

# **Reasonable Modifications: Service Animals and Other Power-Driven Mobility Devices**



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# Reasonable Modifications

## § 35.130(b)(7)

A public entity shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

# Fundamental Alteration

An entity is not required to provide an auxiliary aid or service if it would fundamentally alter the nature of the program or service.

## Fundamental Alteration: Part 2

A public entity is not required to take action if it would result in undue financial and administrative burdens.

- Look at resources of the agency as a whole.
- Still required to provide service to the maximum extent possible.

# Reasonable Modification Examples

- Accepting state issued non-driver IDs;
- Allowing someone with a disability to participate in a meeting by telephone;
- Allowing a person with a disability who uses a Segway<sup>®</sup> as a mobility device to enter a building; and .....

# **Service Animals**



# Service Animals

- Codifies a variety of the Department's longstanding policies and interpretations regarding service animals.
- The Department's rules do not affect coverage of other animals under other laws, like the Fair Housing Act or Air Carrier Access Act.

# Definition of Service Animal

"Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability... The work or tasks performed by a service animal must be *directly related* to the individual's disability..."



# What does this mean?

- Limits the species of service animals to dogs;
- Makes clear that comfort or emotional support animals are not covered; and
- Makes clear that individuals with physical, sensory, psychiatric or other mental disabilities can use service animals.

# Definition: Do Work or Perform Tasks

- Requires that the dog be *individually trained to do work or perform tasks*.
- The work or tasks performed by a service animal must be *directly related* to the individual's disability.

# Definition: Do Work or Perform Tasks ..... Continued

- Includes a non-exhaustive list of examples of work and tasks, such as retrieving items, e.g., medicine or telephone.
- Covers individuals with psychiatric, intellectual, or other mental disability that use service animals.

Example: Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

# Emotional Support Animals

- Because service animals must do work or perform tasks, emotional support and comfort animals *are not included* in the definition of service animal.
- The provision of emotional support, well-being, comfort, or companionship *do not constitute work or tasks* for the purposes of the service animal definition.

# Exclusion of Service Animals

- General rule is that covered entities must permit service animals. The revised rules, however, add two specific exceptions for when service animals can be excluded:
  - The animal is out of control and the handler does not take effective action to control it; or
  - The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.

# “Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control ( i.e., voice control, signals, or other effective means.)

# Permissible Inquiries

- Only *two* inquiries may be made by covered entities:
  - Whether the animal is required because of a disability; and
  - What work or task the animal has been trained to perform.
- Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

# Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.





**Beyond Service Animals**

**Miniature Horses**

# Miniature Horses

- Miniature Horses range in weight from 70 to 100 pounds.
- Miniature horses can range in height from 24 to 34 inches.

# Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features.
- Handler has sufficient control of the horse.
- Horse must be housebroken.
- Whether the horse's presence in a specific facility compromises legitimate safety requirements.

