on dimensions and details for new construction and alterations. The specifications of ADAAG and UFAS establish minimum levels of accessibility. Architects and building owners may

choose to design alternative but equally accessible facilities. However, if an alternative design is used, it must provide a level of access equivalent to the requirements in the ADA Standards for Accessible Design or UFAS.

In addition to the Federal standards, almost all States have adopted accessibility guidelines as part of their building codes. Although States may adopt and enforce standards that are more stringent than Federal standards, covered entities must comply with Federal minimum standards. State and local governments may apply to the DOJ Assistant Attorney General for Civil Rights to certify that a State or local building code meets or exceeds the ADA's minimum requirements.

### **1.2.2 Implementing Regulations for Title II and Title III**

Title II, Subpart A, and Title III of the ADA are implemented by the DOJ in the Code of Federal Regulations (CFR). Title II, Subpart B is implemented by the DOT. The DOJ implementing regulations for Titles II and III of the ADA are in CFR Title 28, Parts 35 and 36, respectively. The DOT implementing regulations for Title II, Subpart B, are published in CFR 49, Part 37.

The DOJ regulations for Titles II and III are very similar in their general requirements. The DOJ developed technical assistance manuals for Titles II and III to help public and private entities comply with the ADA implementation regulations. The information line of the Disability Rights Section of the DOJ may be contacted at (800) 514-0301 (V) or (800) 514-0383 (TTY), or on the Internet at [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm).

Both Titles II and III prohibit exclusion of people with disabilities from services, programs, and activities. Both titles also stipulate that the equal participation of individuals with disabilities in the

mainstream of society is a primary goal. Therefore, to prevent segregation, entities covered by Titles II and III must make every effort to integrate people with disabilities to the maximum extent possible. The type of program provided must be appropriate to the needs of the particular individual. For example, an appropriate program for a hearing wheelchair user could include a videotape of a tour through the upper floors of a historic house museum that could not be made physically accessible. However, a program providing sign-language interpretation for a hearing wheelchair user would not be appropriate. Individuals with disabilities are not required to use separate services, even if a qualified separate program exists (US DOJ, 1993b; US DOJ, 1993c).

State and local governments and places of public accommodation are required to make reasonable modifications to their policies, practices, and procedures to avoid discriminating against people with disabilities. Reasonable modifications might include permitting service animals into food establishments, even if other animals are not allowed or granting a variance to a zoning requirement so a business may encroach on the sidewalk to install a storefront ramp (US DOJ, 1993b; US DOJ, 1993c).

Exceptions in both titles are made for historic sites or programs for which providing physical access would “threaten or destroy the historic significance” (ADA, 1990). In such cases, architectural access should be provided to the maximum extent possible, even if full compliance with the ADA standards cannot be met. Examples of partial compliance include providing a steeper-than-average ramp or ground-floor-only access. In situations where no architectural modifications are possible, auxiliary aids such as films, models, or activities representative of the inaccessible area must be provided (US DOJ, 1993b; US DOJ, 1993c).

### **1.2.3 ADA Regulations that Apply to Public Entities**

Title II, Subpart A of the ADA prohibits State and local governments (public entities) from discriminating against people with disabilities in all programs, services, and activities. Title II, Subpart B prohibits discrimination against people with disabilities in public transportation provided by public entities (private transportation is covered in Title III).

Similar to Section 504 of the Rehabilitation Act, Title II requires public entities to provide people with disabilities with program access in existing facilities. Program access for people with mobility disabilities may be achieved by relocating a program to an accessible building or changing the way a service is delivered. Structural modifications are required only if there is no other feasible way to make a program accessible (US DOJ, 1994b). Effective communication for people who have hearing, vision, or speech disabilities can be achieved by providing appropriate means of communication. The requirements for program access are published in the DOJ and DOT regulations.

New construction is held to the highest standard of accessibility because the cost of including accessibility is minimal compared to the overall cost of construction. The current implementing regulations for Title II allow public entities the flexibility to use either UFAS or the ADA Standards for Accessible Design for new construction and alterations. Once a standard has been chosen, it must be followed completely for a given facility or project in both new construction and subsequent alterations (US DOJ, 1993b).

