



**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:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend its off-road vehicle regulations 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 off-road vehicles. This proposed change would facilitate increased recreational opportunities for all Americans, especially those with physical limitations, and would encourage the enjoyment of lands and waters managed by the BLM.

**DATES:** Please submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments, identified by the number RIN 1004-AE72, by any of the following methods:

- *Mail/ Personal or messenger delivery:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St., N.W., Attention: RIN 1004-AE72, Washington, D.C. 20240.

- *Federal eRulemaking portal:* <http://www.regulations.gov>. In the Searchbox, enter "RIN 1004-AE72" and click the Search button. Follow the instruction at this website.

**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 above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Procedural Matters

**I. Public Comment Procedures**

You may submit comments, identified by the number RIN 1004-AE72, by any of the methods described in the ADDRESSES section.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or

paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see "DATES") or comments delivered to an address other than those listed above (see "ADDRESSES").

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "ADDRESSES: Personal or messenger delivery" during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

## **II. Background**

The Federal Land Policy and Management Act (FLPMA) directs the BLM to manage public lands it administers for multiple use and sustained yield (unless otherwise provided by law) and to provide for outdoor recreation (43 U.S.C. 1701). Many visitors bicycle 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 an electric power assist to the operation of the bicycle and reduces the physical exertion demands of the rider. 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. While they come in many varieties, the proposed rule focuses on Class 1, 2, and 3 e-bikes.

The integration of a small electric motor onto bicycles has reduced the physical demand required to operate an e-bike and, in turn, has increased the public's access to recreational opportunities, 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 integration of a small electric motor onto bicycles has also created uncertainty regarding whether e-bikes should be treated in the same manner as other types of bicycles or as motorized vehicles subject to the BLM's off-road vehicle regulations at 43 CFR part 8340.

On August 29, 2019, the Secretary of the Interior issued Secretary's Order (S.O.) 3376 to address regulatory uncertainty on how agencies within the Department of the Interior should manage e-bikes. Specifically, S.O. 3376 set forth the policy of the Department of the Interior that e-bikes should be allowed where other, non-motorized types of bicycles are allowed and not allowed where other, non-motorized types of bicycles are prohibited. S.O. 3376 directs the BLM to revise its off-road vehicle regulations at 43 CFR 8340.0-5 to be consistent with S.O. 3376. The National Park

Service, Fish and Wildlife Service, and Bureau of Reclamation are also revising their regulations for consistency with S.O. 3376.

### **III. Discussion of Proposed Rule**

Existing BLM regulations do not explicitly address the use of e-bikes on public lands. However, under the BLM's current Travel and Transportation Management Manual (MS-1626), e-bikes are managed as off-road vehicles, 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 open or limited to off-road vehicle use. Additionally, e-bikes currently must be operated in accordance with the regulations governing off-road vehicle use at 43 CFR subpart 8341.

The proposed rule would direct authorized officers to generally allow, through subsequent decision-making, Class 1, 2, and 3 e-bikes whose motorized features are being used as an assist to human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, where appropriate. The authorization for Class 1, 2, and 3 e-bikes whose motorized features are being used as an assist to human propulsion to be used on roads and trails upon which mechanized, non-motorized use is allowed, would be included in a land-use planning or implementation-level decision. Such decisions would be made in accordance with applicable legal requirements, including compliance with the National Environmental Policy Act (NEPA). Under the proposed 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 off-road vehicle at 43 CFR 8340.0-5(a) and would not be subject to the regulatory requirements in 43 CFR part 8340. Additionally, e-bikes

excluded from the definition of off-road vehicle 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 proposed rule, authorized officers would not allow e-bikes where 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 off-road vehicles (and, therefore, e-bikes) is currently allowed on the majority of roads and trails on BLM-administered public lands. The proposed rule would 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 off-road vehicles, and other motorized vehicles could continue to use roads and trails upon which off-road vehicle use is currently allowed. However, the proposed rule would, by directing authorized officers to allow certain e-bike use where

mechanized, non-motorized bicycle use is allowed, facilitate an increase in recreational opportunities for all Americans, especially those with physical limitations, and encourage the enjoyment of the Department of the Interior (DOI)-managed lands and waters.

The BLM expects that the changes directed by the proposed rule would result in 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 which may have inherently limited ridership. Under the proposed rule, the use of an e-bike could cause increased ridership on these roads or trails. To address site-specific issues, the BLM would consider the environmental impacts from the use of e-bikes through a subsequent analysis. E-bike use would be subject to the governing land use plans, including conditions of use that may be specific to an area. The BLM requests information from the public on the potential social and physical impacts of e-bike use on public lands.