# Other Requirements for Miniature Horses

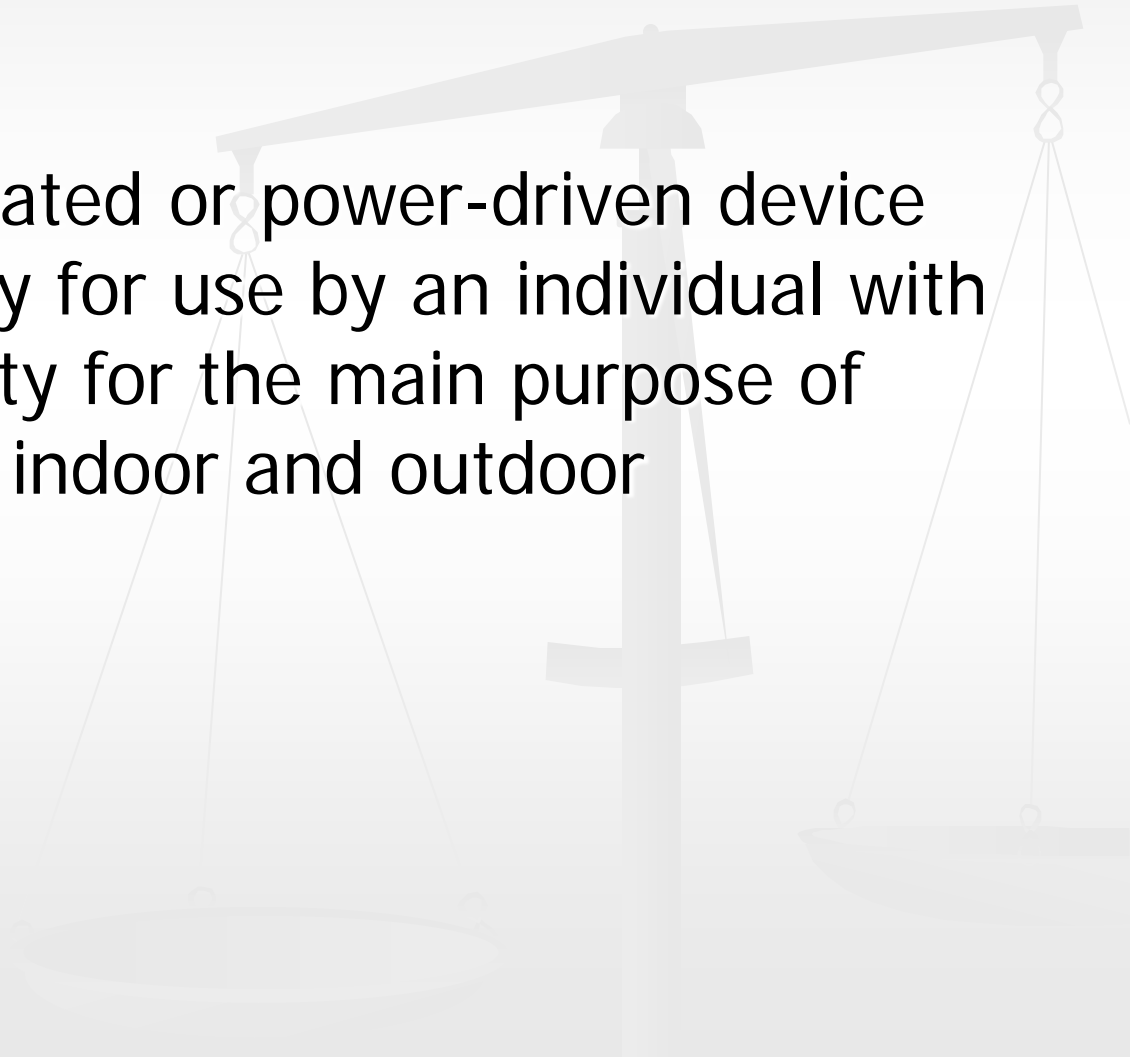
- Sections 35.136(c)-(h)'s and § 36.302(c)(3)-(8)'s service animal requirements also apply to miniature horses.
- Admit person with a disability even if animal is properly excluded.
- Care and supervision.
- Inquiries.
- Access to all public areas.
- Surcharges.

# **Other Power-Driven Mobility Devices**



# Definition of “Wheelchair”

[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.



# Definition of “Wheelchair,” Continued

- “Mobility disability” includes a wide range of disabilities, including, circulatory and respiratory disabilities that make walking difficult or impossible.
- Does not apply to Federal wilderness areas.

