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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 27**

**[Docket No. FWS-HQ-NWRS-2019-0109; FXRS1263090000-201-FF09R81000]**

**RIN 1018-BE68**

**National Wildlife Refuge System; Use of Electric Bicycles**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, issue regulations pertaining to the use of electric bicycles (otherwise known as “e-bikes”). These regulations have the potential to facilitate increased recreational opportunities for all Americans, especially for people with physical limitations. This rule will provide guidance and controls for the use of e-bikes in the National Wildlife Refuge System.

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

**ADDRESSES:** The comments received on the proposed rule and the economic and threshold analysis prepared to inform the rule are available at the Federal e-rulemaking portal:

<http://www.regulations.gov> in Docket No. FWS–HQ–NWRS–2019–0109.

**FOR FURTHER INFORMATION CONTACT:** Maggie O'Connell, National Wildlife Refuge System–Branch Chief for Visitor Services, 703–358-1883, [maggie\\_oconnell@fws.gov](mailto:maggie_oconnell@fws.gov).

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) (16 U.S.C. 668dd–668ee), governs the administration and public use of national wildlife refuges, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k-4) governs the administration and public use of national wildlife refuges and national fish hatcheries.

National wildlife refuges are considered closed to the public until and unless the Secretary of the Interior (Secretary), acting through the U.S. Fish and Wildlife Service, opens the

area for use. 50 CFR 25.21. The Secretary may open refuge areas to any use, including public recreation, upon a determination that the use is compatible with the purposes of the refuge and the National Wildlife Refuge System (NWRS) mission. 16 U.S.C. 668dd(d). The mission of the NWRS is: “to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” 16 U.S.C. 668dd(a)(2). Administration of the NWRS must also be in accordance with all applicable laws, and consistent with the principles of sound fish and wildlife management and administration.

The U.S. Fish and Wildlife Service (FWS) administers the NWRS via regulations contained in title 50 of the Code of Federal Regulations (CFR). These regulations, found at 50 CFR, chapter I, subchapter C, serve to protect the natural and cultural resources of refuges, and to protect visitors and property within those lands, by governing public use of the NWRS.

National wildlife refuges offer many outdoor recreation activities such as wildlife observation, fishing, and hunting, and nearly 200 national wildlife refuges allow bicycling on designated roads and trails. FWS regulations generally prohibit visitors from using motorized vehicles on refuges other than on designated routes of travel. See 50 CFR 27.31(a).

Traditional bicycles are allowed on some designated routes of travel and parking areas open to public motor vehicles. On refuges where the refuge manager has determined that such use is an appropriate and compatible use, bicycles are also allowed on certain roads, access trails, and other trails that are closed to public motor vehicle use but that may be open to motor vehicle use by the FWS for administrative purposes.

FWS policy set forth in the FWS Manual outlines a robust process for determining appropriate use and compatibility, which each refuge manager must follow when making refuge-specific decisions for allowing a proposed public use, such as e-biking. See 603 FW 2. This process must be followed even if other similar uses are already allowed.

### **This Rulemaking Action**

FWS published a proposed rule on April 7, 2020 (85 FR 19418), pertaining to the use of low-speed e-bikes on NWRS lands in accordance with Secretary's Order 3376, which directed Department of the Interior (DOI) bureaus to propose regulations allowing e-bikes where other types of bicycles are allowed, consistent with other laws and regulations. The proposed rule put forward new regulations to be added to 50 CFR part 27, which pertains to prohibited acts on refuge lands. The current regulations in § 27.31 generally prohibit use of any motorized or other vehicles, including those used on air, water, ice, or snow, on national wildlife refuges except on designated routes of travel, as indicated by the appropriate traffic control signs or signals and in designated areas posted or delineated on maps by the refuge manager.

