

**4332-90-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

43 CFR Part 420

[RR85672000, 20XR0680A2, RX.31480001.0040000]

RIN 1006-AA57

**Off-Road Vehicle Use**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The Bureau of Reclamation (Reclamation) is amending 43 CFR 420 to add a definition for electric bikes (E-bikes) and exclude 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, where E-bikes are not propelled exclusively by a motorized source, and appropriate Reclamation Regional Directors expressly determine through a formal decision that E-bikes should be treated the same as non-motorized bicycles. This change facilitates increased E-bike use where other types of bicycles are allowed in a manner consistent with existing use of Reclamation land, and increases recreational opportunities for all Americans, especially those with physical limitations.

**DATES:** This rulemaking is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This final rule is available on the internet at <http://www.regulations.gov> and <http://www.usbr.gov/recreation/index.html>. Comments we received, as well as supporting documentation we used in preparing this final rule, are available for public inspection at

<http://www.regulations.gov> in Docket ID: BOR-2020-0001.

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

**SUPPLEMENTARY INFORMATION:**

**Background.**

On August 29, 2019, the Secretary of the Interior signed Secretarial Order 3376, *Increasing Recreation Opportunities Through the Use of Electric Bikes*, that directed Reclamation and other Department of the Interior (DOI) bureaus (Bureau of Land Management, National Park Service, and the U. S. Fish and Wildlife Service) to increase recreation opportunities and expand access on public lands. The Secretarial Order addressed regulatory uncertainty on how bureaus within DOI manage recreational opportunities for E-bikes on trails and paths where traditional bikes are allowed.

Uncertainty about the regulatory status of E-bikes had led some of DOI's land management bureaus to impose restrictive access policies treating E-bikes as motor vehicles, often inconsistent with State and local regulations for adjacent areas. The possibility that in some cases E-bikes can be propelled solely through power provided by the electric motor, a function often used in short duration as an assist, has contributed to confusion about E-bike classification. Further, Federal regulation has not been consistent across DOI and has created ambiguity among recreation area rules regarding trail and road access to E-bikes resulting in limited access to Federally owned lands by E-bike riders.

To provide consistency in Federal policy among DOI's bureaus, the Secretarial Order set forth the policy of DOI 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.

### **Summary of Final Rule.**

Reclamation was directed by the Secretarial Order to revise 43 CFR 420 to add a definition of E-bikes and to generally treat E-bikes similarly to traditional, non-motorized bicycles. Continuing, it is further specified that E-bikes should be defined as having two or three wheels and fully operable pedals. The electric motor for an E-bike may not exceed 750 watts (one horsepower) and E-bikes must fall into one of three classes:

(a) "Class 1 electric bicycle" means 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 bicycle" means 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" means 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 rule therefore amends title 43 of the Code of Federal Regulations (CFR) by revising part 420 as follows:

(a) Section 420.5(a) is amended to include E-bikes that satisfy certain criteria in the specified exclusions to the definition of off-road vehicles.

(b) Section 420.5(h) is added to define electric bicycles to include the three classes of electric bicycles.

Reclamation expects these changes to the rule could facilitate increased E-bike ridership

on Reclamation lands in the future. However, the rule would not be self-executing. The rule, in and of itself, does 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. Furthermore, 43 CFR 420.5(a)(7) would allow Reclamation's Regional Directors to expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles. While Reclamation intends for this 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).

### **Summary of and Response to Public Comments.**

Reclamation published a proposed rule in the Federal Register on April 13, 2020 (85 FR 20463) soliciting public comments for a 60-day period. The public comment period ended on June 12, 2020. During the public comment period, Reclamation received 705 comment submissions from members of the public including senior citizens, avid cyclists, hikers, equestrians and equestrian associations, industrial cycling organizations and manufacturers, as well as state and local governments. Each public comment received consideration in the development of 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. The following discussion addresses

substantive information provided during the comment period, by topic, and includes comments and responses that were made in the final rule based on comment analysis and other considerations.

*Comment:* Before any existing, non-motorized trails could be opened to E-bikes, logic suggests a NEPA study should have to be completed.

*Response:* Lands managed by Reclamation vary significantly from region to region (e.g., the environmental variability, potential user conflicts, amounts of visitation) making an overarching NEPA analysis infeasible. Addressing potential environmental and social issues are most meaningful at the site-specific level. Reclamation will consider the suitability of E-bike use on specific trails through subsequent analysis consistent with the requirements of NEPA and other applicable laws. The NEPA process and implementation will be conducted in accordance with 43 CFR 420.5(a)(7) whereby Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles. Implementation may also include the development of site-specific design features and mitigation strategies to reduce or negate potential adverse impacts.

*Comment:* A public review and comment period of at least 60 days should be provided for each proposed trail or trail system, and that comment period should be in a season when the area is accessible to people who want to examine the routes for themselves before submitting comments.