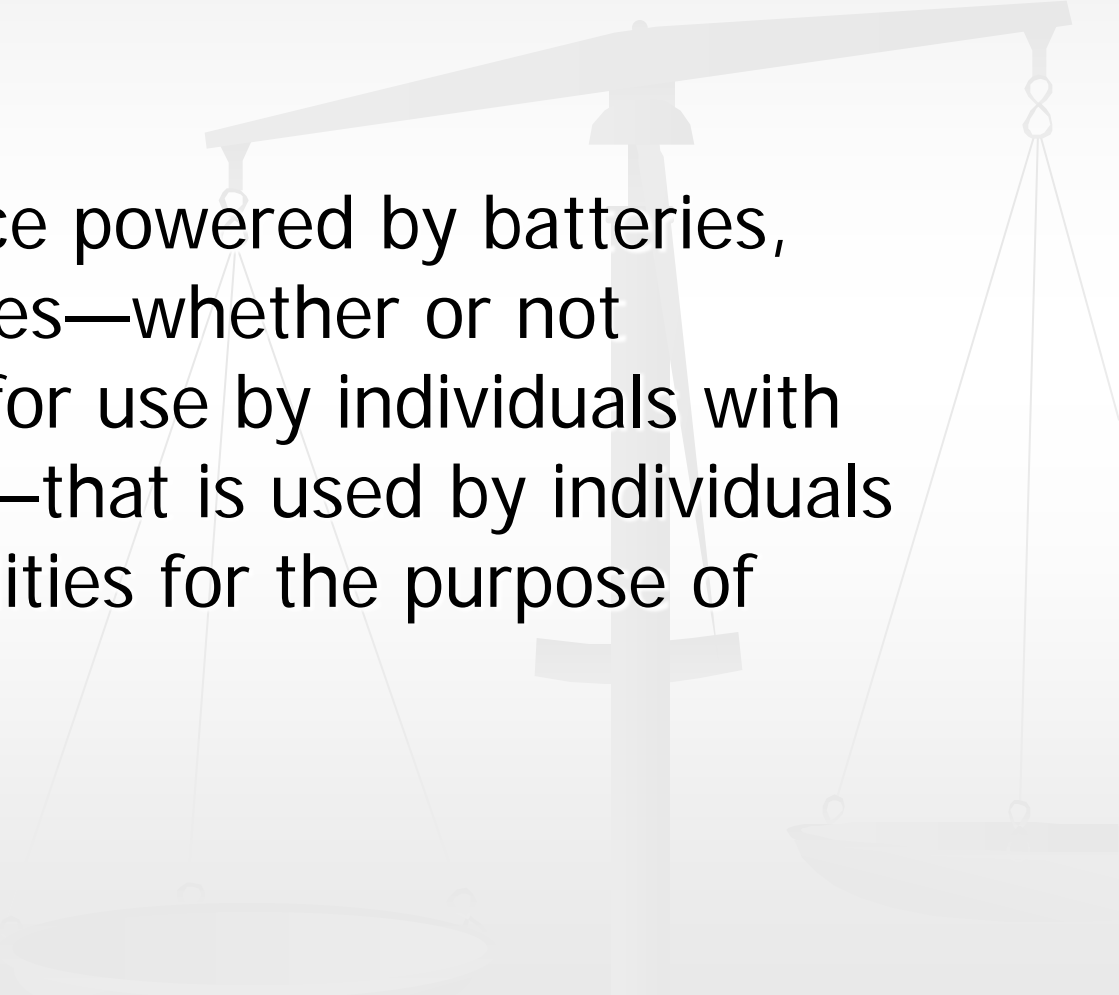
# Use of Wheelchairs

- Covered entities must permit individuals with mobility disabilities to use wheelchairs in any area open to pedestrian use.
- Must also allow individuals with mobility disabilities to use manually-powered mobility aids (walkers, crutches, canes, braces, or other similar devices) in areas open to pedestrian use.



# Other Power-Driven Mobility Device (OPDMD)

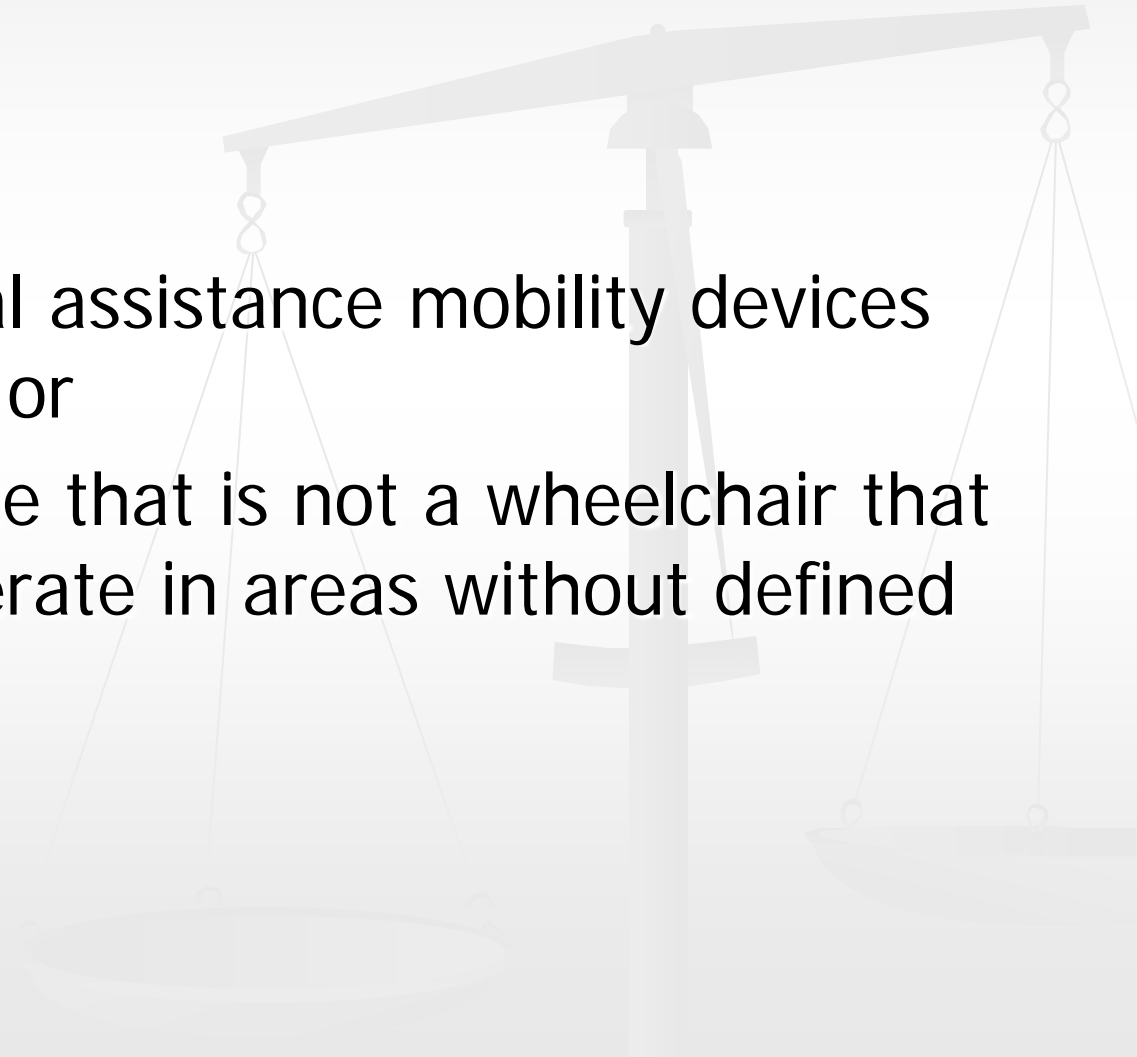
[A]ny mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion.