The proposed rule specified that the operator of an e-bike may use the small electric motor (not more than 1 horsepower) only to assist pedal propulsion. In other words, the proposed rule indicated that the motor may not be used to propel an e-bike without the rider also pedaling. However, based on comments received on the proposed rule, FWS has modified the final rule language to specify that e-bike operators may not propel an e-bike using the motor exclusively for extended periods of time. See the proposed rule (85 FR 19418, April 7, 2020) for further information on the purpose and provisions of the proposed regulations.

Promulgation of this rule supersedes FWS Director's Order 222, which was established to implement Secretary's Order 3376.

## **Comments Received**

The proposed rule opened a public comment period, which ended June 8, 2020. We accepted comments on the proposed rule through the mail, by hand delivery, and through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). By the close of the comment period, we received just over 16,000 comments from thousands of individuals and approximately 62 organizations.

Most (approximately 97%) of the comments we received were form comments, submitted by unique individuals but including very similar or identical content. Commenters expressing general support for the proposed rule most frequently cited the following reasons:

- E-bike use on NWRS lands will allow people to access lands and participate in bicycling when they otherwise could not due to age or physical limitations.
- The proposed rule will enable e-bike users more access to roads and trails, nature, and the outdoors.
- E-bike use can improve health through exercise and physical exertion.
- E-bikes cause no more damage to trails than traditional bicycles.
- The use of e-bikes reduces pollution compared to the use of other vehicles, and e-bikes are not noisy.

While some commenters stated general support for or opposition to the rule in whole or in part, the majority of commenters included at least one, and often multiple, unique and specific remarks about the proposed rule. In other words, a single commenter often provided more than

one reason that supported or opposed the proposed rule. Many of the comments we received referenced a general topic, and we have grouped similar comments together in some instances, particularly if the response is the same for each of the comments. For example, we received multiple comments that suggested only certain classes of e-bikes should be allowed on nonmotorized trails. Some commenters stated that only Class 1 e-bikes should be allowed, while Class 2 and Class 3 e-bikes should be prohibited. Other commenters requested different combinations of e-bike classes be allowed or prohibited on national wildlife refuges. We grouped these class-related comments together. We also grouped other related comments, such as those addressing enforcement or visitor safety issues when our response for each would be the same. Summaries of the pertinent issues raised in the comments and FWS responses are provided below:

*Comment (1):* We received comments from several individuals and organizations that were dissatisfied with some aspect of the public review process associated with this rulemaking. Specifically, commenters stated that the length of the public review period was not sufficient due to the coronavirus pandemic, that the pandemic created obstacles to public participation, and that it prevented public meetings. Some commenters stated that due to the pandemic, the rulemaking should be postponed.

*Our Response:* The comment period began on Tuesday, April 7, 2020, and ended on Monday, June 8, 2020, for a total open period of 62 days, which is 2 days longer than the standard timeframe for proposed rules issued by the Department of the Interior. The 60-day public comment period is the opportunity for participation in the rulemaking process. During this time period, the public was invited to submit comments via mail or hand delivery or via the Federal eRulemaking portal (<http://www.regulations.gov/>). We received more than 16,000

comments during the public comment period. The large number of comments received suggests that the 60-day public review period was sufficient for providing public comment. Therefore, the FWS met the Administrative Procedure Act (APA; 5 U.S.C. 553) requirement for notice and comment. Public meetings are not required for informal rulemakings under the APA. Moreover, the public will have more opportunities to comment because refuge managers must provide an opportunity for public review and comment during the compatibility determination process. See 603 FW 2.11(I), 2.12(9).

*Comment (2):* We received comments stating the proposed rule violates the National Wildlife Refuge System Improvement Act of 1997 by interfering with other priority uses and prevents the FWS from managing for conservation over all other competing uses in the NWRS.

*Our Response:* This rule does not mandate the use of e-bikes at any national wildlife refuge. The rule defines permitted types of e-bikes and establishes a general framework that can be used by a refuge manager to allow e-bikes on designated roads and trails where traditional bicycles are already allowed. The National Wildlife Refuge System Improvement Act of 1997 states that "the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." In determining if e-biking is appropriate and compatible, the refuge managers use their sound professional judgment to consider wildlife and habitat impacts, health and safety, potential conflicting uses, and available resources to manage the use. The National Wildlife Refuge System Improvement Act of 1997 provides guidelines for how managers may or may not implement new uses on refuges, and this rule does not violate the Act.

