

4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[LLWO430000.L12200000.XM0000.20x 24 1A]

RIN 1004-AE72

Increasing Recreational Opportunities through the Use of Electric Bikes

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its off-road vehicle (ORV) regulations at 43 CFR Part 8340 to add a definition for electric bikes (e-bikes) and, where certain criteria are met and an authorized officer expressly determines through a formal decision that e-bikes should be treated the same as non-motorized bicycles, expressly exempt those e-bikes from the definition of ORV at 43 CFR 8340.0-5(a). The regulatory change effectuated by this rule has the potential to facilitate increased recreational opportunities for all Americans, especially those with physical limitations, and could encourage additional enjoyment of lands and waters managed by the BLM.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Britta Nelson, National Conservation Lands and Community Partnerships, 303-236-0539. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, 7

days a week, to leave a message or question with the previously mentioned point of contact. You will receive a reply during normal business hours.

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I. Background

The Federal Land Policy and Management Act (FLPMA) directs the BLM to manage public lands for multiple use and sustained yield (unless otherwise provided by law) and to provide for outdoor recreation (43 U.S.C. 1702). Many visitors ride bicycles on BLM-managed public lands. Improvements in bicycle technology have made bicycling an option for more people and have made public lands more accessible to cyclists. One bicycle design modification growing in popularity is the addition of a small electric motor that provides power assistance to the rider and reduces the physical exertion required. Electric bicycles (also known as e-bikes) are available in an ever-expanding range of design types (urban commuter, full suspension mountain, fat-tire, gear hauler bikes, etc.) and electric assist capabilities (limited by speed, wattage, output algorithms, etc.). E-bikes are commonly used in different capacities, such as transportation and recreation.

By reducing the physical demand associated with bicycling, e-bikes expand recreational opportunities for the public, including for people with limitations stemming from age, illness, disability, or fitness, and in more challenging environments, such as high altitudes or mountainous terrain. The presence of a small electric motor on e-bikes, however, has created

uncertainty about whether e-bikes should be treated in the same manner as other types of non-motorized bicycles or as ORVs subject to the BLM's regulations at 43 CFR Part 8340.

On August 29, 2019, the Secretary of the Interior issued Secretary's Order (SO) 3376 to address regulatory uncertainty regarding how agencies within the Department of the Interior (DOI) manage e-bikes. Specifically, SO 3376 sets forth the general policy of the DOI that e-bikes should be allowed where non-motorized types of bicycles are allowed and not allowed where non-motorized types of bicycles are prohibited. SO 3376 directs the BLM to revise its ORV regulations at 43 CFR 8340.0-5 to be consistent with SO 3376. The Bureau of Reclamation, U.S. Fish and Wildlife Service, and National Park Service are also revising their regulations for consistency with SO 3376.

II. Discussion of the Final Rule and Comments on the Proposed Rule

The BLM published a proposed rule on April 10, 2020 (85 FR 20229), soliciting public comments for 60 days. During the comment period, the BLM received almost 24,000 submissions from members of the public, including senior citizens, avid cyclists, hikers, equestrians and equestrian associations, and cycling organizations and manufacturers, as well as state and local governments. Each public comment was considered in the development of the final rule. Many comments were supportive of the proposed rule, with some expressing support for increased opportunities for people to ride e-bikes on public lands and for e-bikes to be treated similarly to traditional, non-motorized bikes by land managers. The BLM also received comments that were critical of the proposed rule. Some of these comments expressed concern over potential user conflicts or resource damage that may result from allowing e-bikes on roads and trails that are currently closed to ORVs. Meanwhile, some comments expressed a desire for consistency in the management of e-bikes across different agencies.

In the proposed rule, the BLM requested information from the public on the potential social and physical impacts of e-bike use on public lands. Studies and reports were provided in conjunction with many of the comments and cover a variety of topics, such as safety, hazards, health benefits, user conflict, attitudes and perceptions, elk behavior, soil displacement, speed comparisons, impacts to grizzly bears, snowmobiles, impacts to wildlife, impacts of roads, strategic planning, crash likelihood, and battery flammability. While some studies and reports address e-bikes specifically, others do not. Many studies extrapolate their findings to e-bike use, management, and effects. The BLM considered these studies and reports while developing the final rule.

Comments received that are similar in nature have been categorized by subject and, in some instances, have been combined with related comments.

Discussion of Comments by Topic

Need for a Rule

Comment: Some commenters stated that the rule would be inconsistent with the direction in Executive Order (EO) 11644, “Use of Off-Road Vehicles on the Public Lands.” These commenters assert that the rule’s exclusion of e-bikes from the ORV requirements of this EO is arbitrary and capricious.

Response: EO 11644 was issued by President Nixon in 1972 and amended by President Carter in 1977 (EO 11989). It establishes policies and procedures for managing the use of ORVs to protect the resources of the public lands, promote safety of all users of the lands, and minimize conflicts among those users. The EO defines ORVs as any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain. Certain vehicles that would otherwise fall within this broad

definition are expressly excluded, including, but not limited to, any registered motorboat; any fire, military, emergency, or law enforcement vehicle when used for emergency purposes; and any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract. Under the EO, the administrative designation of the specific areas and trails on which the use of ORVs may be permitted must be based on specific criteria designed to protect resources, promote user safety, and minimize conflicts among the various uses of public lands.

E-bikes are not referenced in EO 11644, which is not surprising given that the technological advances needed to popularize them, such as torque motors and power controls, were not developed until the mid-1990s. While the e-bikes addressed in this rule have a small electric motor and are capable of cross-country travel over land, there are multiple reasons why it is reasonable to provide authorized officers with discretion to manage Class 1, 2, and 3 e-bikes in the same manner as non-motorized bicycles and unlike ORVs, where appropriate.

First, providing authorized officers with discretion to manage e-bikes similar to non-motorized bicycles in certain instances does not undercut the EO's intent. EO 11644 was designed to address the expanding and wholly unregulated use of ORVs on public lands, much of which involved cross-country travel that did not occur on identified roads and trails and was harming historical and archaeological sites, among other resources. Such use was also putting ORV users at risk, particularly due to the existence of uncovered abandoned mine shafts on public lands. By comparison, the Class 1, 2, and 3 e-bike use that could be allowed under this rule would be limited to roads and trails that traditional, non-motorized bicycles can already use. Therefore, users will not likely expose resources or themselves to the type of harm that EO 11644 was intended to mitigate.

Second, the Class 1, 2, and 3 e-bikes that are the subject of this rule differ significantly in their engineering from the types of ORVs that are identified in EO 11644 and that the Executive Branch sought to regulate in 1972. These vehicles include the “motorcycles, mini-bikes, trial bikes, snowmobiles, dune-buggies, [and] all-terrain vehicles,” which are expressly referenced in EO 11644. They also include “motorcycles of various sorts (minibikes, dirt bikes, enduros, motocross bikes, etc.), four-wheel drive vehicles such as Jeeps, Land Rovers, or pickups, snowmobiles, dune buggies, and all-terrain vehicles” mentioned in a 1979 report by the Council on Environmental Quality (CEQ) that discusses the requirements of EO 11644 in great detail and evaluates efforts undertaken by federal land management agencies to comply with them. Although EO 11644 and the CEQ report did not attempt to list every type of vehicle that may fall within the definition of ORV, the marked differences in the overall design and function between the identified vehicles and Class 1, 2, and 3 e-bikes is telling. The clearly-identified ORVs have internal combustion engines and do not have pedals or other design features that allow for human propulsion. To be treated similar to a non-motorized bicycle under this rule, however, an e-bike must have operable pedals, be capable of relying on human power, and only derive some assistance from a small, electric motor. Moreover, the ORVs that the EO clearly applies to are uniformly larger, louder, and, due to their more powerful engines, capable of achieving greater speeds than Class 1, 2, and 3 e-bikes.

Third, as a result of the aforementioned engineering differences, e-bikes, unlike the larger, more powerful vehicles referenced in EO 11644 tend to affect resources and other public land users in a manner and scope similar to traditional, non-motorized bicycles. Allowing e-bikes on roads and trails that are already open to non-motorized bike use will therefore not result in the types of resource impacts and user conflicts that EO 11644 was designed to address. For

example, the ORVs referenced in EO 11644 and the 1979 CEQ report are powered by internal combustion engines that generate loud noises (i.e., anywhere from 90-110 decibels, depending on the type of vehicle), which are capable of carrying over long distances. The noise associated with e-bikes includes the sound of their tires rolling over a road or trail and, at most, a low, steady whine that may be emitted when the electric motor is engaged. While the effects of noise on wildlife differ across taxonomic groups and reactions to sound are different for every visitor, the impacts on quietude, wildlife behavioral patterns, and other recreational uses caused by e-bikes are expected to be similar to those caused by traditional, non-motorized bicycles and substantially less than those resulting from typical motor vehicle use or even the vehicles listed in the EO. Also, unlike those latter vehicles, e-bikes do not emit exhaust that could impact air quality and the health of nearby users. Finally, a review of available models shows that Class 1, 2, and 3 e-bikes are generally much lighter than even the lightest ORV listed in the EO. A typical e-bike weighs approximately 45-50 pounds, which is only slightly heavier than a typical traditional, non-motorized bicycle's weight of 30-35 pounds. In comparison, minibikes, which are the lightest ORV listed in EO 11644, weigh an average of 115-130 pounds, typical trial bikes can weigh 145 pounds, and motorcycles can weigh approximately 300-400 pounds. The significantly lower weight of e-bikes, combined with the lower levels of torque that they are capable of generating, and the lower speeds that they are capable of reaching, limit their potential to cause soil compaction and erosion. This was demonstrated by a recent study conducted by the International Mountain Bicycling Association. That study, which measured relative levels of soil displacement and erosion resulting from traditional, non-motorized mountain bikes, e-bikes, and gasoline-powered dirt bikes, found that soil displacement and tread disturbance from e-bikes and traditional, non-motorized mountain bikes were not significantly different, and both were much

less than those associated with gas-powered dirt bikes. Although the study focused on the impacts from Class 1 e-bikes, it is likely that the impacts would be similar for Class 2 e-bikes. Both classes provide motorized assistance up to 20 miles per hour and, under this rule, Class 2 e-bikes may not be ridden in throttle-only actuation for extended periods of time. Class 3 e-bikes, which aside from providing motorized assistance up to 28 miles per hour, are generally similar in design, engineering, size, and weight to Class 1 e-bikes.

Fourth, managing Class 1, 2, and 3 e-bikes similarly to traditional, non-motorized bicycles and distinguishing them from other motor vehicles is consistent with how other federal agencies regulate e-bikes. Defined by Congress in the Consumer Product Safety Act (Pub. L. 107-319, Dec. 4, 2002; codified at 15 U.S.C. 2085) as low-speed electric bicycles, e-bikes are not considered to be motor vehicles under 49 U.S.C. 30102; therefore, they are not subject to regulation by the National Highway Traffic Safety Administration. Instead, e-bikes are regulated similarly to non-motorized bicycles and considered consumer products regulated by the Consumer Product Safety Commission.

Comment: Some commenters stated that the rule is unnecessary because the BLM manages sufficient motorized trails for e-bikes.

Response: The BLM currently manages, and will continue to manage, motorized trails for e-bikes, among other uses. The popularity of e-bikes, however, is increasing significantly. Market research from the NPD Group's bicycle industry statistics from 2018 shows that e-bikes are currently the fastest growing bicycle type in the market with e-bike sales totaling \$77.1 million in 2017, up 91% from 2016, with sales of e-bikes growing more than eight-fold since 2014. Considering e-bikes' growing popularity, the BLM needs additional administrative tools to regulate them appropriately. This rule will provide authorized officers with greater flexibility

to manage e-bikes in the future and enable BLM's management of e-bikes to be more consistent with the approach of adjacent land managers and other DOI agencies.