If a public entity follows the ADA Standards for Accessible Design, alterations and new additions must meet the minimum specifications for new construction unless it is “technically infeasible” to do so. An improvement is technically infeasible only

if “existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility” (US DOJ, 1991). According to UFAS, alterations and new additions must meet the minimum specifications for new construction unless it is “structurally impracticable” to do so (UFAS, U.S. DoD et al., 1984). Structurally impracticability is defined in UFAS as “changes having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved” (UFAS, U.S. DoD et al., 1984). Special technical provisions may be applied where constraints prohibit full compliance with new construction standards. However, this decision must be made carefully, and the accessibility standards must be met to the maximum extent feasible.

New construction or alteration work commenced after January 26, 1992, must meet the requirements outlined in the ADA Standards for Accessible Design or UFAS.

### **1.2.4 ADA Regulations for Places of Public Accommodation and Commercial Facilities**

Title III prohibits discrimination on the basis of disability in places of public accommodation and in commercial facilities. Places of public accommodation are facilities operated by private entities that fall within the following 12 broad categories defined by Congress [ADA, Section 301(7), 1990]:

1. Places of lodging
2. Establishments serving food or drink

3. Places of exhibition or entertainment
4. Places of public gathering
5. Sales or rental establishments
6. Service establishments
7. Stations used for specified public transportation
8. Places of public display or collection
9. Places of recreation
10. Places of education
11. Social service center establishments
12. Places of exercise or recreation

Private entities who own, lease, lease to, and/or operate places of public accommodation are responsible for compliance with all Title III requirements.

Title III of the ADA requires that new or altered places of public accommodation be “readily accessible to and usable by” people with disabilities [ADA, 1990, Section 303(2)]. Places of public accommodation are required to provide auxiliary aids, such as interpreters for people who are deaf. Places of public accommodation are also required to remove architectural barriers in existing facilities where it is readily achievable to do so. Readily achievable is defined by the ADA as “easily accomplishable and able to be carried out without much difficulty or expense” (US DOJ, 1991). Architectural barriers include elements such as steps, doorways that are very narrow, deep pile carpeting on floors, and objects positioned in a manner that impedes access. Modifications that may be considered readily achievable include installing ramps, restriping parking lots, placing Braille in elevators, repositioning shelves, rearranging furniture, and other actions. Rearranging furniture or equipment to provide access is not considered readily achievable if it results

in a significant loss of selling or serving space. If architectural modifications are made to meet barrier-removal requirements, the ADA Standards for Accessible Design should be used as a guide. However, when it is not readily achievable to install architectural improvements that comply with the ADA Standards, alternative designs that increase access but do not meet all the specifications are acceptable.

If barrier removal is not readily achievable, a public accommodation must make goods, services, facilities, privileges, advantages, or accommodations available through alternative measures, if those measures are readily achievable. Alternative measures include providing curb service or home delivery, retrieving merchandise from inaccessible areas, or relocating activities to accessible locations (US DOJ, 1991).

Barrier removal is an ongoing obligation. However, places of public accommodation may not be required to complete access improvements to all their facilities immediately. The DOJ implementing regulations for Title III strongly recommend that places of public accommodation comply with barrier-removal requirements according to the following priorities (US DOJ, 1991):

1. Access to a place of public accommodation from public sidewalks, parking, or public transportation
2. Access to those areas of a place of public accommodation where goods and services are made available to the public
3. Access to and usability of restroom facilities
4. Any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation

Commercial facilities (US DOJ, 1991) are facilities operated by private entities

1. whose operations will affect commerce;
2. that are intended for nonresidential use by a private entity; and
3. that are not
  - i. facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601–3631);
  - ii. aircraft; or
  - iii. railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars.

Examples of commercial facilities include factories and warehouses that are not open to the public. Commercial facilities do not have to make auxiliary aids available, nor are they obligated to meet barrier-removal requirements.

Both places of public accommodation and commercial facilities must comply with the ADA Standards for Accessible Design for new construction and alterations. New construction must be in full compliance with the requirements specified in the ADA Standards for Accessible Design unless compliance would be structurally impracticable. Full compliance is considered “structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessible features” (US DOJ, 1991).

