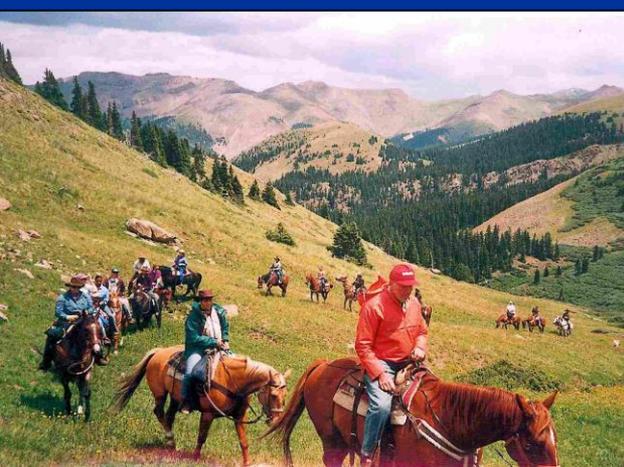


Essential Eligibility Criteria (EEC) A Risk Management Tool



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YOU!

Do you operate your program's activities—

- under funding from a State or local government
- as a private business open to the public?
- under, or from time to time use, a special use permit from a federal agency?

What's the point of this session?

- To provide you with basic information and hands on practice so you can create Essential Eligibility Criteria (EEC) for your program's activities.
- Why EEC?
 - From a practical and risk management perspective: it takes the guesswork out of who should participate.
 - From a civil rights perspective: it determines participation based on the EEC and applied equally to ALL.
 - EEC has been in the laws since 1973...
 - It's not new
 - It's not changing

Scope of Presentation

This presentation contains general information and is not intended to provide specific legal advice. Adventure and recreation providers should consult with legal counsel, regarding matters specific to their business or operation, and aware of the laws in their jurisdiction.

Basic Legal Framework

- Access to your programs: consideration of risk management and legal exposure issues related to all program participants.
- You are required, within limits of law, to provide integrated access to your programs for qualified people who have disabilities. No discrimination.

Rehabilitation Act: 29 USC 794; Titles II & III - Americans with Disabilities Act: 42 USC 12101, et seq.



Rehab. Act, Title II, and Federal agency CFRs:

Qualified person: one who can meet the essential eligibility criteria for participation in the program or activity

Rehab Act: 29 USC 794; 7 CFR 15e.103.4 (USDA); 43 CFR 17.202(k)(4)(USDO I); Title II
42 USC 12131(2) and 28 CFR 35.104.



Tool for Law's Complexity

- Healthy “Information Exchange” -- in this context:

Development of EEC to provide appropriate access to your programs for ALL participants – regardless of the presence of a disability!



EEC Practical Value

- The EEC invites inquiry and dialogue from ALL to discuss the individual's abilities, concerns, desire to participate, potential modifications and so forth.
- Importantly, EEC educates EVERYONE interested in participating – and – it educates YOU!
- *What EEC is not



EEC

■ *Purpose:*

- to establish who can participate in an activity based on participant's ability to perform the essential skills required for that activity –
 - focus: risk management considerations.

EEC

■ *Goal:*

- to give you and your potential participants the information needed to objectively evaluate if they have the ability to participate;
- Striving for a good fit for the participant and the program!

Example: *Possible basic E.E.C.* for Guided Whitewater Float Trip



Each participant must ...

- Be able to tolerate water between X and X degrees and bright sunlight for X minutes or more.
- Have the ability to follow verbal and/or visual instructions independently or with the assistance of a staff member/companion.

Example: *Possible basic E.E.C.* for Guided Whitewater Float Trip



Each participant must ...

- Be able to tolerate water between X and X degrees and bright sunlight for X minutes or more.
- Have the ability to follow verbal and/or visual instructions independently or with the assistance of a staff member / companion.



EEC Example continued....

Each participant must ...

- Wear all protective equipment recommended/required.
- Enter and exit the raft independently or with the assistance of a companion.
- Remain seated and balanced with the use of adaptive equipment if necessary.
 - Adaptive equipment must not inhibit a wet exit.



EEC Example continued...