*Response:* Reclamation began its 60-day public comment period on April 13, 2020 and concluded on June 12, 2020. This period gave the public the opportunity to participate in the rulemaking process. Given the quantity of existing trails upon Reclamation lands, creating additional 60-day public comment periods for each proposed trail would be extremely costly and

create a large administrative burden. Additionally, as local field and area offices will work with recreation area managing partners to make such determinations, the decision to add additional comment periods, if necessary, will remain at that level and at the discretion of the Regional Director.

*Comment:* Reclamation seeks to define relevant classifications of electric bicycles ("E-bikes") and exclude E-bikes from DOI's regulatory definition of "off-road vehicles," which are forbidden to be used in certain areas that are open to traditional bicyclists. Permitting the use of certain E-bikes in appropriate areas could indeed benefit many Americans who otherwise could not access certain lands. However, instead of clearly describing a widening of the permitted category of "bicycles," the amendment offers clumsy, incohesive groupings of E-bikes. The proposed amendments may create arbitrary and capricious results.

*Response:* The definition of E-bikes included in this rule establishes a consistent definition for use across all DOI bureaus. The definition and associated classification system are based on industry standards and is the same system that many states are using to regulate E-bikes. DOI chose this system to be as consistent as possible with how E-bikes are being regulated.

*Comment:* The regulation fails to offer any policy rationale, and thus is both arbitrary and capricious and fails to allow commenters to properly respond to the agency's decision-making. The regulation simply states that "E-bikes should be allowed where other, non-motorized types of bicycles are allowed."

*Response:* Federal regulation of E-bikes has not been consistent across DOI. The purpose of this rulemaking is to unify regulation of E-bikes on Federal lands managed by DOI. Secretarial Order 3376 directs the Bureau of Land Management, U. S. Fish and Wildlife service,

National Park Service, and Reclamation to define E-bikes, and directs Reclamation to expressly exclude E-bikes from the definition of Off-Road Vehicles (ORV) in accordance with 43 CFR 420.5(a)(7) whereby Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles.

*Comment:* We support allowing only Class 1 E-bikes on narrow trails to better ensure trail integrity and appropriate speeds for safe interaction with other trail users. Class 2 and Class 3 E-bikes are not appropriate for these narrow non-motorized trails.

*Response:* Reclamation acknowledges comments that request the exclusion of Class 2 and Class 3 E-bikes from non-motorized trails. The rule provides Regional Directors or their delegates authority to determine whether E-bike use generally, or the use of certain classes of E-bikes, would be appropriate on certain roads or trails.

*Comment:* Omit three-wheeled E-bikes or provide a detailed description of the three-wheeled bikes and specific trail parameters on which they should be allowed. Three-wheeled bikes are closer to all-terrain vehicles and will have specific requirements for the trails unlike a two-wheeled E-bike.

*Response:* Reclamation acknowledges comments pertaining to omitting the use of three-wheeled E-bikes on non-motorized trails. The rule provides Regional Directors or their delegates the authority to determine whether E-bike use generally, or the use of certain classes of E-bikes, would be appropriate on certain roads or trails. Regional Directors may also determine whether the use of three-wheeled E-bikes are appropriate on certain roads or trails. In addition, keeping in line with industry standards, the term "low-speed" electric bicycles means two- or three-wheeled vehicle.

*Comment:* Reclamation should amend text within the proposed rule to allow all bicycle trails and routes to be open to E-bikes as well as motorized paths with improved surfaces.

*Response:* Reclamation believes that E-bikes would generally be appropriate on roads and trails upon which mechanized, non-motorized use is permitted, however there are certain instances where that may not be possible. Therefore, it is most appropriate to follow 43 CFR 420.5(a)(7) whereby Reclamation's Regional Director may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles. Additionally, E-bikes are currently allowed on many surfaced roads and motorized paths per state and local level discretion.

*Comment:* As Reclamation will be allowing E-bikes on non-motorized trails and trail systems, the addition of other ORVs should also be permitted.

*Response:* This final rule addresses only Class 1, 2, and 3 E-bikes. Reclamation will continue to manage all types of ORVs in accordance with 43 CFR 420.21, Procedure for Designating Areas for Off-Road Vehicle Use. No other types of ORVs will be eligible for exclusion under this rule.

*Comment:* Reclamation may wish to exclude hoverboards and other standing, electrical motorbikes, because these devices can also have "pedals" that do not engage the motor unless activated. Explicit exclusion of hoverboards and other motorized instruments may be required to avoid an issue.

*Response:* The intent of the rule is to generally allow E-bikes where a traditional bicycle is allowed. E-bikes may have two or three 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 the rule. The definition provided in the rule, including the



requirement for fully operational pedals, is sufficient to allow use of E-bikes and does not apply to other electric vehicles such as scooters, skateboards, or hoverboards if they do not fit into the definition established by this rule.