Alterations must be readily accessible to and usable by individuals with disabilities in accordance with the ADA Standards for Accessible Design to the maximum extent feasible. Alterations are considered to be any change to the facility that affects usability, such as renovation of walls and remodeling, but does not include normal maintenance, such as painting or electrical work, unless it affects usability. When alterations are made to an area of primary function, up to an additional 20 percent

of total spending must be allocated to make the path of travel to the altered area accessible. The path of travel includes elements such as toilets, drinking fountains, and telephones serving the altered area.

### **1.3 Accessibility Guidelines, Requirements, and Standards for Sidewalks and Trails**

It is critical for sidewalks and trails to be accessible because such paths often link individually accessible facilities. For example, a person may wish to do business with a bank in an accessible building but may be unable to use the bank’s services if he or she cannot negotiate the curbs, intersections, and other public rights-of-way required to reach the bank.

#### **1.3.1 Sidewalks**

The implementing regulations for Titles II and III of the ADA require curb ramps to be provided in all existing facilities and for new construction and alterations. The implementing regulations also require public entities that have responsibility for or authority over streets, roads, sidewalks, and/or other areas meant for pedestrian use to develop a transition plan within 6 months of January 26, 1992 (by July 26, 1992). Structural changes identified in the transition plan were to be completed within 3 years of the transition plan (by January 26, 1995) (US DOJ, 1994b). A transition plan should include an assessment of the existing sidewalks requiring access improvements and present a schedule for curb ramp installations where an existing pedestrian walkway crosses a curb or other barrier.

The DOJ Title II implementing regulations [28 CFR Section 35.105(d)(2), US DOJ, 1994b] require State and local government entities to prioritize the installation of curb ramps on walkways serving

1. State and local government offices and facilities;
2. Transportation;
3. Places of public accommodation (private-sector facilities covered by Title III); and
4. Places of employment.

With the exception of the curb ramp requirement, accessibility standards specifically applicable to public sidewalks have not yet been developed by the DOJ. In 1994, the U.S. Access Board published four additional sections of ADAAG, including proposed public right-of-way guidelines (Section 14) now reserved. The proposed 1994 guidelines were circulated for a public review period, during which the U.S. Access Board received some negative feedback relating to specific sections of the document. Based on the comments received, the U.S. Access Board decided to withdraw the guidelines and focus on a public awareness campaign for the transportation industry. Section 14 was reserved to allow the possibility of developing accessibility guidelines for public sidewalks in the future. Although Section 14 was withdrawn, it was reviewed for this report because it made an impact on the transportation industry and because it is still being used by many State and local transportation agencies.

Despite the current lack of enforceable standards for public sidewalks and trails, public and private entities who design and construct sidewalks and trails are still obligated under the ADA to make them accessible to and usable by people with disabilities. In the absence of accessibility guidelines for public sidewalks and trails, planners, designers, and builders should adhere to appropriate sections of the ADA Standards for Accessible Design or UFAS and applicable State and local accessibility provisions. The ADA Standards for Accessible Design contain many sections that are potentially applicable to elements found in sidewalks. For example, Section 4.7 of the ADA Standards provides design specifications for curb ramps on accessible

routes. Some State and local governments have expanded the ADA Standards for Accessible Design to develop their own accessibility standards for sidewalks.

If a sidewalk is significantly altered, accessibility improvements must be made. However, there has been extensive debate about whether modifying a street triggers the same requirement to make accessibility improvements to the sidewalk. Altered or new facilities must be readily accessible and usable by individuals with disabilities. Under the ADA, modifications that affect usability are considered alterations. In *Kinney v. Yerusalim*, a Federal district appeals court ruled that if the depth of the resurfacing overlay is at least 38 mm (1.5 in), the usability of a street is affected. The court further ruled that because a street and its curbs are interdependent facilities, alteration of a street triggers the installation of curb ramps (U.S. District Court, Eastern District of Pennsylvania, 1993). According to the DOJ Technical Assistance Manual, “resurfacing beyond normal maintenance” is an alteration; construction limited in scope to a spot repair, such as patching potholes, is considered maintenance and does not trigger additional access retrofit requirements (US DOJ, 1993c).