# Definition of “OPDMD,” Continued

Includes:

- Golf cars;
- Electronic personal assistance mobility devices (e.g., Segway®); or
- Any mobility device that is not a wheelchair that is designed to operate in areas without defined pedestrian routes.

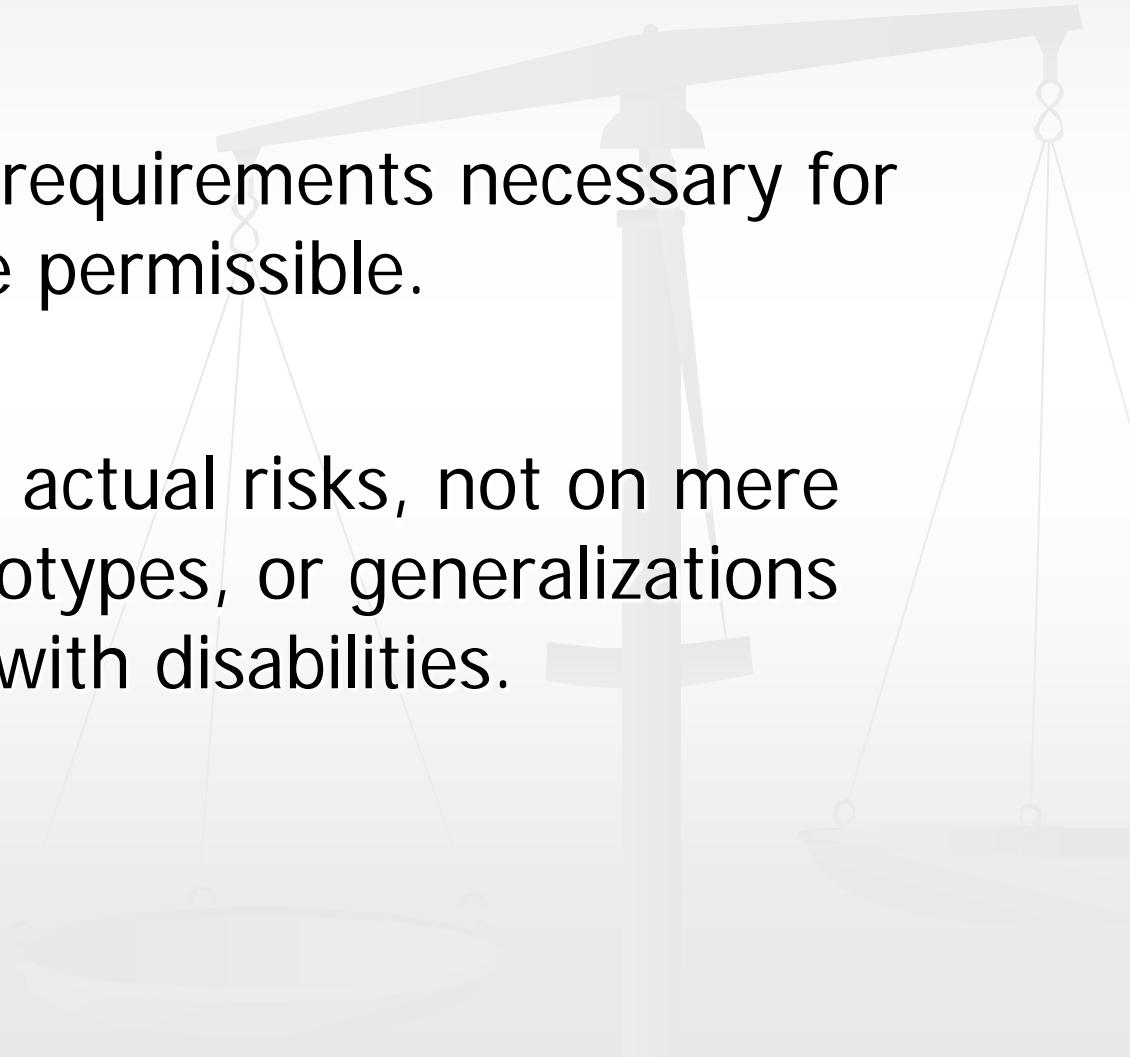


# Use of OPDMDs

- Covered entities must make reasonable modifications to permit individuals with mobility disabilities to use OPDMDs, unless. . .
  - the *entity* can demonstrate that the *class* of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity.