*Comment (3):* We received several comments stating that the FWS does not need rulemaking to allow e-bike use at national wildlife refuges because refuge managers can allow e-bikes under existing regulations.

*Our Response:* Although refuge managers can allow e-bikes under existing regulations, Secretary's Order 3376 was issued to clarify, simplify, and unify regulation of e-bikes on Federal lands managed by DOI, and it directed the FWS to develop the proposed rule. Prior to this final rule, e-bikes were not defined and e-bike use was not described in any FWS regulations. The rule defines the type and classes of e-bikes that a refuge manager may allow and provides a consistent management framework for the use of e-bikes in the NWRS. This rule does not authorize e-bike use; rather, such authorization would be based on subsequent evaluation and determination at the site-specific level. It provides the public with information about e-biking regulations and provides guidance to refuge managers to manage e-bike use at refuges.

*Comment (4):* We received comments about the ability of individual refuge managers to make decisions on e-bike use at a specific national wildlife refuge. Some commenters stated that refuge managers should be able to determine if e-bike use is a compatible use on a refuge. Other commenters stated that refuge managers should not have the authority to determine if e-bikes are compatible, and that this decision should be made for all refuges at a national level. One commenter stated that the FWS should conduct a general compatibility analysis first. Some commenters requested that the rule text should be rewritten to include a uniform set of guidelines, parameters, and criteria for refuge managers to use when determining if and how e-bike use is allowed.

*Our Response:* Established laws, regulations, and policies enable the FWS and the refuge manager to determine if a public use is allowed on a site-specific basis, as summarized below. The Administration Act stipulates that certain wildlife-dependent and other recreational uses, such as traditional bicycle and e-bike use, if found to be appropriate and compatible, are legitimate public uses of a refuge. FWS policy outlines a robust process for determining appropriate use and compatibility, which each refuge manager must follow when making refuge-specific decisions for a public use such as e-biking. The FWS has adopted policies and regulations implementing the requirements of the Administration Act that refuge managers comply with when considering appropriate and compatible uses on individual refuges.

According to FWS policy (603 FW 1.11), refuge managers base the finding of appropriateness on the following 10 criteria:

- We have jurisdiction over the use.
- The use is legal.
- The use is consistent with Executive Orders and Department and Service policies.
- The use is consistent with public safety.
- The use is consistent with refuge goals and objectives in an approved management plan.
- The use has not been rejected previously, unless circumstance or conditions have changed or it was not considered in a refuge planning process.
- The use is manageable within available budget and staff.
- The use will be manageable in the future within existing resources.
- The use contributes to the public's understanding and appreciation of the refuge's natural or cultural resources or is beneficial to the refuge's natural and cultural resources.

- The use can be accommodated without impairing existing wildlife-dependent recreation uses.

If the refuge manager finds e-bike use to be appropriate under the criteria above, the refuge manager must then determine whether e-bike use is “compatible” with the established purpose(s) of the refuge and the mission of the NWRS, as required by the Administration Act. Each refuge is established with unique refuge purposes, and, as such, the Administration Act requires each refuge to evaluate compatibility on a refuge-specific level. A compatible use is “[a] proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” 603 FW 2.6(B). The refuge manager must issue a compatibility determination, which is “a written determination signed and dated by the refuge manager and Regional Chief signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.” 603 FW 2.6(A). The compatibility determination process includes a requirement for public notification and comment on the proposed use. 603 FW 2.11(I), 2.12(9). The refuge manager is required to consider the anticipated impacts that a new use such as e-bikes would have on public safety, refuge resources, other uses, and other users. See the complete policy for determining compatibility of proposed and existing uses of national wildlife refuges for more information. 603 FW 2.