Comment: Some commenters stated that the BLM does not need a rulemaking to designate trail access for e-bikes, where appropriate.

Response: This final rule provides additional specificity regarding how the BLM may allow the use of e-bikes, or classes of e-bikes, on non-motorized roads and trails; clarifies that, under certain conditions, e-bikes are to be treated similarly to traditional bicycles; and provides authorized officers the discretion to treat them accordingly. Under existing regulations, e-bikes are managed as ORVs and can be allowed, based on site-specific considerations, on roads and trails that are located in areas designated as "Open" or "Limited" to ORV use in applicable land use plans. E-bikes are not currently allowed in areas that land use plans have closed to ORV use, some of which contain roads and trails available to traditional, non-motorized bicycles. Because this rule provides authorized officers with discretion to issue a decision that excludes Class 1, 2, and 3 e-bikes from the definition of ORVs at 43 CFR 8340.0-5(a), the final rule could facilitate e-bike use on roads and trails in areas that are closed to ORV use and help the BLM achieve its goal of providing greater access to public lands, particularly to people with limitations.

Comment: Several commenters suggested that the BLM should abandon the rulemaking and that the DOI should fund additional studies to consider the impacts of e-bikes on public lands.

Response: The BLM considered the studies and reports received in response to the BLM's request for information on the proposed rule and determined that the current body of literature supports its decision to empower authorized officers to allow e-bikes on non-motorized roads and trails. The current literature indicates that e-bikes do not tend to be more dangerous

than traditional, non-motorized bicycles and that e-bikes and non-motorized bicycles have similar impacts on public health and safety. Where e-bike accidents do occur, they tend to involve a single e-bike during mounting and dismounting and are less likely to involve other road users. The current body of literature also indicates that e-bikes displace soil and contribute to erosion in ways that are similar to traditional, non-motorized bicycles. Moreover, a 2019 review conducted by Boulder County, Colorado, found little in the literature to suggest that e-bikes are more likely to impact wildlife differently than traditional, non-motorized bicycles.

In sum, the current body of literature is sufficient for the BLM to conclude that the differences in impacts between e-bikes and non-motorized bicycles will, at most, likely be minor. The BLM recognizes, however, that e-bikes are an emerging technology and acknowledges that the body of literature on e-bikes will increase over time. Authorized officers will have the opportunity to consider new scientific and other relevant information when determining whether to authorize e-bikes on non-motorized roads and trails through future site-specific decision-making processes.

Comment: Some commenters stated that the BLM failed to provide a reasoned explanation for the proposed changes in defining e-bikes as non-motorized. Several commenters suggested that the BLM continue to manage e-bikes as ORVs.

Response: As previously noted, allowing authorized officers to exclude e-bikes from the definition of ORV in certain situations will help the BLM account for the fact that, in both their engineering and impacts, e-bikes are more like traditional, non-motorized bicycles than other motorized vehicles. The rule change will also help align how agencies across the DOI regulate e-bikes and make the BLM's regulation of e-bikes more consistent with that of other non-DOI federal agencies, such as the National Highway Traffic Safety Administration and the Consumer

Product Safety Commission. Finally, because the rule will provide authorized officers with the authority to allow e-bikes on roads and trails that are located within “OHV Closed” areas under applicable land use plans, the rule will help fulfill the DOI’s policy of increasing recreational opportunities for all Americans, especially those with physical limitations.

Comment: Some commenters stated that the rule does not reconcile a discrepancy with the BLM’s Travel and Transportation Management Manual.

Response: After publication of this final rule, the BLM may determine it is necessary to update agency policy, including manuals, handbooks, and other guidance materials, for consistency with the new rule.

User Conflicts

Comment: Several commenters expressed concern about potential conflicts between e-bikes and other users of public lands. These concerns included potential safety issues from user interactions and speed differences between e-bike users and equestrians or hikers. These commenters suggested that increased e-bike use would cause certain users to avoid using trails where these conflicts could occur and could change the visitation patterns of existing trail users. Some commenters stated the rule may lead to “technological displacement,” whereby recreational users with new and more advanced forms of transportation degrade the experience of and displace traditional users.

Response: The BLM will consider potential conflicts with other users when considering whether Class 1, 2, or 3 e-bikes should be allowed on specific roads and trails through future planning or implementation-level decision-making processes. While the existing body of literature demonstrates that e-bikes tend to be ridden in a manner similar to traditional, non-motorized bicycles and are generally compatible with existing recreational uses of BLM-

managed roads and trails that are already open to traditional bicycle use, the agency recognizes that there may be situations where that is not the case. The BLM also recognizes that new technologies can, in some situations, result in the displacement of other, less technologically advanced recreational uses. The BLM will consider potential conflicts between e-bikes and other recreational uses on individual roads and trails through future National Environmental Policy Act (NEPA) processes before any new e-bike use is authorized.

Comment: Commenters stated that the BLM needs to analyze the potential liability that could result from e-bike accidents and injuries before finalizing a rule.

Response: The BLM will consider potential user conflicts and other public health and safety concerns in accordance with applicable law as part of a site-specific analysis. In the event that accidents or injuries were to occur as a result of or in conjunction with e-bike use, liability, if any, would be determined in accordance with applicable laws, which may include the Federal Tort Claims Act.

Comment: Some commenters expressed a concern that the rule would result in existing motorized trail opportunities being lost if those trails are reclassified for the exclusive use of bikes or e-bikes.

Response: The final rule will allow the BLM more flexibility to increase e-bike opportunities on existing non-motorized trails without reclassifying existing ORV trails. Under this rule, Class 1, 2, and 3 e-bikes may be excluded from the definition of ORV and thereby allowed on certain non-motorized roads or trails where they were previously prohibited. The rule would not affect the use of e-bikes or other motorized vehicles on the use of roads and trails where ORV use is currently allowed.

Economic and Threshold Analysis

Comment: Several commenters disagreed with conclusions in the Economic and Threshold Analysis that the rule would not impact public safety.

Response: This rule is not self-executing—it does not authorize any new e-bike use on BLM-managed roads and trails—and does not have any direct impacts on public safety. The BLM prepared an Economic and Threshold Analysis for the proposed rule, which concluded that the rule itself would not adversely affect, in a substantial way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The Economic and Threshold Analysis and proposed rule discussed the potential for an increase in conflicts among trail users following site-specific implementation of the rule, as well as an increase in the risk of injury or need for rescue. The existing body of literature concerning the impacts of e-bikes suggests, however, that the potential for conflicts and an increase in the risk of injury is likely to be low. Studies from Europe that focus on commuter use found that e-bike use results in accidents and hospital admissions at a similar rate to conventional, non-motorized bicycle use. Another study found that the road situations in which crashes occur do not differ between e-bikes and traditional bikes and that crashes with e-bikes are about equally severe as crashes with traditional bikes. Still another study showed riders of e-bike and traditional, non-motorized bicycles exhibit similar safety behavior. Given differences in current use across sites, potential e-bike use, and visitor preferences, it is not feasible to estimate the net effect of e-bike use across all BLM road and trails at this time. Therefore, based on the existing literature, the BLM concludes that e-bike use will likely have minimal impacts on public safety.

Comment: Some commenters suggested that the economic consequences of the displacement of traditional trail users must be addressed in the final rule.

Response: The rule is not self-executing, so no users will be displaced as a result of the rule. Potential conflicts between users will be evaluated in a site-specific analysis.

National Environmental Policy Act (NEPA) Analysis

Comment: Commenters stated that the rule disregards research demonstrating adverse impacts from e-bikes and has not analyzed e-bike compatibility.

Response: The body of research on impacts and compatibility of e-bike use is still developing. For that reason, as discussed earlier, the BLM's proposed rule requested information from the public on the potential social and physical impacts of e-bike use on public lands. The BLM received many studies and reports in response to its request, which it reviewed and considered in coordination with the other DOI agencies promulgating e-bike rules. Although not all the studies and reports specifically addressed e-bike use, many of them contained useful information that the BLM considered when drafting this final rule. For example, they demonstrated that the public tends to ride e-bikes and traditional, non-motorized bicycles at similar speeds. In one survey of bikes on county trails, the average e-bike speed was less (13.8 miles per hour (mph)) than the average conventional bike speed (14.5 mph). Other studies found that on-road, e-bike riders (13.3 kilometers per hour (kph)) achieved higher speeds than regular bicyclists (10.4 kph), but shared use path (greenway) speeds of e-bike riders (11.0 kph) were lower than regular bicyclists (12.6 kph), and that average riding speed on an e-mountain bike was approximately 4 mph faster than speeds on a conventional mountain bike.

Another study, which found that e-bike users are equally likely to be admitted to hospitals as traditional bike users if they need treatment at an emergency department after a bicycle crash, demonstrated that e-bikes and traditional, non-motorized bicycles have similar impacts on public health. Other studies demonstrated that all forms of recreation may have

negative impacts on wildlife behavior and habitat and that elk tend to avoid areas where humans recreate, resulting in habitat compression. Many of these studies, however, did not address e-bikes specifically, and none of them conclusively demonstrated that e-bikes have more adverse impacts on wildlife than non-motorized bicycles.

Authorized officers will account for the information in these studies, as well as any relevant future studies, when considering whether to authorize the use of e-bikes on non-motorized roads and trails. These studies will be particularly useful at the site-specific level, where more detailed information on potential effects will be available and authorized officers can consider specific user incompatibility, resource impacts, and other issues.

Comment: Some commenters asserted that the rule cannot be categorically excluded under 43 CFR 46.210(i) because it is not “of an administrative, financial, legal, technical, or procedural nature.”

Response: This rule is administrative and procedural in nature and satisfies the first prong of the categorical exclusion at 43 CFR 46.210(i). The rule is not self-executing and does not authorize the use of any e-bikes use in areas where e-bikes are currently not allowed. The rule merely establishes a definition of e-bikes and creates a process for authorized officers to consider when determining whether to authorize e-bike use on public lands. That process describes how authorized officers will consider whether to allow for e-bike use on roads and trails. The rule preserves authorized officers’ discretion to either approve or deny the use of e-bikes on roads and trails and to impose limitations or restrictions on authorized e-bike use to minimize impacts on resources and conflicts with other recreational uses. Additionally, the rule maintains the public’s ability to participate in any such BLM decision-making process. When considering whether to allow Class 1, 2, and 3 e-bikes on non-motorized roads and trails, the

BLM must comply with NEPA and other laws providing for public participation. Before deciding to authorize e-bike use, the BLM will consider comments it receives from Federal, state, county, and local agencies, Tribes, local landowners, and other interested members of the public. Under BLM policy, application of the minimization criteria identified in EO 11644 and incorporated into 43 CFR 8342.1 involves limiting the degree or magnitude of the action, as those terms are defined in the CEQ's NEPA regulations. Although this rule would not require the BLM to apply the minimization criteria to authorize e-bike use on non-motorized roads and trails, the BLM's legal obligation to consider the degree or magnitude of impacts associated with e-bike use through the NEPA process will nonetheless facilitate the minimization of impacts on resources and users. The rule, because it is administrative and procedural in nature and would not result in any on-the-ground changes or other environmental effects, satisfies the first prong of the categorical exclusion at 43 CFR 46.210(i).

Comment: Some commenters requested an environmental assessment or environmental impact statement to analyze the environmental consequences of the rulemaking to help inform future decisions about whether to authorize e-bike use. These commenters stated that the rule cannot be categorically excluded under 43 CFR 46.210(i) because the environmental effects are not "too broad, speculative, or conjectural to lend themselves to meaningful analysis."