- In the event of a capsizing each person must have the ability to independently:
 - get out from under the watercraft;
 - remain face up in the water with the aid of a lifejacket;
 - make progress to the shoreline.



EEC Example continued...

- *For rentals:* At least one person in the watercraft must have the ability to move it through the water in a stable manner and return it to the rental area.
- *For trips including overnight camping:* Mobility about the campsite independently or with the assistance of a companion.

E.E.C.

- Who writes the EEC for your program?
 - You do.
- How do you know it is correct?
 - Ask yourself...why each of the criteria is necessary. Does it address “safety”/risk management criteria?
 - Can you explain those reasons to someone else?
 - Can also check your EEC with the Federal agency and/or your legal counsel, as appropriate.
 - non-discriminatory language

E.E.C. must:

- Be written.
- List...in order of activity the basic physical and thinking abilities needed to participate – focused on risk management issues.
 - consider what a person must be able to do to avoid the most common causes of injury;
- Include if a companion can assist;
- Include rules / required etiquette.
- Use non-discriminatory language.
- Be edited for simplicity and reviewed, as appropriate, by legal counsel.
- Be applied to EACH potential participant.

Breakout Groups

1. Backpacking trip –multi-day; July, Death Valley, California.
2. Rock climbing – day trip; September, Washington
3. Backcountry Skiing; January, New Hampshire.
4. Winter camping-overnight; March, Colorado.
5. Mountain Biking- 1/2 trip; June, Vermont.
6. Horseback Riding –day trip; August, Virginia.

***Include the elevation you are assuming**

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- Be written.
- List...in order of activity the basic physical and thinking abilities needed to participate – focused on risk management issues.
 - consider what a person must be able to do to avoid the most common causes of injury;
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Post Your EEC:

Post your EEC in locations where you already provide information about your program :

- on websites
- in brochures
- in health or medical form
- in participant agreement
- ETC.

Then apply the EEC to each person seeking to participate in the program.