*Comment:* Definitions of Class 1, 2, and 3 E-bikes will need to be reassessed and updated to reflect improvement in technologies as it becomes available.

*Response:* Reclamation acknowledges that future changes in technology may result in some E-bikes not being eligible for exclusion from the definition of ORV as defined in 43 CFR 420 if they do not fit into the definition established by this rule. Regional Directors may allow the use of certain ORVs on designated routes and trails without any necessary revisions to the regulations as part of 43 CFR 420.21, Procedure for Designation Areas for Off-road Vehicle Use.

*Comment:* Previous grants that put monies into non-motorized trails, will now have spent their money on trails that are no longer non-motorized. E-bikes would also create issues with further Federal trail funding.

*Response:* Reclamation recognizes that funding commitments for trail planning, construction, and maintenance must be considered. The use of funds from grants and other funding sources for past, present, and future trail projects will be a contributing factor in making management determinations. Title 43 CFR 420 gives Regional Directors authority in making management determinations.

*Comment:* The implementation of the proposed rule will negatively impact natural resources and wildlife.

*Response:* Future implementation of the rule will be subject to the NEPA process on a case-by-case basis depending on the approach at Reclamation's Regional and Area Office levels.

Applying the NEPA process at a site-specific level will allow Reclamation to evaluate detailed information on the potential effects of E-bike use for a particular area and develop site-specific design features and mitigation strategies, if needed. In addition, the rule continues to allow the flexibility in accordance with 43 CFR 420.5(a)(7) whereby Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles and to review designated areas and trails periodically for unmitigated resource damage.

*Comment:* The use of E-bikes on non-motorized trails will create user conflicts and safety concerns for hikers, traditional bikers, and equestrians.

*Response:* Reclamation acknowledges concerns regarding potential user conflicts and safety concerns on trails that have previously been designated for non-motorized use such as hiking and equestrian trails. As such, the rule allows the flexibility in accordance with 43 CFR 420.5(a)(7) whereby Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles and will not create unmitigated user conflicts.

*Comment:* Based on the three categories of E-bikes as defined in the rule, it will be impossible to enforce that E-bikes are not modified beyond these specifications.

*Response:* Illegal modification of E-bikes is beyond the scope of this rulemaking process. Reclamation acknowledges that enforcement of modified vehicles is difficult. However, modifications that result in such vehicles no longer qualifying as a Class 1, 2, or 3 E-bike as defined in the rule, result in that vehicle being subject to the same enforcement as designated in 43 CFR 420.4.

*Comment:* E-bikes have a motor and therefore should not be allowed on non-motorized

trails and roads.

*Response:* Reclamation recognizes the nuance within the comments related to E-bikes having a motor, and therefore should not be allowed on non-motorized trails and roads. In making its decision Reclamation took into consideration the 1972 Executive Order 11644 and the amended 1977 Executive Order 11989, “Use of Off-Road Vehicles on the Public Lands” which established policies and procedures for managing the use of “off-road vehicles” to protect the resources of the public lands, promote safety of all users of the lands, and minimize conflicts among users. The Executive Order, which does not reference E-bikes, defines “off road vehicles” 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 are expressly exempt from this definition and additional exemptions may be made by the respective agency head or as is 43 CFR 420 by Regional Directors.

In addition, although the E-bikes addressed in this rule have a small electric motor, there are multiple reasons why it is reasonable for Regional Directors to maintain the authority to manage Class 1, 2, and 3 E-bikes in the same manner as non-motorized bicycles.

Class 1, 2, and 3 E-bikes that are the subject of this rule differ significantly in their engineering from the types of motorized vehicles that are expressly referenced in Executive Order 11644 and that the Executive Branch was interested in regulating. These vehicles include the “motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, [and] all-terrain vehicles” expressly referenced in Executive Order 11644 and the “motorcycles of various sorts (minibikes, dirt bikes, enduros, motocross bikes, for example), four-wheel drive vehicles such as Jeeps, Land Rovers, or pickups, snowmobiles, dune buggies, and all-terrain vehicles” discussed in a 1979 report by the Council on Environmental Quality (CEQ) that discusses the requirements of the

Executive Order in great detail and evaluates efforts undertaken by Federal land management agencies to comply with its requirements. Although these lists were not intended to include every type of vehicle that may fall within the Executive Order's definition of off-road vehicle, it is telling that all of the vehicles identified in Executive Order 11644 and the CEQ report differ markedly from E-bikes that may be excluded from the definition of ORV under this rule.

Whereas the vehicles referenced in the Executive Order are powered by internal combustion engines that produce more than 1 horsepower, the E-bikes that may be allowed on non-motorized trails under this rule rely on human power and only derive some assistance from a small, electric motor. Whereas the E-bikes that are the subject of this rule have operable pedals, the ORVs expressly referenced in the Executive Order do not.