#### **§8340.0-5 Definitions.**

The proposed rule would add a new definition for electric bicycles, or e-bikes, and define three classifications of e-bikes (see new paragraph (j) of this section). The proposed rule would also exclude e-bikes from the definition of off-road vehicle, pursuant to subsequent action by an authorized officer, where specific criteria are met (see new paragraph (a)(5) of this section).

Paragraph (a) of this section defines an off-road vehicle 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 proposed rule would move existing paragraph (a)(5) of this section to (a)(6) and add a new (a)(5) that addresses e-bikes. Under

proposed paragraph (a)(5) of this section, an e-bike would be excluded from the definition of off-road vehicle 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; 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, some e-bikes are capable of propulsion without pedaling. For example, Class 2 e-bikes allow for the motor to propel the rider without pedaling. Under the proposed rule, e-bikes operated in a fully motorized method that does not involve pedal assistance would not be eligible to be excluded from the definition of off-road vehicle at 43 CFR 8340.0-5(a) and would continue to be regulated as off-road vehicles.

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.

Proposed 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.

Proposed 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.

Proposed 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 proposed paragraph (j), including the three classes of e-bikes included in that definition, is consistent with other DOI agencies which are also proposing revisions to their regulations to address e-bike use. The BLM believes that having the same definition as other DOI agencies will ensure consistent implementation across public lands administered by the DOI and help coordination with other local, State, and Federal agencies.

Considering that this technology is new and evolving, the BLM requests information from the public on use of Class 1, 2, and 3 e-bikes on roads and trails on public land.

## **Subpart 8342—Designation of Areas and Trails**

### **§8342.2 Designation procedures.**

The proposed rule would add a new paragraph (d) to this section that addresses how the BLM would issue decisions to authorize the use of e-bikes on public lands. Authorized officers would generally be encouraged to authorize the use of e-bikes whose motorized features are being used to assist human propulsion on roads and trails upon which mechanized, non-motorized use is allowed. The proposed rule provides authorized

officers with discretion, however, to determine that the use of e-bikes (or certain classes of e-bikes) would be inappropriate on roads or trails.

This proposed rule would not, on its own, change the existing allowances for e-bike usage on BLM-administered public lands. In other words, no additional e-bike use would be allowed on BLM-administered public lands as a direct result of this proposed rule becoming effective. Rather, the proposed rule directs the BLM to specifically consider e-bike usage in future land use planning or implementation-level decisions. This new paragraph also provides the authorized officer with discretion to determine whether e-bike use generally, or the use of certain classes of e-bikes, would be inappropriate on certain roads or trails. While the BLM believes that increasing public access to public lands through the use of e-bikes would generally be appropriate on roads and trails upon which mechanized, non-motorized use is permitted, there are certain instances where that is not the case. For example, some trails may be particularly steep or narrow and the use of an e-bike at speeds higher than originally intended could present a danger to some users. In some situations, legislation or a presidential proclamation may restrict motorized use of a trail. Another example of where e-bike use might be limited is a non-motorized trail that originates on BLM public land and feeds into a trail system under the jurisdiction of another agency that does not allow e-bike use on that trail. Proposed paragraph (d) of this section would allow the BLM the flexibility to utilize local knowledge and determine the propriety of e-bike use on site-specific basis.

Under new paragraph (d) of this section, 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 proposed rule to increase accessibility to public lands, e-bikes would not be given special access beyond what traditional, non-motorized bicycles are allowed. For example, e-bikes would not be allowed on roads or trails or in areas where traditional, non-motorized bicycle travel is prohibited, such as in designated wilderness.

#### **IV. 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 waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order 13563 reaffirms the principles of E.O. 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. E.O. 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 proposed rule addresses how the BLM would 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 proposed rule would amend 43 CFR 8340.0-5 to define class 1, 2, and 3 of e-bikes. The proposed rule would direct authorized officers to generally allow, through subsequent decision-making in a land-use planning or implementation-level decision, Class 1, 2, and 3 e-bikes whose motorized features are being used as an assist to human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, where appropriate. The proposed rule, where certain criteria are met, would exclude e-bikes from the definition of off-road vehicle.

The proposed rule would not be self-executing. The proposed rule, in and of itself, would not change existing allowances for e-bike usage on BLM-administered public lands. It would neither allow e-bikes on roads and trails that are currently closed to off-road vehicles but open to mechanized, non-motorized bicycle use, nor affect the use of e-bikes and other motorized vehicles on roads and trails where off-road vehicle use is currently allowed. While the BLM intends for this proposed rule to increase accessibility to public lands, e-bikes would not be given special access beyond what traditional, non-motorized bicycles are allowed.