In addition, opening a refuge to specific public uses requires compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). Depending on the site and type of use, additional documentation may be required, such as an evaluation under section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) or section 106 of the National Historic

Preservation Act (16 U.S.C. 470 *et seq.*). There are more than 565 national wildlife refuges, and the established purposes, habitats, public uses, and many other conditions at individual national wildlife refuges can differ greatly. Local refuge managers may limit, restrict, or impose conditions on e-bike use where necessary to manage visitor-use conflicts and ensure visitor safety and resource protection.

Compatibility determinations are not final, as they require periodic reevaluation. Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will reevaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. 603 FW 2.11(H)(2). Moreover, a refuge manager may always reevaluate the compatibility of a use at any time. See 50 CFR 25.21(g). When we reevaluate a use for compatibility, we will take a fresh look at the use and prepare a new compatibility determination following the procedure outlined in 50 CFR 26.41 and 603 FW 2.

*Comment (5):* Several commenters stated the rule is inconsistent with the NWRS mission and the principles of sound fish and wildlife management. Some commenters stated that the rule does not appear to be compatible with the purposes of many national wildlife refuges.

*Our Response:* This rule does not mandate the use of e-bikes in the NWRS, and the rule itself is not inconsistent with the Refuge System mission and principles of sound fish and wildlife management. The Administration Act authorizes the Secretary of the Interior to allow the use of refuges for any use, including public recreation, if such use is compatible with the major purposes for which the refuge was established, among other considerations. 16 U.S.C. 668dd(d). Refuge managers are responsible for determining whether e-bike use is a compatible

use for each refuge on a case-by-case basis. When completing compatibility determinations, refuge managers use “sound professional judgment” to determine if a use will materially interfere with or detract from the fulfillment of the NWRS mission or the purpose(s) of the refuge. “Sound professional judgment” is defined as: “A finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.” 603 FW 2.6(U). If the refuge manager determines e-bike use to be an appropriate and compatible use, e-biking will be managed using principles of sound fish and wildlife management. For example, wildlife disturbance that is very limited in scope or duration may not result in interference with fulfilling the NWRS mission or refuge purposes. However, even unintentional minor harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold (603 FW 2.11(B)). If a refuge manager determines that e-bike use is not compatible on a particular refuge or in a part of a refuge, then the refuge manager shall prohibit the use of e-bikes on that refuge/in that area. Therefore, this rule is consistent with the NWRS mission.

*Comment (6):* One commenter requested that the rule should clarify e-bike use on national wildlife refuges in Alaska and change the rule text to align with the directives in Secretary’s Order 3376. The commenter stated that the FWS should delete 50 CFR 27.31(m) as written in the proposed rule and add language in 50 CFR 25.12 to define e-bikes and exempt them from the definitions of off-road and motorized vehicles. In addition, the commenter stated that the proposed rule failed to adequately describe how the National Wildlife Refuge System

Administration Act affects the management of e-bikes in Alaska and does not acknowledge that bicycle use in Alaska is managed according to 43 CFR 36.11.

*Our Response:* The FWS decided to add the definition of e-bikes to 50 CFR 27.31 because that section specifically deals with use of vehicles on national wildlife refuges. The FWS does not define motor vehicles or off-road vehicles in 50 CFR 25.12, and the regulation is more appropriate in 50 CFR 27.31. The Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 23-71, authorizes the use of nonmotorized surface transportation methods for traditional activities and for travel to and from villages and home sites within the NWRS in Alaska. 16 U.S.C. 3170(a). This allowance for special access applies in Alaska notwithstanding any other law and does not limit nonmotorized transportation to designated roads or trails. The Department of the Interior has interpreted this statutory allowance to include the use of traditional bicycles. E-bikes do not fall under this allowance because they have an electric motor and therefore are not “nonmotorized.”