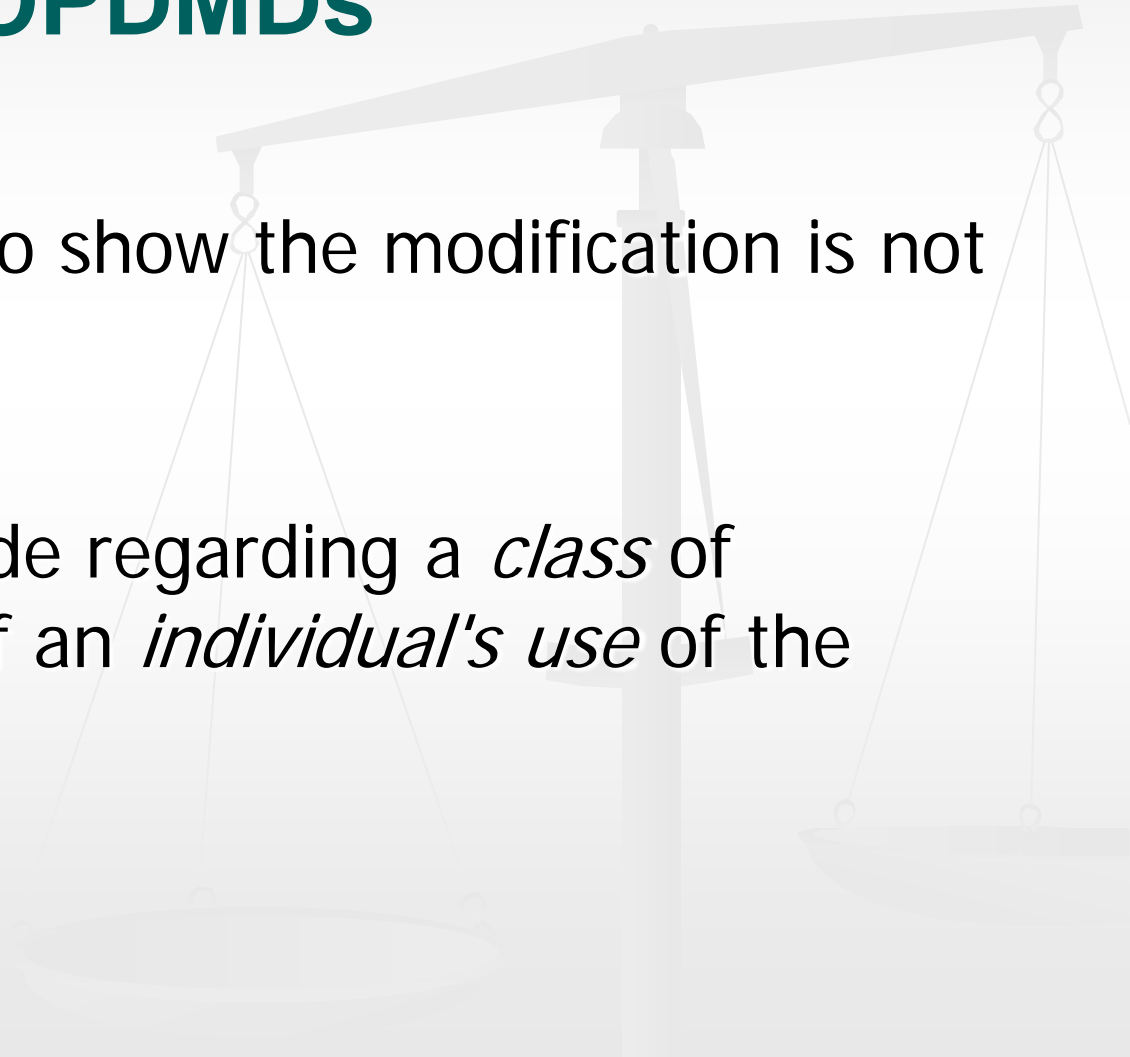
# Legitimate Safety Requirements

- Legitimate safety requirements necessary for safe operation are permissible.
- Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.



# Reasonable Modifications Regarding OPDMDs

- Burden on entity to show the modification is not reasonable.
- Assessment is made regarding a *class* of devices, instead of an *individual's use* of the device.