The BLM reviewed the requirements of the proposed rule and determined that it would 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 proposed rule. This analysis has been posted in

the docket for the proposed 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 (E.O. 13771)**

The BLM has complied with E.O. 13771 and the OMB implementation guidance for that order<sup>1</sup>. The proposed rule is not a significant regulation action as defined by E.O. 12866 or a significant guidance document. Therefore, the proposed rule is not an “E.O. 13771 regulatory action,” as defined by OMB guidance. As such, the proposed rule is not subject to the requirements of E.O. 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.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-

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<sup>1</sup> 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>.

profit enterprises. The proposed rule is most likely to affect entities that participate in biking and other outdoor recreation. The industries most likely to be directly affected are listed in SBA Size Standards Table that follows, including the relevant SBA size standards.

**SBA Size Standards Table**

<b>SBA Size Standards Table</b>		
<b>Industry</b>	<b>NAICS Code</b>	<b>Size standards in millions of dollars</b>
Sporting Goods Stores	451110	\$16.5
Scenic and Sightseeing Transportation, Land	487110	\$8.0
Recreational Goods Rental	532284	\$8.0

Based on these thresholds, the proposed rule may affect small entities. In addition to determining whether a substantial number of small entities are likely to be affected by this proposed rule, the BLM must also determine whether the proposed rule is anticipated to have a significant economic impact on those small entities. The proposed rule is most likely to affect entities that participate in biking and other outdoor recreation. The industries most likely to be directly affected include sporting goods stores, scenic and sightseeing land transportation, and recreational goods rental. The BLM generally expects that the proposed rule would facilitate increased recreational opportunities on public lands, although these impacts would occur after future site-specific decisions, not as a direct result of the proposed rule. For these reasons, the magnitude of the impact on any individual or group, including small entities, is expected to be negligible. There is no reason to expect that these changes would place an undue burden on any specific individual or group, including small entities.

Based on the available information, we conclude that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 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 proposed rule would 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 proposed rule would add a definition for e-bikes, direct the BLM to consider how they should be managed on public lands in future land-use planning and implementation-level decisions, and exclude e-bikes from the definition of off-road vehicle when certain criteria are met.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-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 Executive Order 12630. This proposed rule would 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 Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This proposed rule would 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 would coordinate with State and local governments, as appropriate, when making future planning 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 E.O. 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 (E. O. 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 Executive Order 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 proposed 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 BLM retains the discretion to authorize e-bike use where appropriate. Tribal consultation would occur as required on a project-specific basis as potential e-bike opportunities are considered by the BLM.

### **Paperwork Reduction Act (44 U.S.C. 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 (PRA) is not required.

### **National Environmental Policy Act**

The BLM does not believe that this rule would constitute 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, would be 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.

This proposed rule would not change the existing allowances for e-bike usage on public lands. It would neither allow e-bikes on roads and trails that are currently closed to off-road vehicles but open to mechanized, non-motorized bicycle use, nor affect the use of e-bikes and other motorized vehicles on roads and trails where off-road vehicle use is currently allowed. The proposed rule would (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 off-road vehicle at 43 CFR 8340.0-5(a). Before the

public could use e-bikes on any roads or trails that are not currently opened to off-road vehicle use, an authorized officer of the BLM would have to issue a land-use planning or implementation-level decision allowing for such use. That decision would have to comply with applicable law, including NEPA. As such, the proposed rule is administrative and procedural in nature and would not result in any environmental effects. 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 would be subject to the NEPA process on a case-by-case basis. The BLM has also determined, as a preliminary matter, that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

### **Effects on the Energy Supply (E.O. 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. This proposed rule would not directly impact any allowed uses on public lands, 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.

### **Clarity of this regulation**

We are required by Executive Orders 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**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, Branch of Planning and NEPA; Britta Nelson, National Conservation Lands Division; Charles Yudson, Division of Regulatory Affairs; assisted by the Office of the Solicitor, Ryan Sklar.

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Casey Hammond

Acting Assistant Secretary

Land and Minerals Management

**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 preamble, 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 not being used in a manner where the motor is being used exclusively to propel the E-bike; 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.**

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(d) *E-bikes.* (1) Authorized officers should generally allow, as part of a land-use planning or implementation-level decision, E-bikes whose motorized features are being used to assist human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, unless the authorized officer determines that E-bike use would be inappropriate on such roads or trails; 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 user of a non-motorized bicycle.

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