Response: This rule also satisfies the second prong of the categorical exclusion at 43 CFR 46.210(i). Unlike some rules, this rule is not suited to the preparation of a NEPA analysis from which future site-specific analyses can tier. The future implementation of the procedures in this rule is uncertain. Moreover, the environmental consequences from any such future implementation would be evaluated in future NEPA documents but at this time are too broad, speculative, and conjectural to evaluate meaningfully. As discussed previously in this rule, the

body of literature concerning the impacts of e-bike use is still developing. While the existing literature demonstrates that the general impacts associated with e-bikes are very similar to those from traditional, non-motorized bicycles, the actual impacts that may result from allowing e-bikes on roads and trails on which non-motorized bicycles are allowed will depend primarily on the site-specific conditions of the roads and trails on which e-bike use is contemplated. These conditions vary significantly across BLM-managed lands and, as a result, given existing literature, are currently too speculative to lend themselves to meaningful analysis at a Bureau-wide scale. For example, some roads and trails may be on sagebrush steppe or high plateaus, while others are in Eastern hardwood forests and on the Pacific coast. Some roads and trails may be in areas that are commonly visited by backpackers, bird watchers, and other recreational users seeking solitude, while others may be located in areas commonly utilized by equestrians, rock climbers, or hunters. Additionally, some roads and trails may be in areas near urban centers that see significant visitation, while others are in remote areas that see very few visitors. As a result of these differences, local conditions will ultimately dictate what impacts can be expected from e-bike use on certain roads and trails. Therefore, the BLM will not be able to analyze meaningfully those impacts through the NEPA processes until it can account for that site-specificity through future land use planning or implementation-level proposals. As a result, the BLM's reliance on the second prong of the categorical exclusion at 43 CFR 46.210(i) is appropriate.

Comment: Some commenters requested the preparation of supporting analyses to determine thresholds for wildlife disturbance from e-bikes on BLM land, including information regarding the extent to which affected trails overlap with designated critical habitat.

Response: The BLM will consider the impacts of Class 1, 2, and 3 e-bikes on wildlife through the NEPA process that accompanies future site-specific proposals to authorize e-bike use on roads and trails on which traditional, non-motorized bicycles are currently allowed.

Considering impacts on wildlife at the site-specific level will allow the BLM to better evaluate the potential effects of e-bike use on specific populations of animals; consult with the appropriate federal, state, and local resources agencies regarding potential resource impacts; and develop site-specific design features and/or mitigation strategies. It would be shortsighted for a rule of this nature to prescribe disturbance thresholds, even making them mandatory, as that would preclude the use of future science and information or require further revisions to the regulations in order to incorporate new science and information.

Comment: Some commenters state that future implementation actions allowing Class 1, 2, and 3 e-bikes on roads and trails are connected actions under NEPA that are inextricably intertwined with the proposed rule and must be fully analyzed now. Similarly, other commenters state that the BLM has improperly segmented these connected actions to rely on the categorical exclusion at 43 CFR. 46.210(i).

Response: Future implementation actions allowing or disallowing e-bikes on roads and trails that are open to traditional, non-motorized bicycles are not connected actions that are inextricably intertwined with the rule and must undergo NEPA analysis in conjunction with this rulemaking. Future decision-making is facilitated by the rule, but it is not required or automatically triggered by it. Instead, authorized officers will determine whether to initiate proposals to allow Class 1, 2, and 3 e-bikes on currently non-motorized roads and trails on an individualized basis. Authorized officers will also determine whether to allow or disallow e-bikes on those roads and trails on an individualized basis, as the rule does not mandate any

specific outcomes. Additionally, future proposals to allow or disallow e-bikes are not connected actions because the BLM could authorize e-bike use on roads and trails on which traditional, non-motorized bicycles are allowed in the absence of this rule. As some commenters pointed out, the BLM could allow Class 1, 2, and 3 e-bikes on roads and trails that are currently non-motorized under its current regulations and travel management policies and without excluding them from the definition of ORV. Indeed, as these same commenters additionally noted, some BLM field offices are currently considering opening single-track mountain biking trails to e-bikes through their current travel management plans. Finally, future implementation actions are not connected actions because they are not interdependent or dependent on a larger action for their justification. Site-specific decision-making can proceed under the rule in the absence of, and completely independent from, other site-specific proposals to allow e-bike use on BLM-managed lands.

Extraordinary Circumstances

Comment: Some commenters stated that extraordinary circumstances under 43 CFR 46.215 apply to this rulemaking, prohibiting the BLM from relying on the categorical exclusion at 43 CFR 46.210(i). Commenters cited the following extraordinary circumstances under 43 CFR 46.215.

(a) Significant impacts on public health or safety.

- Comment: Commenters stated that they provided documentation of significant safety impacts of e-bikes within their comment, including citations to numerous supporting studies.
- Response: Because this rule will not result in any on-the-ground changes or authorize any new e-bike use on BLM lands, it will not have any direct impacts on public health

and safety. Additionally, relevant literature demonstrates that the rule should not have significant indirect impacts on public health or safety as a result of future site-specific decisions allowing e-bikes on roads and trails upon which non-motorized bicycles are allowed. For example, studies show that, although e-bikes enable riders to travel longer distances and carry more cargo with them, they are generally ridden at speeds similar to non-motorized bicycles. In fact, a survey conducted by Boulder County, Colorado, found that, on average, e-bikes were ridden more slowly than non-motorized bicycles on county trails. Other studies found that e-bike and non-motorized bicycle riders behave similarly, violate applicable rules similarly, have similar accident rates, and are admitted to hospitals after a crash at similar rates. While the relevant body of literature on e-bikes continues to develop, existing research allows the BLM to predict that the effects of this rule on public health and safety will be insignificant.

(b) *Significant impacts on natural resources and unique geographic characteristics.*

- Comment: Commenters stated that the rule will have significant impacts on recreation, national monuments, and other vulnerable categories identified in 43 CFR 46.215(b).
- Response: The rule will not have significant impacts on the natural resources and unique geographic characteristics identified in 43 CFR 46.215(b). This rule will not result in any on-the-ground changes. Specifically, it will not authorize the use of Class 1, 2, or 3 e-bikes on any roads or trails upon which they are currently prohibited. Any future changes would require future NEPA processes that will consider the impacts that e-bikes may have on natural resources and unique geographic characteristics. If e-bike use is proposed in an area identified in 43 CFR 46.215(b), such as a national monument, then

the potential significance of impacts would be a factor in determining the appropriate level of NEPA analysis at that time.

(c) *Highly controversial environmental effects or unresolved conflicts concerning alternative uses of available resources.*

- Comment: Commenters stated that e-bike use on public lands is becoming highly controversial and involves unresolved conflicts concerning alternative uses of available resources, with generally no effort to study the impacts of e-bike use. Commenters stated that there is conflicting data about the significance of impacts of e-bikes in comparison with motorized vehicles and traditional mountain bikes, creating disputes regarding the effects of conflicts from e-bike use on non-motorized trails. Some commenters stated that e-bike use is highly controversial, with numerous major stakeholders and interest groups taking “pro” and “con” sides, fitting the definition of “highly controversial.”
- Response: 43 CFR 46.215(c) pertains to whether the environmental effects of a proposed action are highly controversial (i.e., there is significant scientific disagreement about whether a specific action will impact the environment, and how). There is not significant scientific disagreement about how or whether this rule will impact the environment. Because this rule merely creates a process for allowing Class 1, 2, and 3 e-bike use in the future and does not directly authorize their use on any roads or trails upon which they are currently prohibited, it will have no impact on the environment. There also is not a significant scientific disagreement about how e-bikes generally impact the environment. While the body of literature concerning the environmental impacts of e-bikes is still developing, the studies that were submitted by the public during the public comment period demonstrate that the impacts associated with e-bikes are similar to the well-

understood impacts associated with traditional, non-motorized bicycles. Notably, the studies show that e-bikes and traditional, non-motorized bicycles travel at relatively similar speeds, pose similar health and public safety risks, impact wildlife similarly, and displace soil and contribute to erosion in ways that are similar to each other and significantly different than a gas-powered dirt bike. In sum, the studies are consistent in their discussion of impacts associated with e-bikes and do not demonstrate significant scientific disagreement about this rule or how e-bikes, generally, may impact the environment.

(d) *Highly uncertain and potentially significant environmental effects or involve unique and unknown environmental risk.*

- Comment: Commenters stated that the extent of environmental impacts is uncertain, given that e-bikes are growing in popularity as an emerging recreational use with data collection and studies warranted. Commenters stated that the BLM does not consider the uncertain and potential impacts of e-bike use, defers this analysis, and directs pre-determined outcomes. Commenters stated that the categorical exclusion should not apply because of unique risks presented by e-bikes (e.g., backcountry use, safety, and user conflicts due to the speed of an e-bike).
- Response: This rule does not change any on-the-ground e-bike allowances, and the environmental effects associated with it are not highly uncertain. To the extent that the rule will have any environmental effects, they will result from future site-specific decisions, which are left to the discretion of the authorized officer and will be supported by additional NEPA processes. Moreover, the environmental effects associated with e-bikes generally are not highly uncertain. While there is always some uncertainty when

making predictions about how human activities will impact the natural world, the existing literature demonstrates that e-bike impacts are similar to those of traditional, non-motorized bicycles. Allowing e-bikes on roads and trails that are already open to non-motorized bicycles will therefore not have significant impacts on the environment. Studies discussing impacts on wildlife are instructive in this regard. They show that, while all forms of recreation may negatively impact wildlife habitat, motorized all-terrain vehicles tend to have greater adverse impacts on wildlife compared to traditional, non-motorized bicycles, and there is little in the peer-reviewed literature to suggest that e-bikes have greater negative impacts than traditional, non-motorized bicycles. Similarly, a study performed by the International Mountain Bicycling Association found that soil displacement and tread disturbance from e-bikes and traditional, non-motorized mountain bikes were not significantly different; in fact, both were much less than those associated with gas-powered dirt bikes. In light of this existing body of literature, and the absence of any studies clearly showing that e-bikes impact the environment in a manner that differs significantly from non-motorized bicycles, the BLM has reasonably concluded that the impacts associated with this rule are not highly uncertain. To the extent that the existing body of literature on the impacts of e-bikes continues to develop, authorized officers will consider new, relevant studies when analyzing future site-specific proposals.

(e) *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

- Comment: Commenters stated that the rule establishes a precedent for future actions with potentially significant environmental effects, creates a presumption that e-bikes are allowed on non-motorized trails, and largely predetermines the outcome of relevant land

management planning or implementation-level decisions. Commenters stated that the rule encourages BLM offices to make decisions without addressing the potentially significant environmental effects. Commenters stated that the rule fails to consider its precedential importance and the associated commercialization of BLM-administered lands, opening the floodgates for numerous similar technological impacts.

- Response: The rule does not establish a precedent or represent a decision in principle about how authorized officers should treat e-bikes in the future. As discussed later in greater detail, the BLM recognizes how language in the proposed rule, which provided that authorized officers “should generally allow” e-bikes on roads and trails upon which mechanized, non-motorized use is allowed, could be understood to create a presumption in favor of e-bike use that would bias future BLM decision-making. In response, the BLM has revised the final rule to state that authorized officers “may allow” e-bikes on roads and trails open to non-motorized bicycles. This change is intended to clarify that authorized officers have full discretion to determine whether e-bike use, or the use of only certain classes of e-bikes, is appropriate on individual roads and trails. Therefore, it reinforces that authorized officers have authority to, and should, consider the potential impacts associated with e-bikes before authorizing their site-specific use and it emphasizes that the rule does not direct any specific substantive changes or establish a precedent for purposes of 43 CFR 46.215(e).

(f) *Direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

- Comment: Commenters stated that cumulative impacts of all BLM units approving e-bikes will be significant when considered nationwide.