# OPDMD Assessment Factors

Entities must consider the following specific assessment factors to determine whether a reasonable modification can be made:

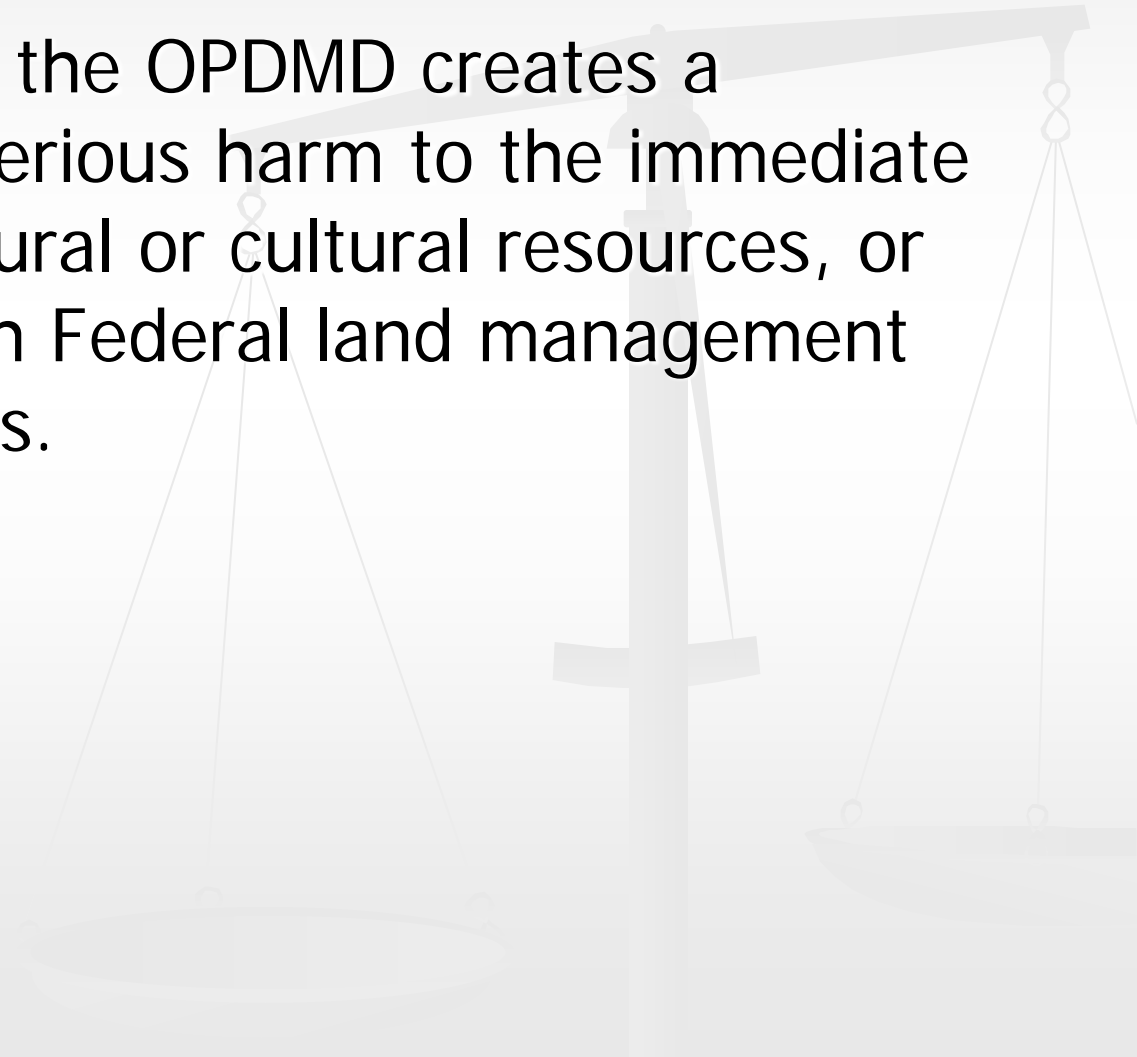
- The type, size, weight, dimensions, and speed of the device.
- The facility's volume of pedestrian traffic (may vary at different times of the day, week, month, or year).

# Assessment Factors: Continued

- The facility's design and operational characteristics (e.g., whether its business or services are 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).
- Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility.