Notwithstanding the statutory allowance for traditional bicycles in Alaska, FWS is not willing to create different rules for e-bikes in Alaska than it does for e-bikes everywhere else within the NWRS. The stated purpose of Secretary’s Order 3376 is to simplify and unify the regulations of e-bikes on lands managed by the Department of the Interior. The FWS shares this goal of a consistent management framework within the NWRS. Outside of Alaska, these regulations allow the use of bicycles on designated roads and trails only. Dispersed, overland use is not allowed. In order to manage e-bikes in a similar manner to traditional bicycles, the rule allows e-bikes only on roads and trails otherwise open to bicycle use and designated by the refuge manager. Although the special allowance in Alaska for traditional bicycles is not limited to roads and trails, the FWS declines to extend this special allowance for e-bikes in Alaska.

*Comment (7):* Some commenters stated they opposed the rule because there are already sufficient e-biking opportunities at national wildlife refuges and on DOI lands on roads or trails open to motorized vehicle users. One commenter stated that the proposed rule should require refuge managers to determine if e-bikes are compatible on roads and trails that already allow e-bikes and if they are compatible on new roads and trails.

*Our Response:* As stated in Secretary's Order 3376, the purpose of this rulemaking is to facilitate increased access to federally owned lands by e-bike riders and ensure consistency among Department of the Interior lands. The final rule directs refuge managers, if they find e-bike use is an appropriate and compatible use, to provide e-bike operators (using the permitted classes in the manner described) with the same rights, privileges, and responsibilities as nonmotorized bicycle operators on roads and trails.

FWS policy outlines a robust process for determining appropriate use and compatibility that refuge managers follow when making refuge-specific decisions for a public use such as e-biking. E-biking will be a new use on designated routes of travel and nonmotorized roads and trails. Therefore, refuge managers must determine if e-bike use is an appropriate and compatible use on refuges on a case-by-case basis, regardless of whether other types of bicycles or motor vehicles are allowed.

*Comment (8):* We received comments opposing the proposed rule because of potential impacts to threatened and endangered species. One commenter stated that the rule violates the Endangered Species Act (ESA).

*Our Response:* The rule is administrative and procedural in nature. The rule itself will have no impact on threatened or endangered species. Opening a refuge to specific public uses requires compliance with NEPA. Depending on the site and type of use, additional

documentation may be required, such as an evaluation under section 7 of the ESA or section 106 of the National Historic Preservation Act. Future implementation will be subject to the NEPA process on a case-by-case basis in conjunction with the compatibility-determination process. A use cannot be found appropriate and compatible if it is not legal, which includes consideration of the ESA. Applying the appropriate use and compatibility determination processes in conjunction with the NEPA process at a site-specific level will allow the refuge manager to evaluate detailed information on the potential impacts of e-bike use to wildlife, including threatened or endangered species, for a particular national wildlife refuge.

*Comment (9):* We received comments requesting the FWS to limit or restrict e-bike use in the NWRS based on e-bike class type. Some commenters stated that only certain e-bike classes should be allowed on roads and trails where traditional bicycles are allowed.

*Our Response:* It is not appropriate for the FWS to categorically limit or restrict certain e-bike classes throughout the NWRS for several reasons. For example, refuge purpose(s) vary widely between individual units in the NWRS, which we must take into account when determining if a proposed use is compatible. We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. If a refuge manager determines that one class of e-bike may cause unacceptable impacts to natural resources or the visitor experience, they may not allow that class on certain roads or trails. Furthermore, FWS policy in 603 FW 2 requires that we must manage conflicting uses among users of the refuge and analyze the costs for administering and managing a public use. This requires a site-specific evaluation, and NWRS-wide restrictions based on e-bike class or other factors is not possible. While the final rule provides definitions of a low-speed e-bike and includes three different classes, this rule enables the refuge manager to determine whether all or

certain e-bike classes will be allowed or prohibited on all or certain roads or trails where other types of bicycles are allowed. For example, if the refuge manager determines that public safety impacts of one or more e-bike classes is unacceptable, this rule and the Administration Act allow the manager to limit or restrict certain classes on a site-specific basis.