- Response: The rule will not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. The rule, and future implementation actions that will occur in accordance with it, are not connected actions and their impacts do not have to be analyzed in tandem. The rule will not automatically trigger future proposals to authorize e-bikes on roads and trails that are open to traditional, non-motorized bicycles. Whether such decisions will occur will be determined by authorized officers on an individualized basis. At the same time, the rule does not mandate any specific outcomes. It provides authorized officers with discretion to determine whether e-bike use is appropriate on individual roads and trails and does not require or suggest that authorized officers consider how determinations are being made in other field offices. To the contrary, in light of limited agency resources and highly variable geography, the BLM designed the rule to allow site-specific decision-making to proceed in the absence of, and completely independent from, other site-specific proposals to allow e-bike use on BLM-managed lands.

(g) *Significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.*

- Comment: Commenters stated that many BLM units contain current or potentially listed historic places, and some were established specifically to protect such places, so in light of their special national importance, the rule for system-wide approval is improper.
- Response: The rule does not change current authorized uses. Therefore, the rule itself will not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places. If the BLM does propose to allow Class 1, 2, or 3 e-bikes on non-motorized roads and trails, the authorized officer will consider the potential

impacts on historic properties in determining the appropriate level of NEPA analysis for the proposed action. Even in that situation, however, impacts on historic properties are unlikely to be significant. That is because the rule will only allow e-bike use on non-motorized roads and trails that are already open to traditional, non-motorized bicycles, and, as discussed throughout this rule, the impacts associated with e-bikes are similar to those associated with traditional, non-motorized bicycles.

(h) *Significant impacts on species listed, or proposed to be listed, on the list of endangered or threatened species or significant impacts on designated critical habitat.*

- Comment: Commenters stated that the BLM has not complied with Section 7(a)(2) of the Endangered Species Act and that the rule will have significant impacts on endangered or threatened species.
- Response: For the same reasons it will not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places, the rule will not have significant impacts on species listed, or proposed to be listed, as endangered or threatened species, or on designated critical habitat for these species. As noted previously, the rule does not allow e-bike use on any roads or trails on which it is currently prohibited. Any new e-bike allowances will be the result of future site-specific decision-making processes that will comply with the Endangered Species Act, as applicable. Additionally, because any future allowances will be limited to roads and trails on which traditional, non-motorized bicycles are allowed, the BLM anticipates that any impacts stemming from new e-bike use will be insignificant.

(i) *Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment.*

- Comment: Commenters stated that allowing e-bikes on non-motorized trails threatens to violate laws designed to protect resources on public lands and that allowing e-bikes on non-motorized trails without designating those trails for motorized use is contrary to federal law and longstanding travel management regulations and policies. Commenters stated that the rule also threatens to violate various state and local laws governing e-bike use on trails and that state, local, and Forest Service definitions and requirements for e-bikes differ and conflict from BLM proposals. Commenters stated that this creates the potential for significant jurisdictional challenges and violations of such differing standards imposed for the protection of the environment. Commenters stated that these extraordinary circumstances require the BLM to conduct additional analysis for the rule.
- Response: This final rule does not violate a federal law or requirement imposed for the protection of the environment. As discussed previously, although the e-bikes addressed in this rule have a small electric motor, their engineering and impacts and their similarities to non-motorized bicycles and differences from other motorized vehicles result in this rule being consistent with the overall design and intent of EO 11644. Allowing authorized officers to exclude e-bikes from the EO's definition of ORV also makes the BLM's management of e-bikes more consistent with that of other federal agencies, including the Consumer Product Safety Commission. Additionally, the rule does not violate a state, local, or tribal law or requirement imposed for the protection of the environment. The rule provides authorized officers with the discretion to consider applicable state, local, or tribal laws and requirements when determining whether to allow e-bikes on roads and trails that are open to traditional, non-motorized bicycles. Authorized officers will account for these

laws and requirements when deciding whether e-bike use is appropriate on specific roads and trails.

Public Comment Process

Comment: Some commenters stated that the length of the public review period was not sufficient and that a public meeting should be scheduled. Some commenters stated that the pandemic has created obstacles to public participation and that rulemaking should be postponed. Some commenters asserted that the BLM was failing to comply with its requirements under FLPMA for public involvement. The commenters state that FLPMA requires that the BLM give “the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.”

Response: In accordance with the Administrative Procedure Act and applicable policy, the BLM provided a 60-day public comment period that began on Friday, April 10, 2020, and ended on Tuesday, June 9, 2020. During that time, the BLM received almost 24,000 public comments, which suggests that the 60-day public review period was adequate for the public to respond to the proposed rule. Public meetings are not required for informal rulemaking under the Administrative Procedure Act. The BLM will provide the public with opportunities to respond to future, site-specific implementation of the rule in accordance with NEPA and other applicable laws.

E-Bike Definition

Comment: Some commenters stated that the e-bike classification system and its associated speed limits are not supported by evidence.

Response: The definition of e-bike included in this the rule, which relies on a “3-class system” originally created by the bicycling industry, establishes a consistent definition for use across all DOI agencies. To date, at least 28 states have adopted the 3-class system into their regulations for e-bikes. The BLM incorporated the 3-class system into its definition of e-bike to achieve greater consistency with how other jurisdictions and entities are regulating e-bikes.

Comment: Some commenters asserted that the rule limits the discretion of the authorized officer to make individualized decisions on e-bike use and that e-bike use should be managed separately from traditional bike use.

Response: The BLM has revised paragraph 8342.2(d) to provide that authorized officers “may allow” e-bikes on roads and trails upon which mechanized, non-motorized use is allowed. This change is intended to clarify that the rule does not mandate any specific outcomes and to alleviate any concern that the rule limits the discretion of authorized officers about whether and where to allow e-bike use on BLM-managed public lands. The authorized officer will consider site-specific conditions, including environmental impacts and potential user conflicts, before deciding to allow or disallow e-bike use on specific roads and trails.

Comment: Commenters suggested that the BLM limit e-bike use to trails that are very wide or paved and to not permit their use on steep, single-track trails. Other commenters suggested that the BLM specifically allow e-bikes on motorized paths and non-motorized paths with improved surfaces.

Response: Each trail, area, field office, district office, etc., presents a unique set of circumstances that may make e-bike use appropriate in certain situations and not in others. The inherent variability in BLM-managed lands is better accounted for by a rule that establishes a framework for future decision-making and relies on local expertise to determine where e-bike

use should be allowed. Through planning or implementation-level decision-making processes, authorized officers will determine whether certain types of roads and trails are appropriate for e-bike use.

Comment: Some commenters suggested that, instead of excluding e-bikes from the definition of ORVs, the BLM should add a category of “low-powered vehicles” to the regulations for management separately from bicycles or ORVs.

Response: The intent of this rule is to expand recreational access to public lands through the use of e-bikes, treat e-bikes similarly to traditional bikes, as appropriate, and to establish consistency in the DOI regarding how e-bikes are managed. Other “low-powered” vehicles, such as scooters and skateboards, are not similar to, and provide a different experience than, traditional, non-motorized bicycles, and are not addressed in this rule.

Comment: Some commenters requested that the rule be revised to state that all bicycle trails and routes would be open to e-bikes.

Response: Rather than promulgating a rule that opens all mechanized, non-motorized trails and roads to e-bike use, the BLM believes that authorized officers should have the discretion and flexibility to determine where e-bikes will be allowed through subsequent decision-making. Authorized officers are most familiar with an area’s natural and cultural resources, operating budget, visitor use patterns, and enforcement capabilities. They are therefore in the best position to determine where e-bike use is most appropriate. While the BLM believes that there are many situations in which e-bike use would be appropriate on roads and trails upon which mechanized, non-motorized use is permitted, there are certain instances where that may not be the case, such as where legislation or a presidential proclamation prohibits motorized use of a trail.

Comment: Some commenters suggested that only Class 1 e-bikes should be excluded from the definition of ORV. Several commenters suggested that the BLM should continue to define Class 2 and Class 3 e-bikes as ORVs. Some commenters pointed out that the different classes of e-bikes may have different impacts on the public lands and suggest that only Class 1 e-bikes should be allowed on unpaved surfaces.

Response: While the definition of e-bikes includes Class 1, 2, and 3 e-bikes, the BLM recognizes that there are differences among the classes that may result in certain classes of e-bikes being inappropriate on individual roads and trails. The BLM has drafted the rule with these differences in mind. Under the rule, Class 2 e-bikes being ridden in throttle-only actuation for extended periods of time cannot be excluded from the definition of ORV and, therefore, must remain on roads and trails that are available for ORV use. This should reduce the potential physical damage that may result from throttle-only actuation and help ensure that the impacts associated with Class 2 e-bikes are similar to those associated with Class 1 e-bikes, which also stop providing motorized assistance to riders at 20 miles per hour. The BLM has also revised the language in 43 CFR 8342.2(d) rule to clarify that authorized officers may distinguish between the classes of e-bikes where necessary to address potential resource and user impacts. Pursuant to this change, authorized officers may consider potential resource conflicts and other relevant factors and determine that only Class 1 e-bikes should be allowed on a particular road or trail.

Comment: Some commenters suggested that three-wheeled e-bikes are incompatible with single-track trails and require an appropriate width corridor.

Response: Under paragraph 8342.2(d) of the final rule (Designation Procedures), the authorized officer may determine whether e-bike use in general, or the use of particular classes of e-bikes, would be appropriate on certain roads or trails. The authorized officer may also

determine whether the use of three-wheeled e-bikes is appropriate based on site-specific circumstances, such as trail width and potential user conflicts.

Authorized Officer's Discretion

Comment: Some commenters expressed concern that the rule does not allow the authorized officer to make individualized decisions and restrictions within the classes and between e-bikes and traditional bikes. The commenters requested a change in the rule text to allow authorized officers to impose specific limitations on e-bike use or to close any road, trail, or portion thereof to e-bike use.

Response: The rule was always intended to provide authorized officers with discretion to allow either e-bikes, or certain classes of e-bikes, on particular roads or trails. In response to comments received, however, the BLM revised the final rule to include specific regulatory text in 43 CFR 8342.2(d)(1) to make clear that authorized officers may distinguish between “certain classes” of e-bikes when determining where e-bikes should be allowed. Authorized officers will make these site-specific decisions in consideration of potential resource impacts and user conflicts and in accordance with NEPA and other applicable laws.

Comment: Several commenters suggested that the BLM include specific factors in the regulations that the authorized officer must consider before allowing e-bikes on a particular route or trail. Some commenters suggested adding a requirement for the authorized officer to minimize environmental impacts and user conflicts.

Response: This rule provides authorized officers with discretion to determine, through a planning or implementation-level decision, whether Class 1, 2, and 3 e-bikes should be allowed on roads and trails on which mechanized, non-motorized uses are allowed. In making this decision, authorized officers will consider potential impacts to resources, conflicts with other

users, and other relevant factors. The specific factors, however, will vary greatly based on the site-specific conditions at issue, and some factors may not be applicable in each circumstance. The BLM, therefore, prefers to allow authorized officers to determine the appropriate factors to consider when deciding whether to allow e-bikes on particular roads or trails. The BLM may include a discussion of possible factors to consider in future guidance issued to implement these regulations.

Other E-Bike Management

Comment: Some commenters requested an addition to the rule text to manage other e-bikes that are not Class 1, 2, or 3 as motorized vehicles.

Response: The final rule addresses only Class 1, 2, and 3 e-bikes. The BLM will continue to manage all other types of e-bikes as ORVs. E-bikes that do not meet the qualifications of Class 1, 2, or 3 bikes will not be eligible for exclusion from the definition of ORV at 43 CFR 8340.0-5 and must remain on roads and trails open to ORV use.

Comment: Some commenters requested an addition to the rule text that an eligible e-bike must be equipped with a seat or saddle for the rider.