# Assessment Factors: Continued

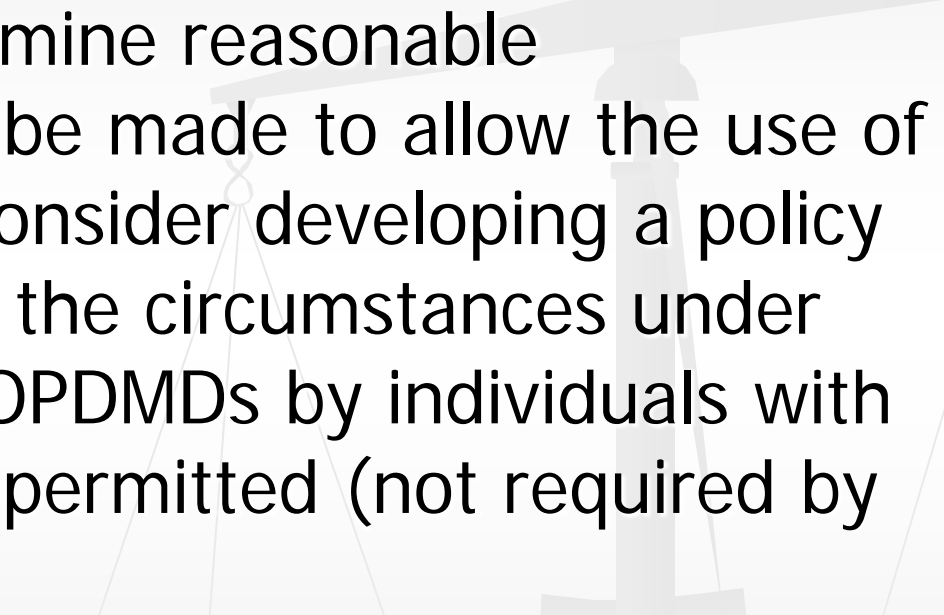
- Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.





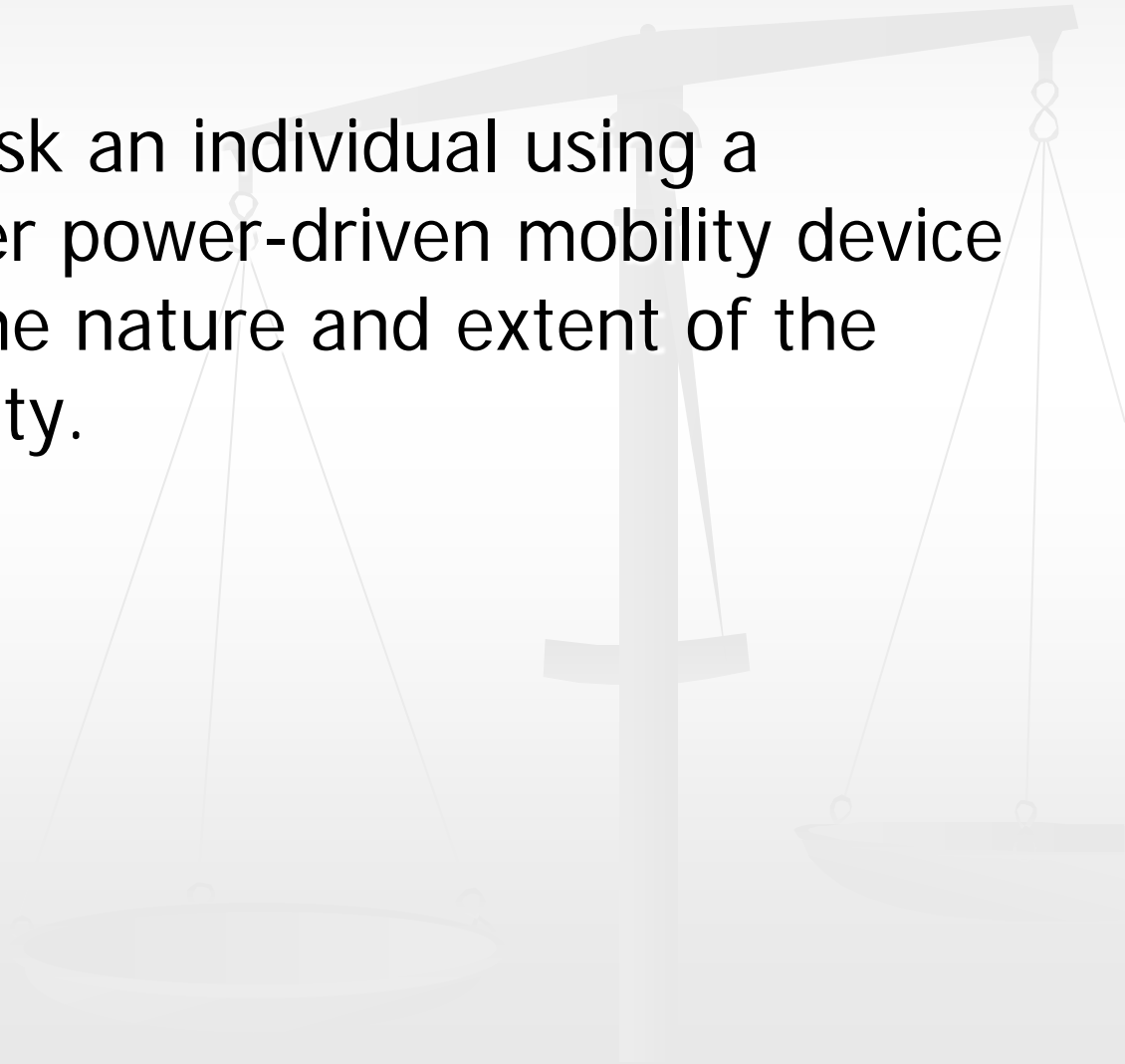
# Development of OPDMD Policies

Entities that determine reasonable modifications can be made to allow the use of OPDMDs should consider developing a policy that clearly states the circumstances under which the use of OPDMDs by individuals with disabilities will be permitted (not required by the rules).