*Comment (10):* Many commenters requested that the FWS should limit or restrict where e-bikes may be used on a national wildlife refuge. Many commenters stated that e-bikes should be allowed only where motor vehicles are allowed. Some commenters stated that e-bikes should be allowed wherever traditional bicycles are allowed. Some commenters stated that some trails were not appropriate for e-bike use due to design or topography issues.

*Our Response:* The rule has been established to facilitate increased public access on national wildlife refuges and clarify e-bike use for visitors. Allowing e-bikes on nonmotorized, natural surface, nonpaved, multiuse, or other types of roads or trails is subject to the discretion of the refuge manager, who is required to consider the anticipated impacts that a new use such as e-bikes would have on refuge resources and visitor experience. For the same reasons mentioned in our response to *Comment (9)*, it is not appropriate for the FWS to categorically limit or restrict where e-bikes are allowed on specific national wildlife refuges or generally in the NWRS. While the final rule provides the same rights, privileges, and duties to a person operating an e-bike as the operator of a nonmotorized bicycle on roads and trails, the refuge manager can determine if and where e-bike use will be allowed. If the refuge manager determines that e-bike use will significantly impact public safety on a certain nonmotorized trail where other types of bicycles are allowed, this rule and the Administration Act permit the manager to limit or restrict where all or certain e-bike classes may be allowed on a site-specific basis.

*Comment (11):* Some commenters stated that the rule or preamble should clarify whether a refuge manager needs to determine if e-bike use is compatible on roads or trails where motor vehicles are allowed. In addition, some commenters stated that the rule should clarify what the rights and duties are for e-bike users on roads or trails where motor vehicles are allowed.

*Our Response:* This rule does not mandate the use of e-bikes in any national wildlife refuge or FWS-managed area. The rule stipulates that a refuge manager must determine if e-biking is compatible on roads or trails. FWS policy (603 FW 2) also states that the refuge manager will not initiate or permit a new use or expand, renew, or extend an existing use of a national wildlife refuge unless the refuge manager has determined that the use is a compatible use. This includes areas where motor vehicles or other types of bicycles are already allowed. The FWS has clarified this issue in the **Supplementary Information** section of this final rule.

The rights, privileges, and duties of e-bike users are described in the rule and in 50 CFR, chapter I, subchapter C. Paragraph (m) in the rule stipulates that if e-biking is allowed on certain roads and trails, “any person using an e-bike where the motor is not used exclusively to propel the rider for an extended period of time, shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of nonmotorized bicycles on roads and trails.” In addition to paragraph (m), e-bike and other bicycle users will be subject to the policy and provisions regarding vehicles found in 50 CFR 27.31.

*Comment (12):* Some commenters stated that the FWS should manage e-bikes separately from traditional bicycles. Some commenters stated that we should distinguish e-bikes from electric mountain bicycles and manage them independently.

*Our Response:* One purpose of this rule is to create a consistent management framework for the use of e-bikes in the NWRs. This rule allows the refuge manager to determine

how best to manage public uses on a case-by-case basis while following established regulations and policy, as detailed in our response to *Comment (4)*. When determining compatibility and how to best manage e-bike use, the refuge manager may consider e-biking as an individual use, a specific use program, or part of a group of related uses. However, whenever practicable, the refuge manager should concurrently consider related uses or uses that are likely to have similar effects and associated facilities, structures, and improvements, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

Whether a refuge manager considers e-biking and traditional bicycling as individual uses, a specific use program, or in conjunction with a group of related uses, the compatibility process enables the refuge manager to determine the allowance of e-bike use on a site-specific basis. E-bike use will be determined to be a compatible use if it does not materially interfere with or detract from the fulfillment of the NWRS mission and/or the purposes of the refuge. Otherwise, e-bike use will be determined to be not compatible. 603 FW 2.12(10). Through this process, the refuge manager can determine specifically if and how e-bike use will be allowed.