Response: The BLM does not believe it is necessary to require an e-bike to be equipped with a seat or saddle. Some e-bikes that otherwise meet the definition of e-bike—such as trial bikes—may not have a seat, and the current definition, including the requirement that an e-bike have fully operational pedals, is sufficient to exclude other types of electric vehicles, such as scooters or skateboards.

Comment: Some commenters expressed concern that definitions for Class 1, 2, and 3 e-bikes will need to be revisited and updated to reflect future technologies.

Response: The BLM acknowledges that future changes in technology may result in some e-bikes not being eligible for exclusion from the definition of ORV at 43 CFR 8340.0-5 if they do not fit into the definition established by this rule.

Comment: Some commenters suggested that the rule should require any e-bike on BLM-managed lands to be certified by an accredited, independent third-party certification body that examines electrical and safety hazards.

Response: The BLM believes that existing federal regulations are sufficient to address potential safety hazards related to e-bike design and manufacturing. E-bikes that fall within the definition of low-speed electric bicycle at 15 U.S.C. 2085 are considered consumer products that are subject to product safety regulations promulgated by the Consumer Product Safety Commission, and e-bikes that do not fall within the definition of low-speed electric bicycle must comply with National Highway Traffic Safety Administration vehicle standards. To the extent that the operation of e-bikes on public lands may affect health and safety, the BLM will consider those potential impacts at the site-specific level when considering a planning or implementation-level proposal.

Comment: Some commenters requested that the BLM address hunting, game retrieval, and cross-country travel in the final rule.

Response: Under the final rule, only Class 1, 2, and 3 e-bikes that are being ridden on roads and trails upon which mechanized, non-motorized use is allowed will be eligible for exclusion from the definition of ORV at 43 CFR 8340.0-5(a). E-bikes being ridden cross country will not be eligible for exclusion from the definition of ORV. Such use is allowed only in areas designated as “OHV Open” under applicable land use plans. E-bikes may be utilized in

hunting and game retrieval to the extent that their use conforms to the governing land use plan and is consistent with applicable road and trail allowances.

Conflict with State and Local Government

Comment: Some commenters stated that the rule would conflict with state and local jurisdictions that exclude e-bikes from non-motorized trails. Some commenters stated that the rule would conflict with state-based user fee programs that define e-bikes as motorized.

Response: The final rule does not conflict with state and local rules that exclude e-bikes from non-motorized trails. First, the rule only applies to BLM-managed roads and trails. Second, as noted previously, the rule does not authorize any new e-bike use on non-motorized roads and trails. Instead, the rule provides authorized officers with discretion to determine whether certain non-motorized roads and trails are appropriate for Class 1, 2, and 3 e-bike use through planning or implementation-level decision-making processes. In making those determinations, authorized officers may consider many factors, including how e-bikes are regulated in adjacent jurisdictions. The BLM will coordinate with other federal, state, local, and tribal entities to address potential conflicts with other requirements or jurisdictions when making site-specific decisions to allow or disallow e-bikes.

Trail Funding

Comment: Some commenters stated that e-bikes would be incompatible on non-motorized trail networks that were constructed with grant funding from the Recreational Trails Program and other Federal funding sources. Some commenters stated that e-bike use might impact future trail funding from federal programs such as the Land and Water Conservation Fund.

Response: Class 1, 2, or 3 e-bike use may be inappropriate on certain roads and trails that were constructed or are maintained using funding sources which may prohibit or be inconsistent with motorized use, such as the Recreational Trails Program and other Federal funding sources authorized by Title 23, Chapter 2 of the United States Code. The BLM has designed the rule to provide authorized officers with the ability to consider whether e-bike use is consistent with potential funding sources when determining which roads and trails to allow e-bike use. Authorized officers will take these and other types of site-specific considerations into account when making future planning or implementation-level decisions concerning e-bike use.

Compliance with Laws, Policies, and Plans

Comment: Some commenters asserted that the BLM failed to consider alternatives to the proposed rule.

Response: The BLM considered less restrictive alternatives in promulgating this rule, including an approach that would have opened all public lands to e-bikes, unless otherwise restricted. That approach, however, would not account for the variability in BLM-managed lands or the resource concerns and potential user conflicts that are often specific to individual roads and trails and could lead to e-bike use in places where it is not appropriate. The BLM, therefore, concluded that determinations about where Class 1, 2, and 3 e-bike use is appropriate should be made by authorized officers at the site-specific level. Their knowledge of and access to local information will help minimize the potential impacts associated with allowing e-bikes on non-motorized roads and trails.

Comment: Some comments asserted that the rule is inconsistent with the direction of SO 3376.

Response: This rule is consistent with the general direction in SO 3376 that the BLM treat e-bikes similarly to traditional, non-motorized bicycles; however, SO 3376 is a policy document that was not “intended to, and d[id] not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States.” While SO 3376 directs the BLM to exclude all e-bikes from the definition of ORV, the BLM, in coordination with DOI, ultimately decided that it would be more appropriate for authorized officers to analyze site-specific factors and determine where Class 1, 2, and 3 e-bike use is appropriate on an individual basis. Because of potential resource impacts, user conflicts, and other relevant considerations, Class 1, 2, or 3 e-bike use may not be appropriate on certain public lands where traditional, non-motorized bicycles are allowed.

Comment: Commenters indicated that the rule would facilitate access to public lands for those with disabilities. Many commenters described their reliance on e-bikes and cited health conditions that prevent them from using traditional bikes. A number of commenters described their specific need for three-wheeled e-bikes, explaining that these bikes are necessary to provide balance for bike users who have a disability and want to access public lands.

Response: This rule is intended to facilitate increased recreational opportunities for all Americans, including those with physical limitations, and to encourage the enjoyment of lands and waters managed by the BLM.

Comment: Some commenters stated that the rule must adhere to all existing state and federal conservation easements and resource management plans.

Response: This rule does not amend or alter any existing land use plans, easements, or authorizations. Any decisions to allow e-bike use under this final rule will be made through the land use planning or implementation-level processes at the local level. The BLM recognizes that

some uses of public lands may impact other uses. Authorized officers will consider conservation easements and other types of commitments made for use of lands when determining which non-motorized roads and trails are appropriate for e-bike use.

Comment: Some commenters asked the BLM to identify how the rulemaking and future implementation of the rule will comply with Section 7 of the Endangered Species Act.

Response: The rule is administrative and procedural in nature. It creates a process by which authorized officers may allow Class 1, 2, and 3 e-bikes on roads and trails that are available to traditional, non-motorized bicycle use. The rule does not change any current e-bike allowances on public lands. It will, therefore, have no impact on listed species or designated critical habitat. Any future changes will be made by authorized officers through site-specific land use planning or implementation-level decision-making processes that will comply with applicable law, including NEPA and the Endangered Species Act. As part of those future decision-making processes, the BLM will engage in consultation under Section 7 of the Endangered Species Act, as necessary.

Comment: Some commenters stated that the BLM must update or conduct a wilderness characteristics inventory in response to the proposed rule. Some commenters further stated that the BLM should not allow e-bike use on lands with wilderness characteristics.

Response: BLM policy provides that the agency will consider whether to update or conduct a wilderness characteristics inventory for the first time when, among other situations, the BLM is undertaking a land use planning process, has new information concerning resource conditions, or a project that may impact wilderness characteristics is undergoing NEPA analysis. This rule, which does not authorize any new e-bike use on BLM-managed public lands, will not impact wilderness characteristics. As a result, the BLM has not updated or conducted a

wilderness characteristics inventory in response to the rule. The BLM, however, may update or conduct a wilderness characteristics inventory, where applicable, in conjunction with future land use planning or implementation-level decision-making processes that consider authorizing Class 1, 2, or 3 e-bike use on non-motorized roads and trails.

Comment: Some commenters stated that e-bikes must be prohibited on national scenic or historic trails and in designated wilderness. Some commenters stated that e-bikes on trails connecting to national scenic or historic trails are likely to degrade the trail experience and pose safety concerns to hikers and equestrians using nationally designated trails. Some commenters stated that the BLM proposed rule is in direct conflict with Section 7(c) of the National Trails System Act, which states: The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be construed as authorizing the use of motorized vehicles....”

Response: The rule, which does not allow any new or additional Class 1, 2, or 3 e-bike use on BLM-managed public lands, will not allow e-bike use in designated wilderness or other areas where traditional, non-motorized bicycle use is not allowed. The authorized officer will determine, on a site-specific basis and through the NEPA process, if Class 1, 2, and 3 e-bike use is appropriate on roads and trails upon which traditional, non-motorized bicycles are allowed. In making this determination, authorized officers, who are presumed to act in accordance with applicable laws, will consider whether any statutory or regulatory provisions either prohibit or otherwise make e-bike use inappropriate on certain roads and trails.

Comment: One commenter stated that the rule does not recognize that non-motorized bicycles are a form of surface transportation use allowed in Conservation System Units (CSUs) designated by the 1980 Alaska National Interest Lands Conservation Act (ANILCA). This

commenter further stated that the rule should recognize the statutory allowance in Section 1110(a) of ANILCA and allow e-bikes in these same CSUs.

Response: The BLM recognizes that ANILCA and its implementing regulations authorize the use of non-motorized surface transportation, including non-motorized bicycles, in CSUs unless such use is prohibited or otherwise restricted in accordance with the procedures set forth in 43 CFR 36.11(h). That rule does not apply to e-bikes, which have small electric motors and therefore do not qualify as non-motorized surface transportation. At this time, the BLM does not intend or have the information necessary to create a separate e-bike regulatory framework for Alaska. Instead, authorized officers will determine if Class 1, 2, and 3 e-bike use is appropriate on non-motorized roads and trails in CSUs on a site-specific basis in accordance with NEPA and other applicable laws. Authorized officers will consider traditional uses and travel to and from villages and homesites in making those determinations.

Comment: Some commenters expressed concern that the e-bike rule may remove future opportunities for coordination between the BLM and entities that have a partnership or agreement with the BLM such as a memorandum of understanding. Some commenters expressed concern that the rule is not supported under the BLM's National Recreation Strategy, which would undermine existing agreements created under the vision of the strategy.

Response: The rule will not affect the ability of the BLM to work with partners and stakeholders to achieve mutual objectives. Although BLM guidance and strategies may be updated to provide direction for e-bike regulation implementation, the BLM concludes that this rule is consistent and compatible with the National Recreation Strategy, which calls for the BLM to increase and improve collaboration with community networks of service providers, help communities produce greater well-being and socioeconomic health, and deliver outstanding

recreation experiences to visitors while sustaining the distinctive character of public lands recreation settings.

Comment: Several commenters expressed concern that excluding e-bikes from the definition of ORV at 43 CFR 8340.0-5(a) would eliminate the requirement for the BLM to comply with certain environmental protections in the agency's ORV regulations and apply the designation criteria at 43 CFR 8342.1 when deciding where e-bike use is appropriate.

Response: For the reasons provided previously, the BLM has determined that, where certain criteria are met, authorized officers may determine that it is appropriate to exclude Class 1, 2, and 3 e-bikes from the definition of ORV at 43 CFR 8340.0-5(a). In such situations, the BLM may allow e-bikes to use roads and trails upon which traditional, non-motorized bicycles are allowed without formally applying the designation criteria at 43 CFR 8342.1. The agency, however, would still provide the public with opportunities to participate in agency decision-making processes in accordance with NEPA and other applicable laws, and the BLM would still consider resource impacts and user conflicts as part of the NEPA process that would support future site-specific decisions.

Implementation

Comment: Some commenters stated that the rule may present enforcement challenges. For example, commenters stated that e-bike use will facilitate illegal trail access by unauthorized vehicles and that the BLM will not be able to enforce the requirement that the throttle on Class 2 e-bikes not be used exclusively to propel the e-bike for extended periods of time.