### 1.3.2 Trails

Outdoor trail facilities should be accessible to the full range of potential users to ensure that people with disabilities will have access to the same recreational experiences available to those without disabilities. The U.S. Access Board established the Recreation Access Federal Advisory Committee in 1993 to examine accessibility in outdoor facilities. The Committee published its recommendations in 1994. The report divided outdoor recreation into six categories:

- Sports facilities
- Amusement areas
- Play settings

- Golf
- Boating and fishing facilities
- Developed outdoor recreation facilities

Access recommendations for these categories are being addressed by the U.S. Access Board in different ways. Methods for making play settings and outdoor developed areas accessible are being addressed by regulatory negotiation committees. The two committees are composed of experts and interested parties and are working toward consensus guidelines for these areas. The play settings committee has completed and forwarded its recommendations to the U.S. Access Board. The U.S. Access Board published a national public rulemaking for access to play areas in April 1998 to seek public comment on the play areas document. A public hearing was held in Denver, Colorado, to receive additional feedback during the comment period. The outdoor developed areas committee continues to meet and is scheduled to submit recommendations to the U.S. Access Board by September 1999.

Even though the DOJ has not adopted specific standards, recreation areas are covered by the ADA. For new construction and alterations, recreation area managers should apply applicable sections of the ADA Standards for Accessible Design or UFAS, as well as any appropriate State or local accessibility provisions. Public entities responsible for recreation areas also must provide program access to existing facilities and develop a written plan and schedule to implement access improvements.

### 1.3.3 Access to Wilderness Areas

A significant number of trails in the United States are administered by the U.S. Department of Agriculture (USDA, including the U.S. Forest Service), the U.S. Department of the Interior (USDI, including the National Park Service, the Bureau of

Land Management, and the U.S. Fish and Wildlife Service), and the Army Corps of Engineers. Some lands managed by these executive-branch agencies bear an additional Wilderness Area designation. In 1964, Congress passed the Wilderness Act to ensure that certain lands would remain free of roads and other types of development and that unimproved trails would constitute the only paths of access to these areas. Such wilderness lands were identified by Congress and were designated as the National Wilderness Preservation System (NWPS).

The Wilderness Act was enacted in 1964, before the recent gains in disability rights, and makes no mention of people with disabilities. Because the Wilderness Act prohibits the use of motorized vehicles and mechanized transport within federally designated wilderness areas (Wilderness Inquiry, Inc., 1992), some people have claimed that it discriminates against the rights of persons with disabilities, especially those who use electric-powered wheelchairs or scooters.

Congress sought to clarify the issue of access for people with disabilities to wilderness areas in Title V, Section 507(c) of the ADA (ADA, 1990):

Congress reaffirms that nothing in the Wilderness Act is 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 to facilitate such use.

Thus, only assistive devices such as wheelchairs or scooters suitable for indoor use are eligible to enter wilderness

areas. For example, a manual or powered wheelchair capable of traveling on off-road terrain would be permitted, while motorcycles, all-terrain vehicles (ATVs), off-highway vehicles (OHVs), and other vehicles with internal combustion engines are prohibited. Although wheelchair users are permitted to enter wilderness areas, land management agencies “are not required to construct any facilities or modify any conditions of lands within Wilderness to facilitate use by persons with disabilities” (Wilderness Inquiry, Inc., 1995). However, when modifications to protect the resource are made, land managers are encouraged to use accessible designs. For example, when a toilet is necessary to protect the resource from the impact of many visitors, land managers are “encouraged to make the toilet as accessible as possible within a primitive design” (ibid.).

## 1.4 Conclusion

The ADA was passed to prohibit discrimination against people with disabilities. Title II of the ADA requires public entities that build sidewalks and trails to provide program access to existing facilities and to design and construct new facilities and altered facilities to be readily accessible to individuals with disabilities. Title III of the ADA requires places of public accommodation to remove barriers to access when it is readily achievable to do so and to meet the requirements for new construction and alteration in the ADA Standards for Accessible Design. Designers and planners of outdoor facilities should apply applicable sections of the ADA Standards for Accessible Design or UFAS and employ good design principles to ensure that facilities are accessible to and usable by people with disabilities.