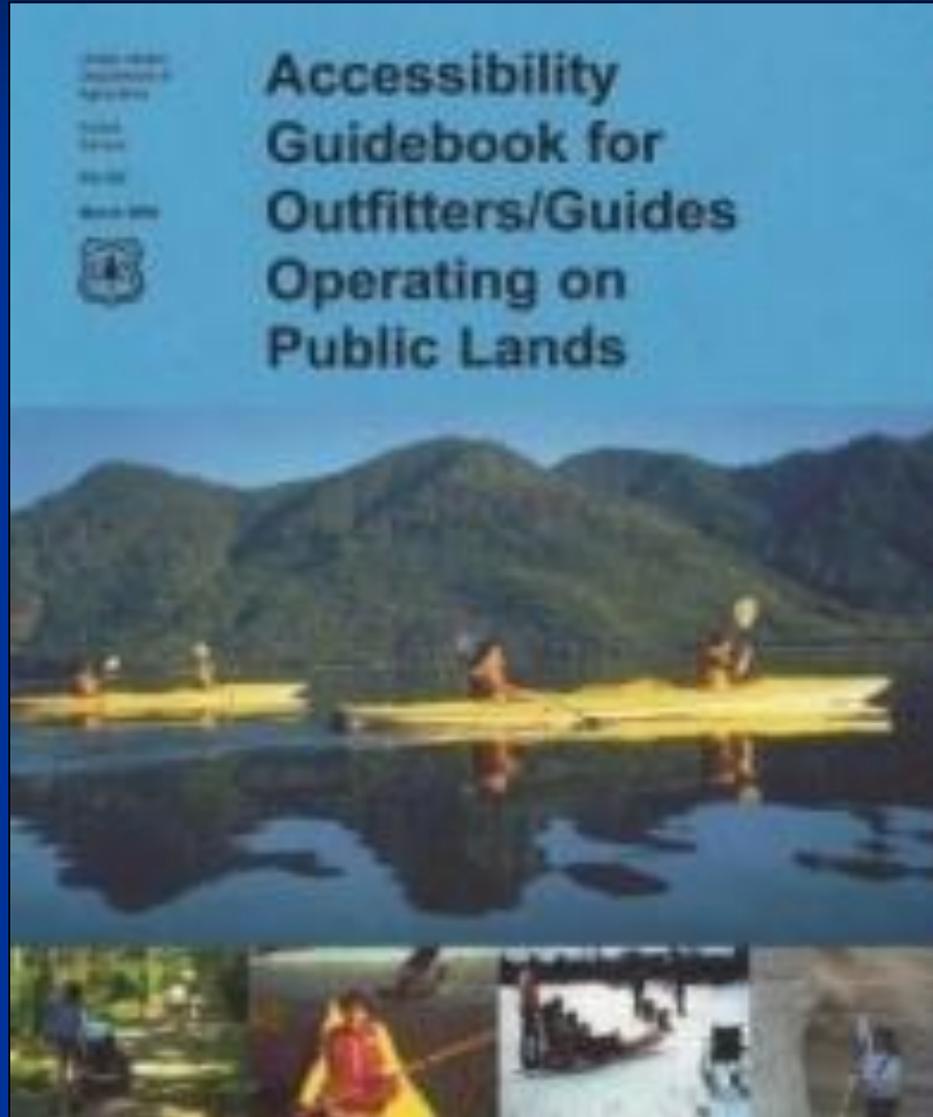
ADA Technical Assistance Centers

- Pat Going (Rocky Mountain ADA Center)
- 10 ADA Technical Centers in U.S.: your resource for information regarding disabilities, outreach and facility accessibility. (funded by Dept. of Education)
- Call 800-514-0301 to be connected to the closest Center.



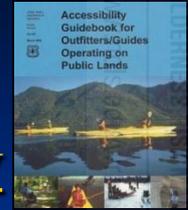
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USFS Resource



Resources

- www.fs.fed.us/recreation/programs/accessibility
Accessibility Guidebook for Outfitters and Guides Operating on Public Lands
- www.adata.org ADA Tech Assistance Centers
 - 800-949-4232
- www.ada.gov -- small business information, tax credit info, etc.
- ADA Information Line (DOJ)
 - 800-514-0301
- www.access-board.gov ---info on facility accessibility guidelines.



Action Steps

for 2010 WRMC EEC Workshop

- 1) Arrange a short staff training or meeting to inform your staff about the importance of developing Essential Eligibility Criteria (EEC)
 - and provide them with the telephone number and e-mail for their regional DBTAC (ADA Technical Assistance Center) office.

- 2) Develop EEC.
 - Select one activity your organization offers and develop EEC for that activity.
 - Distribute the newly developed EEC to your staff for feedback.
 - Repeat these two steps until you have developed EEC for all of your organization's activities.

- 3) Post the EEC for your organization on your website, with input, as appropriate, from your legal counsel.



BASIC LEGAL FRAMEWORK

Access to programs for those with disabilities:

- **Rehabilitation Act:** 29 USC 794

Programs or activities receiving federal financial assistance, including those under permit with those (e.g. USFS, NPS, BLM)

- **Americans with Disabilities Act:** 42 USC 12101

- **Title II:** 42 USC 12131 – state and local govt. entities

- **Title III:** 42 USC 12181 – private entities that own, lease (or leases to), or operates a place of “public accommodation”



Definition of Disability:

Disability: a physical or mental impairment that substantially limits one or more major life activities of such individual;

“Major Life Activities”.=

- (A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- (B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(ADA Amendment Act of 2008 Section 102 - also applies to Section 504)

Basic Premise

- No discrimination in access to programs, activities and facilities for those with disabilities!
- Individual with a disability: 1) impairment that limits one or more major life activities, 2) has a record of an impairment, 3) is regarded as having an impairment.
- Can't always know, 85% of disabilities are unseen, so need a clear way to comply!



LAW LIMITS

Modifications need only be “reasonable” modifications not required (by definition Unreasonable) IF:

- Undue Burden
- Fundamental Alteration in Programs or Activities
- Direct Threat to Safety of Others



Canoeing and Kayaking for People With Disabilities



Canoeing and Kayaking for People With Disabilities

Zeller

American Canoe Association



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WRMRC



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