Response: The BLM acknowledges that implementation of this rule poses certain enforcement challenges; however, those challenges are not unique. They regularly arise in the context of enforcing laws that govern recreational use of public lands. For example, the

regulations governing use of ORVs at 43 CFR 8341.1 prohibit the operation of ORVs in violation of state laws and regulations relating to use, standards, registration, operation, and inspection of ORVs and without a valid state operator's license or learner's permit. Those same regulations also prohibit operation of an ORV in a reckless, careless, or negligent manner, while under the influence of alcohol, narcotics, or dangerous drugs, and in a manner that causes, or is likely to cause, significant, undue damage to or disturbance of resources and other uses of the public lands. Determining when a violation of these regulations occurs can be fact-specific, requiring the exercise of specialized judgment on the part of law enforcement officers.

Similarly, determining that the public is complying with aspects of this rule, such as the requirement that, to be excluded from the definition of ORV, a Class 2 e-bike cannot be ridden for an extended period of time using just its throttle, will involve the exercise of specialized skill, training, and judgment by law enforcement officers. Based on their experience enforcing other regulations that condition how the public recreates on public lands, BLM law enforcement officers have the expertise necessary to properly exercise their discretion to enforce the requirements of this rule in a reasonable manner that ensures protection of public health, safety, and resources and users of the public lands. Moreover, the agency believes that enforcement challenges posed by this requirement are warranted given the requirement's potential benefits to affected public land resources and users. In particular, the requirement prohibiting throttle use on Class 2 e-bikes for extended periods of time will allow riders to benefit from the throttle function for limited durations, such as when first starting out on an incline, while ensuring that Class 2 e-bikes will generally be ridden, and will therefore impact natural resources, in a manner similar to Class 1 e-bikes.

Comment: Some commenters stated that e-bikes can easily be modified to exceed horsepower and speed restrictions.

Response: E-bikes can be modified; however, if an e-bike is modified in such a manner that it does not qualify as a Class 1, 2, or 3 e-bike, it will not be eligible for exclusion from the definition of ORV and will continue to be regulated in accordance with the BLM's ORV regulations at 43 CFR Part 8340.

Comment: Some commenters suggest that the BLM should require users of e-bikes who tamper with or modify an e-bike, changing the speed capability, to replace the manufacturer's classification label.

Response: The BLM does not require any sort of label on e-bikes and will not impose a requirement to remove or modify the label if the e-bike is modified. If an e-bike is modified after purchase, the e-bike may not qualify as a Class 1, 2, or 3 e-bike and would therefore be managed as an ORV in accordance with the regulations at 43 CFR Part 8340.

Comment: Some commenters requested clarification on the appropriate next steps for implementation.

Response: The specific steps that the BLM will take to implement this rule are beyond the scope of this rulemaking process. After publication of this final rule, the BLM may determine that it is necessary to update agency policy, including manuals, handbooks, and other guidance materials, to comply with the new rule.

Comment: Some commenters stated that the introduction of e-bikes will require a revision of existing sign standards to clearly identify where e-bikes are allowed, and further, which classes are allowed. One commenter recommended that the BLM maintain a trail sign

standard with allowable use demarcations to depict traditional bicycles and e-bikes independently.

Response: The BLM agrees that the successful introduction of e-bikes onto public lands depends on clear and consistent communication to the public about where e-bikes are allowed and, further, which classes are allowed. The BLM is working with the other land management agencies within DOI to establish standard signs for e-bikes. The goal of this effort is to create a consistent visual framework indicating where e-bikes are allowed on public lands managed by DOI.

Comment: Some commenters requested a timeline for future NEPA analyses to be conducted by field offices.

Response: Under the final rule, the authorized officer may allow Class 1, 2, or 3 e-bikes to use non-motorized roads and trails through a site-specific land use planning or implementation-level decision. The specific timing of future site-specific decisions and supporting NEPA processes will depend on a number of variables, such as budget, resources, agency priorities, and officer discretion.

Comment: Some commenters stated that authorized officers would implement the rule inconsistently, which would result in public confusion.

Response: The rule provides authorized officers flexibility to determine where e-bike use is appropriate on a case-by-case basis. The BLM may issue subsequent guidance to help achieve consistent implementation of the rule across the agency.

Comment: Commenters stated that e-bike access on non-motorized trails would exacerbate erosion, disturb wildlife habitat through trail-widening and destruction of vegetation adjacent to trails, impact wildlife through disturbance and collisions, create a safety risk to

equestrians and pedestrians (potential collisions, startling horses), and that speed limits should be imposed on trails. Commenters also stated that facilitating backcountry access to less-experienced e-bike users may create unsafe conditions for these users, would contribute to overcrowding of trails and parking areas, and generate noise that would disturb wildlife and other recreationists. Conversely, other commenters stated that e bikes are very quiet, which creates an added safety risk to wildlife, equestrians, and pedestrians.

Response: The BLM reviewed a substantial number of studies and reports, including those submitted by the public, to better understand how site-specific implementation of the rule may impact public land resources and users. That literature indicates that many people hold misconceptions about what constitutes an e-bike, and that these misconceptions foster fears and concerns about trail conflicts and access that typically abate as people gain greater familiarity with e-bikes. The literature indicates that riders of e-bikes and non-motorized bicycles exhibit similar safety behavior and have similar wrong-way, stop sign, and traffic signal compliance. While there is evidence that e-bikes travel faster than non-motorized bicycles in some situations, and slower than non-motorized bicycles in others, the literature generally indicates that the two are often ridden at similar speeds, and that average riding speed is determined largely by cultural norms, law enforcement, and physical infrastructure. The literature also indicates that all forms of recreation may adversely impact wildlife habitat, both motorized and nonmotorized recreation can result in habitat compression, and all-terrain vehicle use has greater adverse impacts on ungulate behavior than biking, hiking, and horseback riding. There is little research to suggest, however, that e-bikes have greater impacts on wildlife than non-motorized bicycles. Finally, the literature indicates that impacts from Class 1 e-bikes and traditional, non-motorized mountain bikes were not significantly different, while motorcycles led to much greater soil displacement

and erosion. In fact, an emerging body of research suggests that the degree to which recreational uses impact soils, water quality, and vegetation depends more on trail design and construction than the specific types of activities. In sum, the literature indicates that the additional e-bike use that authorized officers may allow under the rule is unlikely to have significant adverse impacts on public land resources or users and that the impacts that may occur are likely to be similar to those already being caused by non-motorized bicycle use.

With that said, the impacts associated with e-bike use will largely depend on site specificity, including the geography, wildlife, habitat, and uses associated with individual roads and trails. The BLM has designed this rule to account for that variability. Rather than attempting to apply blanket allowances or prohibitions on e-bike use, the rule provides authorized officers with the discretion to determine, based on local knowledge and in accordance with NEPA and other applicable laws, on which specific roads and trails e-bike use may be appropriate. In making these determinations, authorized officers will consider impacts to public land resources and other recreational uses, as appropriate.

Discussion of the Final Rule

Existing BLM regulations do not explicitly address the use of e-bikes on public lands. Under the BLM's current Travel and Transportation Management Manual (MS-1626), however, e-bikes are managed as ORVs, as defined at 43 CFR 8340.0-5(a), and are allowed only in those areas and on those roads or trails that are designated as "ORV Open" or "ORV Limited". Additionally, e-bikes currently must be operated in accordance with the regulations governing ORVs at 43 CFR 8341.1.

Under the final rule, authorized officers may allow, through subsequent decision-making, Class 1, 2, and/or 3 e-bikes whose motor is not being used exclusively to propel the e-bike for an

extended period of time on roads and trails upon which mechanized, non-motorized use is allowed. These authorizations must be included in a land-use planning or implementation-level decision. Such decisions must be made in accordance with applicable legal requirements, including NEPA. Under the final rule, where an authorized officer determines that Class 1, 2, and 3 e-bikes should be allowed on roads and trails upon which mechanized, non-motorized use is allowed, such e-bikes would be excluded from the definition of ORV at 43 CFR 8340.0-5(a) and would not be subject to the regulatory requirements in 43 CFR Part 8340. E-bikes excluded from the definition of ORV at 43 CFR 8340.0-5(a) would be afforded all the rights and privileges, and be subject to all of the duties, of a non-motorized bicycle. Under the final rule, authorized officers may not allow e-bikes on roads and trails upon which mechanized, non-motorized bicycles are prohibited.

A primary objective of the BLM's travel and transportation management is to establish a long-term, sustainable, multimodal travel network and transportation system that addresses the need for public, authorized, and administrative access to and across BLM-managed lands and related waters. Travel management planning occurs as part of regional or site-specific land use and implementation decisions. Such decisions typically involve public participation and must comply with NEPA. Travel management is an ongoing and dynamic process through which roads and trails for different modes of travel can be added and/or subtracted from the available travel system at any time through the appropriate planning and NEPA processes. These changes may be necessary based on access needs, resource objectives, and impacts to natural resources or the human environment. Any such decisions are made through an amendment to the existing land use plan, or through implementation level actions for a travel management plan.

Under current land use plans and travel management plans, the use of ORVs (and, therefore, e-bikes) is allowed on the majority of roads and trails on BLM-administered public lands. The final rule will have no effect on the use of e-bikes and other motorized vehicles on such roads and trails; e-bikes, which the BLM currently manages as ORVs, and other motorized vehicles could continue to use roads and trails upon which ORV use is currently allowed. The final rule, however, by providing authorized officers discretion to allow Class 1, 2, and 3 e-bike use on roads and trails upon which mechanized, non-motorized bicycle use is allowed, has the potential to facilitate an increase in recreational opportunities for all Americans, especially those with physical limitations, and encourage the enjoyment of the DOI-managed lands and waters.

The BLM intends for the final rule to facilitate an increase in e-bike ridership on public lands. The BLM recognizes that the appeal of many BLM-managed roads and trails to cyclists is the opportunity to experience a challenging road or trail that may have inherently limited ridership. Under the final rule, the use of an e-bike could cause increased ridership on these roads or trails. To address site-specific issues, the BLM will consider the environmental impacts from the use of e-bikes through a subsequent analysis. E-bike use must conform to governing land use plans, including conditions of use that may be specific to an area.

§ 8340.0-5 Definitions.

The rule adds a new definition for e-bikes and defines three classifications of e-bikes (see new paragraph (j) of this section). The rule also excludes Class 1, 2, and 3 e-bikes from the definition of ORV, pursuant to a subsequent decision by an authorized officer, where specific criteria are met (see new paragraph (a)(5) of this section).

Paragraph (a) of this section defines an ORV as “any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain...” and includes

5 exceptions. The rule moves existing paragraph (a)(5) of this section to (a)(6) and adds a new (a)(5) that addresses e-bikes. Under paragraph (a)(5) of this section, a Class 1, 2, or 3 e-bike would be excluded from the definition of ORV if: 1) the e-bike is being used on roads and trails where mechanized, non-motorized use is allowed; 2) the e-bike is not being used in a manner where the motor is being used exclusively to propel the e-bike for an extended period of time; and 3) an authorized officer has expressly determined, as part of a land-use planning or implementation-level decision, that e-bikes should be treated the same as non-motorized bicycles on such roads and trails.

Notably, Class 2 e-bikes are capable of propulsion without pedaling. Under the final rule, Class 2 e-bikes operated in throttle-only actuation (i.e., relying only on the throttle without pedal assistance) for an extended period of time are not eligible to be excluded from the definition of ORV at 43 CFR 8340.0-5(a) and will continue to be regulated as ORVs.