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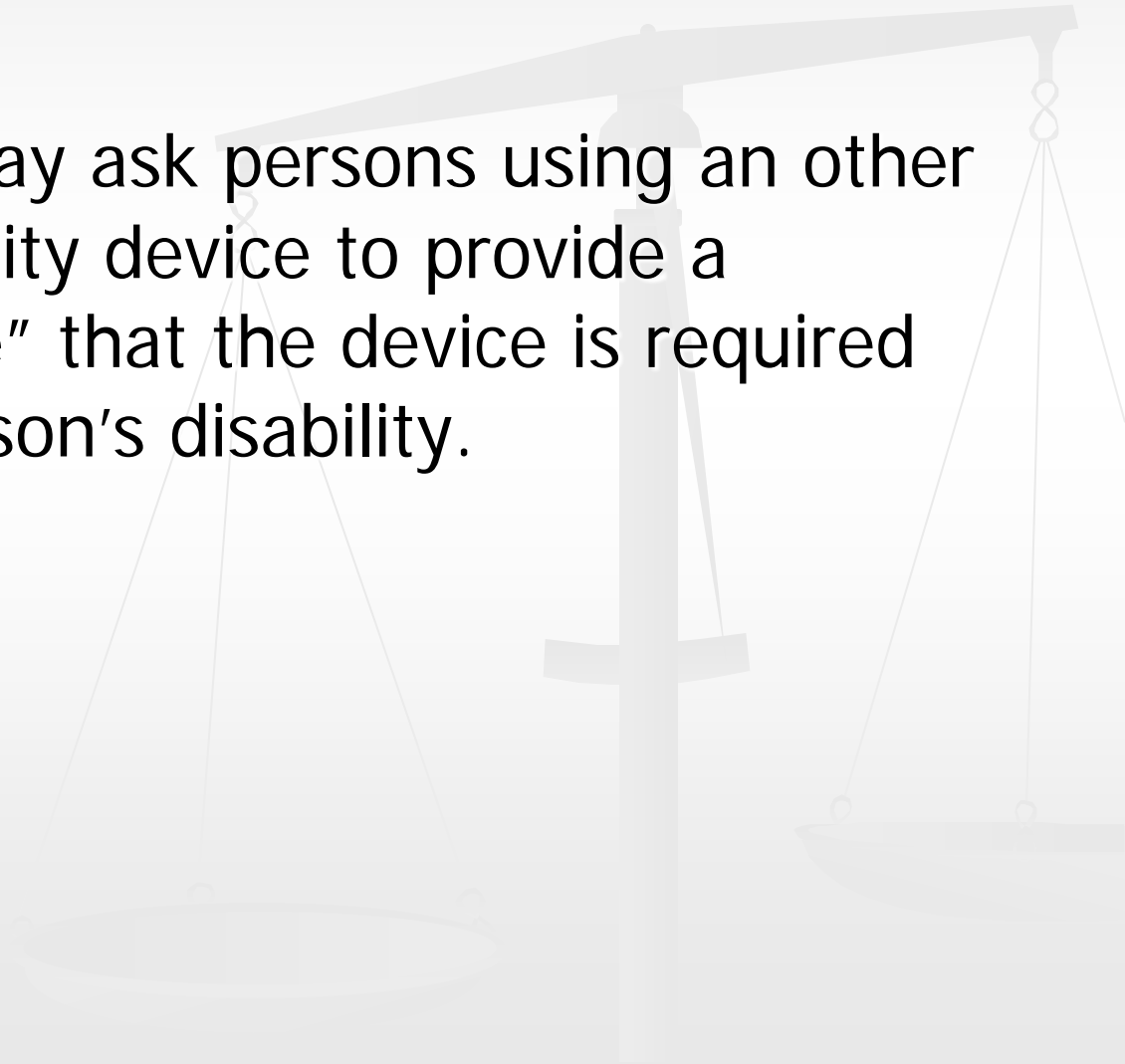
# Impermissible Questions

Entities may not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.



# Permissible Questions

Covered entities may ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person’s disability.



# Credible Assurances

- A valid, disability parking placard or card, or other State-issued proof of disability.
- A “valid” disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements.
- A verbal representation by the individual with a disability that is not contradicted by observable fact.

# Resources

Regulations, appendices, standards are available at DOJ's ADA web site at [www.ada.gov](http://www.ada.gov).

For answers to specific questions, DOJ toll-free confidential ADA information line:

**800-514-0301 (Voice)**

**800-514-0383 (TTY)**

ADA National Network of Centers:

800-949-4232 (Voice/TTY)

[www.adata.org](http://www.adata.org)