



4332-90-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 420

[Cost Center: RR8567200, Fund: 20XR0680A2, WBS: RX.31480001.0040000]

RIN 1006-AA57

Off-Road Vehicle Use

AGENCY: Bureau of Reclamation; Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: Secretarial Order 3376 addresses regulatory uncertainty on how agencies within the Department of the Interior manage recreational opportunities for electric bikes (E-bikes) on trails and paths where traditional bikes are allowed. To provide consistency in Federal policy among agencies with recreational opportunities pertinent to Secretarial Order 3376, the Bureau of Reclamation (Reclamation) is proposing to amend this regulation to add a definition for E-bikes and exempt E-bikes from the regulatory definition of an off-road vehicle where E-bikes are being used on roads and trails where mechanized, non-motorized use is allowed, they are not being propelled exclusively by a motorized source, and the appropriate regional director expressly determines through a formal decision that E-bikes should be treated the same as non-motorized bicycles. This proposed change would facilitate increased E-bike use where other types of bicycles are allowed in a manner consistent with existing use of Reclamation land, and increase recreational opportunities for all Americans, especially those with physical limitations.

DATES: Comments on the proposed rulemaking must be submitted on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1006-AA57 in your comment.

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

2. U.S. mail, courier, or hand delivery: Bureau of Reclamation, Asset Management Division, 8667200, P.O. Box 25007, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Ryan Alcorn, Asset Management Division, Bureau of Reclamation, 303-445-2711; ralcorn@usbr.gov.

SUPPLEMENTARY INFORMATION:

I. Why we are publishing this proposed rule and what it does.

Secretarial Order 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. Accordingly, the proposed rule would include a 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:

a. "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;

b. “Class 2 electric bicycles” 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; and

c. “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.

The Bureau of Reclamation is proposing to make the following changes to 43 CFR part 420:

- Section 420.5(a) will be amended to include E-bikes that satisfy certain criteria in the specified exemptions to the definition of off-road vehicles.
- Section 420.5(h) will be added to define electric bicycles consistent with Secretarial Order 3376.
- Section 420.21(d) will be added to clarify applicability to E-bikes with pedal-assisted propulsion.

Reclamation expects that the changes directed by the proposed rule could facilitate increased E-bike ridership on Reclamation lands in the future. However, 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 Reclamation-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 Reclamation 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. To address site-specific issues, Reclamation would consider the environmental impacts from the use of E-bikes through subsequent analysis in accordance with applicable legal requirements, including the National Environmental Policy Act of 1969 (NEPA).

II. Compliance with other laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA 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 Executive Order 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. Executive Order 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 proposed rule in a manner consistent with these requirements.

This proposed rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

Regulatory Flexibility Act.

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Small Business Regulatory Enforcement Fairness Act.

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

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- 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.

Unfunded Mandates Reform Act (UMRA).

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing information required by the UMRA (2 U.S.C. 1531 et seq.) is not required.

Takings (Executive Order 12630).

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This proposed rule is not a government action capable of interfering with constitutionally protected property rights.

A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed 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 (Executive Order 13175).

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

Paperwork Reduction Act of 1995.

This proposed 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

This proposed rule is categorically excluded from NEPA analysis under DOI categorical exclusion, 43 CFR 46.210(i), which covers “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.” This proposed rule would not change the existing allowances for E-bike usage on Reclamation lands. Rather, it adds a new definition for E-bikes and directs Reclamation to specifically address E-bike usage in future recreation and land-use decisions. The categorical exclusion is appropriate and applicable because the proposed rule is for an administrative change and the environmental effects of the proposed rule in future land use and implementation-level decisions to open or close lands are too speculative to lend themselves to meaningful analysis in this proposed rulemaking. The environmental consequences of these decisions will be subject to the NEPA process before a land use decision is made to ensure the appropriate management of resources on a case-by-case basis.

Pursuant to 43 CFR 46.205(c), Reclamation has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances, at 43 CFR 46.215, and has found that none are applicable for this proposed rule. Therefore, neither an environmental assessment nor an environmental impact statement is required for this proposed rulemaking.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This proposed rule will not have a significant effect on the nation's energy supply, distribution, or use.

Clarity of this regulation.

We are required by Executive Orders 12866 and 12988 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 clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel 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 proposed rule, your comments should be as specific as possible. For example, you should tell us which 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.

Public availability of comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware 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 your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 420

E-Bikes, Recreation.

For the reasons stated in the preamble, Reclamation proposes to amend part 420 of title 43 of the Code of Federal Regulations as follows:

PART 420—OFF-ROAD VEHICLE USE.

1. The authority citation for part 420 continues to read as follows:

AUTHORITY: 32 Stat. 388 (43 U.S.C. 391 et seq.) and act amendatory thereof and supplementary thereto; E.O. 11644 (37 FR 2877).

2. Amend § 420.5 by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 420.5 – Definitions.

* * * * *

(a) *Off-road vehicle* means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes:

- (1) Nonamphibious registered motorboats;
- (2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;
- (3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;
- (4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with the Bureau;
- (5) Any combat or combat support vehicle when used in times of national defense

emergencies;

(6) “Official use” vehicles; and

(7) Electric bikes as defined by § 420.5(h), except those being used in a manner where the motor is being used exclusively to propel the E-bike.

* * * * *

(h) *Electric Bicycle* (also known as an E-bike) shall mean 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 B—Designated Areas and Permitted Events.

3. Amend § 420.21 by adding paragraph (d) to read as follows:

§420.21 Procedure for designating areas for off-road vehicle use.

* * * * *

(d) The appropriate regional director should generally allow E-bikes whose mechanical features are being used as an assist to human propulsion on roads and trails

upon which mechanized, non-motorized use is allowed, in compliance with the requirements of this section, unless the authorized officer determines that E-bike use would be inappropriate on such roads and trails. If the appropriate regional director allows E-bikes in accordance with this paragraph, an E-bike user shall be afforded the rights and privileges, and be subject to all the duties, of non-motorized bicycles.

Aubrey J. D. Bettencourt

Deputy Assistant Secretary – Water and Science

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