The BLM received several comments questioning the wisdom and enforceability of the requirement in the proposed rule that e-bikes must never be used in a manner where the motor is exclusively propelling the bicycle in order to be excluded from the definition of ORV. These commenters pointed out that regular bicycles are often ridden for periods of time without pedaling, for example when a rider is coasting downhill. Other commenters suggested that the BLM remove the clause stating that the bike's "motorized features are being used to assist human propulsion," while other comments suggested removing "that are not being used in a manner where the motor is being used exclusively to propel the e-bike." In response to these comments, the BLM revised this paragraph to specify that an e-bike is eligible to be excluded from the definition of ORV so long as the rider is not relying exclusively on the motor to propel the bike "for an extended period of time." The intent of this rule is to ensure e-bikes are used in

a manner consistent with traditional, non-motorized bicycles. The revised text helps accomplish this goal by making clear that, like the rider of a traditional bicycle, an e-bike rider does not have to pedal continuously for the e-bike to be excluded from the definition of ORV. Relying exclusively on a Class 2 e-bike's throttle for an extended period of time, however, is inconsistent with the use of a non-motorized bike, and e-bikes ridden in such a manner will be considered ORVs under the BLM's regulations. The BLM will coordinate with its partners during implementation of this rule to improve education and awareness of this requirement.

Some commenters recommended that the BLM revise paragraph (a)(5) to additionally specify that an e-bike is eligible for exclusion from the definition of ORV only where it "is not being used on any designated National Scenic Trail, except on segments where motorized ORV use is authorized." The suggested addition is unnecessary. Authorized officers will determine, on a site-specific basis and through the NEPA process, if Class 1, 2, and 3 e-bike use is appropriate on roads and trails upon which traditional, non-motorized bicycles are allowed. In making that determination, authorized officers will consider whether any applicable statutory or regulatory provisions, such as the National Trails System Act, either prohibit or otherwise make e-bike use inappropriate on certain roads and trails.

Another commenter suggested adding language to paragraph (a)(5)(iii) specifying that e-bikes excluded from the definition of ORV and allowed to use non-motorized roads and trails "are independent of" non-motorized bicycles." This addition is unnecessary. The rule draws a clear distinction between e-bikes and non-motorized bicycles, and an authorized officers determination that e-bikes, or certain classes of e-bikes, may use certain non-motorized roads or trails will not limit the BLM's ability to continue to manage e-bikes separately from non-motorized bicycles, where necessary.

A commenter suggested adding language to paragraph (a)(5) specifying that e-bikes that are excluded from the definition of ORV would be operated and managed under the designation procedures of 43 CFR 8342.2. The BLM has not incorporated this suggestion into the final rule. The designation procedures at 43 CFR 8342.2 are specific to the operation and management of ORVs and apply to actions, such as the creation of area designations in land use plans, which would be inapplicable to the management of e-bikes that are excluded from the definition of ORV. Although the BLM has not incorporated this suggestion into the final rule, the agency can still apply certain aspects of section 8342.2 into the management of e-bikes, where appropriate. For example, NEPA and other laws providing for public participation can provide interested user groups, Federal, State, county and local agencies, local landowners, and other parties opportunities to participate in future decision-making processes concerning where e-bike use is appropriate. Similarly, the BLM will retain the ability to identify non-motorized road and trails that are available for e-bike use, as appropriate.

Finally, one commenter suggested the deletion of paragraph (a)(5)(iii), and another commenter suggested deleting paragraph (a)(a), (ii), and (iii). The BLM did not accept either of these suggestions. Adopting them would make the rule self-executing and result in Class 1, 2, and 3 e-bikes that satisfy the criteria at (a)(5)(i) and (ii) being automatically excluded from the definition of ORV. The BLM, however, recognizes that Class 1, 2, and 3 e-bike use may not be appropriate on all roads and trails on which non-motorized, traditional bicycles are allowed, and therefore has concluded that authorized officers should determine where e-bike use is appropriate on a site-specific basis.

New paragraph (j) of this section includes the definition for electric bicycles, or e-bikes. E-bikes may have 2 or 3 wheels and must have fully operable pedals. The electric motor for an

e-bike may not exceed 750 watts (one horsepower). E-bikes must fall into one of three classes, as described in paragraphs (j)(1) through (3) of this section.

Paragraph (j)(1) describes Class 1 e-bikes, which are equipped with a motor that only provides assistance when the rider is pedaling and ceases to provide assistance when the speed of the bicycle reaches 20 miles per hour.

Paragraph (j)(2) of this section describes Class 2 e-bikes, which have a motor that, in addition to pedal assistance, can propel the bicycle without pedaling. This propulsion and pedal assistance ceases to provide assistance when the speed of the bicycle reaches 20 miles per hour.

Paragraph (j)(3) of this section describes Class 3 e-bikes, which have a motor that only provides assistance when the rider is pedaling and ceases to provide assistance when the speed of the bicycle reaches 28 miles per hour.

The definition of e-bike in paragraph (j), including the three classes of e-bikes included in that definition, is consistent with the other DOI agencies that are also revising their regulations to address e-bike use. Having the same definition as other DOI agencies will facilitate consistent implementation of e-bike regulations across public lands administered by the DOI and aid coordination with other local, State, and Federal agencies.

One commenter suggested that language be added to the definition of e-bike in paragraph (j) stating” “[E]-bikes shall be allowed where other types of bicycles are allowed; and prohibited where other types of bicycles are not allowed. They are not considered ORVs for the purposes of this Chapter.” The BLM did not adopt this change, as it would result in a self-executing rule that fails to acknowledge that Class 1, 2, and 3 e-bike use may not be appropriate on all roads and trails on which non-motorized, traditional bicycles are allowed. Under the final

rule, authorized officers will determine whether to allow e-bikes on certain roads and trails on a site-specific basis.

Some commenters requested that the BLM revise paragraph (j) to require an e-bike to be equipped with a seat or saddle for the rider. As stated previously, the BLM is not adding a requirement that an e-bike be equipped with a seat or saddle because some bicycles, such as trial bikes, may not have a seat, and the BLM does not think it is necessary to categorically prohibit those types of e-bikes on non-motorized roads and trails. By requiring e-bikes to have operable pedals, the definition ensures that other low-powered electric vehicles, such as scooters and skateboards, will not fall within the scope of this rule.

One commenter suggested changing the portion of the current Class 2 e-bike definition stating "...and is not capable of providing assistance when the bicycle..." to "...and is not capable of such propulsion when the bicycle...". The BLM did not make this change as there is no substantive difference between the language and changing the Class 2 definition in the manner suggested by the commenter would create inconsistencies with the Class 1 and 3 definitions.

One commenter suggested adding to paragraph (j) that "no Class 1 e-bike allowed to be operated on a non-motorized road or trail on BLM public lands shall be modified to exceed the 20 mph limit and no Class 3 e-bike allowed to be operated on a non-motorized road or trail on BLM public lands shall be modified to exceed the 28 mph limit." The suggested addition is unnecessary. If a modified e-bike falls outside the definition of the three classes described in this rule, it will be managed as an ORV and will be prohibited on non-motorized roads and trails.

Some commenters suggested adding language to paragraph (j) specifying that "Devices with electric motors of 750 watts (1 hp) or more of power and not included as Class 1, Class 2 or

Class 3 in the classification system above, or used in a manner prohibited by the regulations should be managed as motor vehicles under 43 CFR Part 8340.” The BLM has not made this change, as it is clear based on the current text of the rule that e-bikes that do not fall within the definition of e-bike in paragraph (j) and do not satisfy the criteria in paragraph (a)(5) remain ORVs and will be regulated as such.

Subpart 8342—Designation of Areas and Trails

§ 8342.2 Designation Procedures.

The rule adds a new paragraph (d) to 43 CFR 8342.2 that addresses how the BLM will issue decisions to authorize the use of e-bikes on public lands. It provides authorized officers with discretion to determine whether Class 1, 2, and 3 e-bikes (or only certain classes of e-bikes) are appropriate on roads or trails upon which mechanized, non-motorized use is allowed. Under new paragraph (d), e-bikes being used on roads and trails where mechanized, non-motorized use is allowed pursuant to a decision by an authorized officer will be given the same rights and privileges of a traditional, non-motorized bicycle and will be subject to all of the duties of a traditional, non-motorized bicycle. While the BLM intends for this rule to facilitate increased accessibility to public lands, e-bikes will not be given special access beyond what traditional, non-motorized bicycles are allowed. For example, e-bikes will not be allowed on roads or trails or in areas where traditional, non-motorized bicycle travel is prohibited, such as in designated wilderness.

As originally proposed, this paragraph stated that authorized officers “should generally allow” e-bike on roads and trails on which traditional, non-motorized bicycles are allowed. Some commenters suggested that “generally” should be deleted and the rule should be revised to state that the BLM “should allow” e-bikes on roads and trails open to non-motorized bicycles.

By comparison, other commenters expressed concern that the proposed text directed field managers to permit e-bikes on non-motorized trails and created a rebuttable presumption that would bias future NEPA processes. In response to these comments, the BLM has revised this paragraph to provide that authorized officers “may” allow e-bikes on certain roads and trails and removed the statement “unless the authorized officer determines that e-bike use would be inappropriate on such roads or trails,” which described when the authorized officer would not allow e-bike use. While the BLM wants to encourage the use of e-bikes on public lands, the agency feels strongly that field personnel are in the best position to determine where and when e-bike use is appropriate. The BLM has therefore sought to clarify that authorized officers will make unbiased, site-specific decisions that account for potential resource impacts and user conflicts. Such decisions will comply with NEPA and other relevant statutory or regulatory requirements, and outcomes will not be predetermined.

One commenter suggested that the BLM replace the term “mechanical” with “motorized” in paragraph (d). This change was not accepted, as it would limit the rule’s application to traditional, non-motorized bicycles and be inconsistent with the BLM’s intention of facilitating greater e-bike access on public lands.

Some commenters suggested that the BLM add two new provisions to this section. First, that e-bikes may be ridden on streets, highways, or roads that are open to motorized vehicles, including the shoulder or bicycle lane, and second, that authorized officers should generally allow, as part of a land-use planning or implementation-level decision, e-bikes to be ridden on non-motorized bicycle paths with improved surfaces, such as concrete, asphalt, or crushed stone. The BLM has adopted neither suggestion. The BLM has declined to adopt the first suggestion because under the rule, e-bikes—both those excluded from the definition of

ORV, and those that are not—can generally ride on BLM-managed streets, highways, or roads that are open to ORVs. There may be situations, however, where bicycle use is inappropriate or potentially unsafe on certain roads that are open to ORVs. It is therefore important that authorized officers retain discretion to prohibit both e-bike and traditional, non-motorized bicycle use on certain roads open to ORVs, where appropriate. The BLM has declined to adopt the second suggestion for similar reasons. Rather than suggesting that Class 1, 2, and 3 e-bikes should generally be allowed on paths with improved surfaces, the BLM believes that authorized officer need full discretion to determine where e-bike use is appropriate on a site-specific basis.

The BLM received several comments expressing concern or confusion about whether authorized officers could allow only certain classes of e-bikes on a road or trail. To clarify that authorized officers do have discretion to make this distinction, the BLM has revised paragraph 8342.2(d) to provide that the authorized officer may approve the use of “e-bikes, or certain classes of e-bikes,” on a particular road or trail.

One commenter suggested that the BLM add text to this section stating that authorized officers may impose specific restrictions and limitations on e-bike use, or may close any road, trail, or portion thereof to e-bike use to address public health and safety concerns, natural resource protection, and other management activities and objectives. While the BLM agrees that flexibility in the management of e-bikes is important, revising the text in accordance with this suggestion is unnecessary. The rule provides authorized officer with discretion to allow or disallow e-bike use on roads and trails that are open to traditional, non-motorized bicycles. In making those determinations, authorized officers may impose limitations and restrictions on e-bike use—such as limiting certain roads and trails to only certain classes of e-bikes, or limiting e-bike use to certain times of the year—to minimize impacts on public land resources and user

conflicts. Authorized officers also have discretion to make future adjustments to those limitations and restrictions, either by amending previous decisions concerning e-bikes or imposing closures or restrictions pursuant to applicable authority.

