

Sampling of Existing OPDMD Policies/Processes for Discussion

Test your knowledge- Are the following in line with the DOJ OPDMD Rule requirements?

Do the following policies fit the DOJ Assessment Factors?

- “Trails designated for hiking, interpretation, horseback-riding, cross-country skiing, biking, and mountain biking are open to individuals with mobility disabilities using wheelchairs, but not open to OPDMDs due to assessment factors (i), (ii), (iv) and (v). OPDMDs pose a legitimate safety threat to other individuals using the trails and they pose a substantial risk to the natural and cultural resources associated with the trails, and by their nature they disturb the intended trail experience”.

Problem: too broad, the DOJ Rule requires designations as to which classes of OPDMDs are allowed where to be made based on the assessment of the specific locations because conditions vary from place to place.

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- “ATVs, golf carts, or other power-driven mobility devices, are not recognized as appropriate devices for park trails, bike paths and greenway trails for the following reasons:
 - The slope of the natural terrain, which may exceed 5%.
 - The congestion of foot traffic on the shared paths of the facility.
 - Manufacturer’s recommendation for helmet and protective equipment for riders.
 - The unrealistic administrative burden of identifying FDA-approval or speed, weight and safety features of each device upon entry, including any form of assessment of rider abilities; or managing pedestrian traffic throughout the facility for separated movement”.

Problem: the DOJ Rule requires designations as to which classes of OPDMDs are allowed where to be made based on one or more of the 5 Assessment Factors included in the Rule. Once those designations have been made, requirements for all users of that class of OPDMD – such as the wearing of helmets can be part of the operating requirements. However such requirements must be met by all, including employees using that class of device.

Problem: too broad, designations as to which classes of OPDMDs are allowed where to be made based on the assessment of the specific locations because conditions vary from place to place.

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Do the following processes fit the DOJ Prior Notice Requirements?

- “Upon arriving at the site, individuals with mobility disabilities using OPDMDs must check in at the site office prior to use of the OPDMD on a trail or roadway to ensure its use is acceptable at that site”.

Problem: The DOJ Rule requires the information as to which classes of OPDMDs are allowed in the specific location be available before the individual arrives at the site. Therefore requiring the person to gain approval after they arrive at the site is contrary to the Rule’s requirements.

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- “County may issue a permit to use an OPDMD in areas prohibited if it determines that a unique situation applies and special conditions can be placed on the use that would make it safe to operate the OPDMD or prevent serious harm to the environment or natural or cultural resources. In these situations, special circumstances permission should be requested 7 days in advance of arrival date.”

Problem: The DOJ Rule requires the designations of which type of OPDMD is allowed to be used in specific locations be made before the individual with a mobility disability requests the use of a specific class of device. Therefore requiring individuals to complete a request process in advance of arrival is contrary to the Rule.

Problem: The information as to which classes of OPDMDs are allowed in the specific location is required to be readily available before the individual arrives at the site. The above policy doesn't meet that requirement.

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- “As technology advances and new devices are developed, public use patterns change, and impacts to natural and cultural resources are reevaluated. Orange County Parks may modify the type of OPDMD permissible within specific facilities on specific trails as necessary. Please check this site regularly for updates to these guidelines.”

Good additional reminder to web user viewing the listings of trails and the motorized devices allowed on each. While not required in the Rule, this additional user reminder doesn't conflict with the Rule either.

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Advance Notice of Policy

“Natural Areas information about the devices that may be used is posted on the City Website <http://www.fcgov.com/naturalareas/recreation.php> so that the public can easily access the information before going to a particular natural area. The posted information includes the classes of devices that may be used, rules related to that use, and who to contact for more information. Rules may also be posted on the natural area site or at the trailhead.

Good web direction to point users to the exact place within the website where the information about the use of classes of devices in specific locations is available.

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Does the following process fit the DOJ Identification Requirement?

- “a permit system in which someone wanting to use an electric vehicle for the trail would apply and show a doctor's note about the disability.”

Problem: The DOJ Rule is specific “An entity that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability, as a credible assurance that the use of the other power-driven mobility device is for the

individual’s mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, an entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.” No additional documentation, such as a Doctors’ note about the disability is to be required. No individual with a disability is to be asked about the specifics of their disability.

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Interim Policy Statements

- “Special access requests will be processed on a case-by-case basis until the time in which an assessment of all public trails managed by the Authority has been conducted in accordance with federal guidelines.”

Problem: This is a well-intended attempt by an entity to deal with requests until they complete the assessment of their trails. However the Rule requires the designations as to which class of OPDMD is allowed are to have been made before an individual with a mobility disability requests use of that class of device. The Rule doesn’t provide for “interim” policies. A reminder: once the effective date (3/15/2011) is past the entity can have legal action taken against it for not complying with the requirements in the Rule.

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- “While these evaluations are in progress, we invite persons with mobility disabilities to contact us about use of devices that are currently prohibited to other park users (i.e., motorized OPDMDs) but may provide you with better access in a safe manner, considerate of natural resources. We are also in communication with state agencies and community park and recreation systems to develop a plan that may be consistently applied throughout the state.”

Problem: This is also a well-intended attempt by an entity to deal with requests until they complete the assessment of their trails. However the Rule requires the designations as to which class of OPDMD is allowed are to have been made before an individual with a mobility disability requests use of that class of device. The Rule doesn’t provide for “interim” policies. A reminder: once past the effective date (3/15/2011) the entity can have legal action taken against it for not complying with the requirements in the Rule.

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Important to include with trail information (post on website and other locations of trail user information):

Any device that meets the Americans with Disabilities Act (ADA) definition of a wheelchair is allowed to be used wherever foot travel is allowed. ADA defines a wheelchair as “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.”

Resources: www.americantrails.org

(American Trails - click "Resources" then select "Accessibility")

www.ada.gov (DOJ website)

DOJ ADA Technical Assistance line: 800-514-0301

Information provided by Janet Zeller, U.S. Forest Service, National Accessibility Program Manager, jzeller@fs.fed.us