As a result of those engineering differences, E-bikes tend to have impacts that are similar to traditional, non-motorized bicycles and unlike those that result from the larger, more powerful vehicles that Executive Order 11644 was intended to mitigate.

Lastly, 43 CFR 420 has always allowed for the inclusion of ORVs where Regional Directors have authorized the use, this rule is not authorizing the opening of all trails and roads to E-bikes. The intended purpose is to meet public demand for E-bike use and creating opportunities for furthering recreation through the use of E-bikes where it is deemed appropriate.

*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. Reclamation has designed the rule to provide Regional Directors 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. Regional Directors will take these and other types of site-specific consideration into account when making future planning or implementation-level decisions concerning E-bike use.

*Comment:* The opening of trails to E-bikes on Government managed lands will make it easier for people with physical impairments to enjoy trails again.

*Response:* The intention of the Secretarial Order 3376, *Increasing Recreational Opportunities through the Use of Electric Bikes*, was written for this very reason. Reclamation understands that there are members of the public that may be unable to utilize public trails and roads by means of biking due to physical limitations and impairments. It is important to note that while the purpose is to expand recreational opportunities by allowing E-bikes on trails, 43 CFR 420 will continue to authorize Regional Directors and their delegates authority to open or close the use of E-bikes on certain trails. This decision will remain at the local level and follow the framework of 43 CFR 420.

*Comment:* The new rule provides much needed category guidelines for public safety officers as well as a new degree of local level decision making for E-bikes.

*Response:* The current category classes of E-bikes is a widely used model across the United States. While Reclamation did not create the classes, we do recognize the importance of maintaining a clear and consistent message to aid not only public safety officers, but also the general public. Additionally, due to the unique characteristics of each recreation area,

Reclamation also agrees that maintaining local level decision making is vital in successfully implementing the Secretarial Order. In accordance with 43 CFR 420.5(a)(7), Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles.

*Comment:* Federal Laws concerning E-bike use on public lands are currently outdated and are confusing for consumers, small businesses and local governments. This proposed rule fixes that.

*Response:* Reclamation's final rule is not changing any existing Federal Laws but rather aligning with other land management bureaus within DOI and other Federal Agencies. The Secretarial Order has intended to increase recreational opportunities through the use of E-bikes by establishing uniform rules across DOI. Reclamation's authority to use discretion when opening and closing areas to the use of E-bikes will not be affected by the rule. In accordance with 43 CFR 420.5(a)(7), Reclamation's Regional Directors may expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles.

### **Summary of Changes from the Proposed Rule.**

After taking the public comments into consideration and after additional review, Reclamation has made the decision to not revise 43 CFR 420.21, but rather add language to 43 CFR 420.5(a)(7) to allow Reclamation's Regional Directors to expressly determine, as part of a land-use planning or implementation-level decision, that E-bikes should be treated the same as non-motorized bicycles. Additionally, Reclamation made small, non-substantive stylistic, formatting, and structural changes to better serve the reader.

## **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. OIRA has determined that this rule is not significant.

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 rule in a manner consistent with these requirements.

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

### *Regulatory Flexibility Act.*

DOI certifies that this 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 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.

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 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 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 rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This 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 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 rule complies with the requirements of Executive Order 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 (Executive Order 13175).*

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

*Paperwork Reduction Act of 1995.*

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.*

This rule is categorically excluded from the National Environmental Policy Act of 1969 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 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 rule is for an administrative change and the environmental effects of the 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 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 rule. Therefore, neither an environmental assessment nor an environmental impact statement is required for this rulemaking.

*Effects on the Energy Supply (Executive Order 13211).*

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

#### **Drafting Information.**

This final rule reflects the collective efforts of Reclamation staff in the Asset Management Division under the Dam Safety and Infrastructure Directorate, and in coordination with staff of the Bureau of Land Management, National Park Service, U. S. Fish and Wildlife Service, as well as with assistance from DOI's Office of the Solicitor.

#### **References.**

A complete list of all resources reviewed and considered during the development of this rulemaking is available at <http://www.regulations.gov> at Docket No. BOR-2020-0001.

#### **List of Subjects in 43 CFR Part 420**

E-bikes, Recreation.

For the reasons stated in the preamble, Reclamation is amending 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). SOURCE: 39 FR 26893, July 24, 1974, unless otherwise noted.

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 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 includes:

- (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): while being used on roads and trails upon which mechanized, non-motorized use is allowed, that are 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 where the Regional Director 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.

\* \* \* \* \*

(h) *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 horsepower) that meets the requirements of one of the following three classes:

(1) *Class 1 electric bicycle* means 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* means 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* means 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.

---

Timothy R. Petty  
Assistant Secretary – Water and Science