A commenter suggested that this section should direct authorized officers to designate all public roads and trails as either open, limited, or closed to Class 1, 2, and 3 e-bikes to address what it perceived as a “predecisional undertone” caused by the direction in the proposed rule that authorized officers “should generally allow” e-bikes on roads and trails open to non-motorized bicycles. The BLM has declined to adopt this suggestion. As discussed above, the BLM has revised this section to clarify that authorized officers “may allow” e-bikes on roads and trails open to traditional, non-motorized bicycles, where appropriate, in accordance with NEPA and other applicable laws.

Another commenter suggested that the BLM add criteria that the authorized officer should consider when determining if Class 1, 2, and 3 e-bike use would be appropriate on non-motorized roads or trails, including: (1) the speed and characteristics of the different classes of e-bikes; (2) the likely effect of riding e-bikes or a particular class of e-bike on cultural or natural resources; and (3) other road and trail users. The commenter also suggested updating this section to provide that e-bike users shall be afforded all the rights and privileges and be subject to “only” rather than “all of” the duties of users of non-motorized bicycles. The BLM has not adopted these suggestions. There are many considerations that authorized officers may take into account when determining where e-bike use is appropriate, including the items suggested by the commenter. It is neither possible nor necessary to account for all these considerations in the rule, which provides authorized officers with wide discretion to consider any and all criteria that may

be appropriate to individual site-specific decisions. As discussed previously, the BLM may develop subsequent guidance to support implementation of the rule.

Finally, a commenter suggested that the BLM add additional language to paragraph (d) prohibiting Class 2 and 3 e-bikes on trails limited to mechanized, non-motorized use. The comment also suggested prohibiting any three-wheeled e-bike with a combined tire tread width of 15 inches or more on single track trails limited to mechanized, non-motorized use. The commenter indicated that these changes are necessary to limit user conflicts and minimize damage to soil and vegetation. The BLM disagrees. The rule provides authorized officers with sufficient discretion to utilize local knowledge to determine whether e-bikes, or only certain types or classes of e-bikes, are appropriate on individual roads and trails that are limited to mechanized, non-motorized use. In light of this discretion, it is unnecessary to categorically prohibit certain classes and types of e-bikes on certain types of roads and trails through this rule.

III. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that the rule is not a significant regulatory action as defined by Executive Order 12866.

Executive Order 13563 reaffirms the principles of EO 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant,

feasible, and consistent with regulatory objectives. EO 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

The rule addresses how the BLM will allow visitors to operate e-bikes on public lands and directs the BLM to specifically address e-bike usage in future land-use planning or implementation-level decisions. The rule amends 43 CFR 8340.0-5 to define Class 1, 2, and 3 of e-bikes. The rule provides authorized officers the discretion to allow, through subsequent decision-making in a land use planning or implementation-level decision, Class 1, 2, and 3 e-bikes on roads and trails upon which mechanized, non-motorized use is allowed, where appropriate. Where certain criteria are met, the rule excludes Class 1, 2, and 3 e-bikes from the definition of ORV at 43 CFR 8340.0-5(a).

This rule is not self-executing. The rule, in and of itself, does not change existing allowances for e-bike usage on BLM-administered public lands. It neither allows e-bikes on roads and trails that are currently closed to ORVs but open to mechanized, non-motorized bicycle use, nor affects the use of e-bikes and other motorized vehicles on roads and trails where ORV use is currently allowed. While the BLM intends for this rule to facilitate increased accessibility to public lands, e-bikes will not be given special access beyond what traditional, non-motorized bicycles are allowed.

The BLM reviewed the requirements of the rule and determined that it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the Economic and Threshold analysis prepared for this rule.

This analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE72", click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (EO 13771)

The BLM has complied with EO 13771 and the Office of Management and Budget implementation guidance for that order¹. The rule is not a significant regulation action as defined by EO 12866 or a significant guidance document. Therefore, the rule is not an “E.O. 13771 regulatory action,” as defined by Office of Management and Budget guidance. As such, the rule is not subject to the requirements of EO 13771.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*). This certification is based on information contained in the Economic and Threshold analysis prepared for this rule. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required. This analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE72", click the "Search" button, open the Docket Folder, and look under Supporting Documents.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

¹ Executive Office of the President, Office of Management and Budget, Executive Order 13771, January 30, 2017. 82 FR 9339. Available at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>.

See also, OMB Memorandum “Regulatory Policy Officers at Executive Departments and Agencies Managing and Executive Directors of Certain Agencies and Commissions,” April 5, 2017. Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>.

This rule is not a major rule under 5 USC 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The rule will not have a direct and quantifiable economic impact but is intended to increase recreational opportunities on public lands.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule adds a definition for e-bikes, indicates that the BLM should consider how they are managed on public lands in future land-use planning and implementation-level decisions, and excludes e-bikes from the definition of ORV when certain criteria are met.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of US-based enterprises to compete with foreign-based enterprises. The BLM expects this rule to facilitate additional recreational opportunities on public lands, which would be beneficial to local economies on impacted public lands.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The BLM will coordinate with impacted entities, as necessary and appropriate, when it makes land use planning decisions regarding the use of e-bikes on public lands in a particular area. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (EO 12630)

This rule does not affect a taking of private property or otherwise have taking implications under EO 12630. This rule will only impact public lands and how they are managed by the BLM regarding the use of e-bikes. A takings implication assessment is not required.

Federalism (EO 13132)

Under the criteria in section 1 of EO 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The BLM will coordinate with State and local governments, as appropriate, when making future planning and implementation level decisions under this rule regarding the use of e-bikes on public lands. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of EO 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (EO 13175 and Departmental Policy)

The DOI strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's

consultation policy and under the criteria in EO 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. This rulemaking is an administrative change that directs the BLM to address e-bike use in future land-use planning or implementation-level decisions. The rule does not change existing allowances for e-bike usage on BLM-administered public lands. The rulemaking does not commit the agency to undertake any specific action, and the authorized officers retain the discretion to authorize e-bike use where appropriate. Tribal consultation will occur as required on a project-specific basis as potential e-bike opportunities are considered by the BLM in the future.

Paperwork Reduction Act (44 USC 3501 *et seq.*)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

National Environmental Policy Act

The BLM does not believe that this rule constitutes a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule, as proposed, is categorically excluded from further analysis or documentation under NEPA in accordance with 43 CFR 46.210(i), which applies to:

Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case basis.

The BLM received several comments asserting that the agency cannot rely on the categorical exclusion at 43 CFR 46.210(i) to comply with NEPA because the rule is not “of an administrative, financial, legal, technical, or procedural nature,” and because its environmental effects are not “too broad, speculative, or conjectural to lend themselves to meaningful analysis.” Commenters also stated that extraordinary circumstances under 43 CFR 46.215 are applicable to this rulemaking, thereby requiring additional analysis. Commenters state that the categorical exclusion should not apply because of unique risks presented by e-bikes.

As previously discussed, this rule does not change the existing allowances for e-bike usage on public lands and will have no direct environmental effects. It will neither allow e-bikes on roads and trails that are currently closed to ORVs but open to mechanized, non-motorized bicycle use, nor affect the use of e-bikes and other motorized vehicles on roads and trails where ORV use is currently allowed. The rule will (i) add a new definition for e-bikes; (ii) direct the BLM to specifically address e-bike usage in future land-use planning or implementation-level decisions; and (iii) set forth specific criteria for when e-bikes may be excluded from the definition of ORV at 43 CFR 8340.0-5(a). Before the public could use e-bikes on any roads or trails that are not currently open to ORV use, an authorized officer of the BLM must issue a land-use planning or implementation-level decision allowing for such use. That decision must comply with applicable law, including NEPA. As such, the final rule is administrative and procedural in nature. Moreover, the environmental effects associated with future land-use planning or implementation-level decisions that do allow increased e-bike use are too speculative or conjectural at this time to lend themselves to meaningful analysis. Any environmental effects associated with future decisions will be subject to the NEPA process on a case-by-case basis.

The BLM has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that require further analysis under NEPA.

Effects on the Energy Supply (EO 13211)

This rule is not a significant energy action under the definition in EO 13211. This rule will not directly impact any allowed uses on public lands, as it only generally directs the BLM to consider allowing their use on existing trails and roads and in those areas where traditional bicycles are allowed. A Statement of Energy Effects is not required.

Author

The principal author(s) of this rule are Evan Glenn and David Jeppesen, Recreation and Visitor Services Division; Rebecca Moore, Branch of Decision Support; Scott Whitesides and Sandra McGinnis, Branch of Planning and NEPA; Britta Nelson, National Conservation Lands Division; Charles Yudson, Division of Regulatory Affairs; assisted by the Office of the Solicitor.

David L. Bernhardt

Secretary

U.S. Department of the Interior

List of Subjects in 43 CFR Part 8340

Public lands, Recreation and recreation areas, Traffic regulations.

43 CFR Chapter II

For the reasons set out in the discussion of the rule, the Bureau of Land Management proposes to amend 43 CFR part 8340 as follows:

PART 8340—OFF-ROAD VEHICLES

1. The authority citation for part 8340 continues to read as follows:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 et seq., 16 U.S.C. 4601-6a, 16 U.S.C. 1241 et seq., and 43 U.S.C. 1701 et seq.

Subpart 8340—General

2. Revise §8340.0-5 to read as follows:

§8340.0-5 Definitions.

As used in this part:

(a) *Off-road vehicle* means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding:

- (1) Any nonamphibious registered motorboat;
- (2) Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;
- (3) Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;
- (4) Vehicles in official use;
- (5) E-bikes, as defined in paragraph (j) of this section:
 - (i) While being used on roads and trails upon which mechanized, non-motorized use is allowed;
 - (ii) That are being used in a manner where the motor is not exclusively propelling the e-bike for an extended period of time; and

(iii) Where the authorized officer has expressly determined, as part of a land-use planning or implementation-level decision, that e-bikes should be treated the same as non-motorized bicycles; and

(6) Any combat or combat support vehicle when used in times of national defense emergencies.

(b) *Public lands* means any lands the surface of which is administered by the Bureau of Land Management.

(c) *Bureau* means the Bureau of Land Management.

(d) *Official use* means use by an employee, agent, or designated representative of the Federal Government or one of its contractors, in the course of his employment, agency, or representation.

(e) *Planning system* means the approach provided in Bureau regulations, directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

(f) *Open area* means an area where all types of vehicle use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in subparts 8341 and 8342 of this title.

(g) *Limited area* means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) *Closed area* means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

(i) *Spark arrester* is any device which traps or destroys 80 percent or more of the exhaust particles to which it is subjected.

(j) *Electric bicycle* (also known as an e-bike) means a two- or three-wheeled cycle with fully operable pedals and an electric motor of not more than 750 watts (1 h.p.) that meets the requirements of one of the following three classes:

(1) Class 1 electric bicycle shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

(2) Class 2 electric bicycle shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

(3) Class 3 electric bicycle shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

Subpart 8342—Designation of Areas and Trails

3. Amend §8342.2 by adding paragraph (d) to read as follows:

§8342.2 Designation procedures.

(d) *E-bikes*. (1) Authorized officers may allow, as part of a land-use planning or implementation-level decision, e-bikes, or certain classes of e-bikes, whose motorized features

are not being used exclusively to propel the e-bike for an extended period of time on roads and trails upon which mechanized, non-motorized use is allowed; and

(2) If the authorized officer allows e-bikes in accordance with this paragraph (d), an e-bike user shall be afforded all the rights and privileges, and be subject to all of the duties, of a user of a non-motorized bicycle.