*Comment (13)*: Some commenters expressed concern that refuge managers could apply the proposed rule inconsistently, which will lead to public confusion in the NWRS or across the landscape. Some commenters stated that the rule text should include parameters for e-bike use at national wildlife refuges that refuge managers can use to make their decisions.

*Our Response*: This rule establishes a definition for e-bikes and creates a management framework with parameters for the use of e-bikes in the NWRS. There are more than 565 national wildlife refuges, and the established purposes, habitats, public use, and many other conditions at individual national wildlife refuges can differ greatly. This rule and the Administration Act allow local refuge managers to limit, restrict, or impose conditions on e-bike

use where necessary to manage visitor-use conflicts and ensure visitor safety and resource protection. While the FWS agrees that this process and subsequent allowance of e-bike use on a case-by-case basis may be confusing for visitors, refuge managers must perform these rigorous evaluations in order to make appropriate public-use decisions at the sites they manage. We encourage the public to access the official website before visiting a particular national wildlife refuge to determine if and how e-bike or other public uses are allowed, and to call the refuge for specific information not covered on the website.

*Comment (14):* Some commenters requested that we should clarify, change, or eliminate proposed rule text requiring users to pedal while using the motor to propel an e-bike, because that requirement would be impractical and difficult to enforce.

*Our Response:* The FWS agrees that the language in the proposed rule preamble (“that the motor may not be used to propel an e-bike without the rider also pedaling”) is impractical and does not align with the proposed rule language in paragraph (m) (“any person using the motorized features of an e-bike as an assist to human propulsion”). We agree there are times during typical use when an e-bike operator may not be pedaling, and the FWS has changed the language in the final rule accordingly. The language in paragraph (m) of the final rule states that “any person using an e-bike in a manner where the motor is not used exclusively to propel the rider for an extended period of time shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of nonmotorized bicycles on roads and trails.” While the new language applies to all e-bike users and clarifies that riders can alternately pedal and coast without pedaling during operation, this change affects Class 2 e-bike operators in particular because Class 2 e-bikes have a throttle in addition to pedals, which makes it easier for Class 2 e-bike operators to use the motor exclusively for extended periods of time.

FWS law enforcement officers will use observation, situational analysis, and professional judgment to determine if a violation of the regulations related to the “use of an e-bike for an extended period of time using the motor exclusively” occurs. The change to the final rule enables law enforcement officers to enforce the limitations on how Class 2 e-bikes may be used in a reasonable manner that ensures protection of public health, safety, resources, and uses of the public lands.

*Comment (15):* We received comments requesting an addition to the rule text requiring that e-bikes be equipped with a seat or saddle to separate them from other types of electric mobility devices.

*Our Response:* The definition provided in the rule, including the requirement for fully operable pedals, motor type, motor power specifications, and permitted number of wheels, is sufficient to allow use of e-bikes and does not apply to other electric mobility devices and other electric vehicles such as scooters or skateboards. No changes were made to the definitions of e-bikes as the result of this comment.

*Comment (16):* We received comments that the number of wheels on an e-bike should determine if an e-bike is permitted on certain trails. One commenter stated that the vehicle axle-width should determine trail access and if the vehicle has less than three wheels, it should qualify for single-track access. Another commenter recommended establishing a threshold of 15 inches as the bike’s effective combined tread width to prevent wide three-wheeled e-bike users to access single-track trails. Some commenters stated that trail width should determine which type of e-bike use is allowed.

*Our Response:* The rule and the Administration Act require that refuge managers evaluate and determine a proposed use, such as e-biking, at a site-specific level. For example, if a

single-track bicycle trail is too narrow to accommodate the width of three-wheeled e-bikes without causing unacceptable erosion or other impacts to natural resources, the refuge manager must prohibit those types of e-bikes on that trail. It is not appropriate for the FWS to categorically allow or prohibit the types or classes of e-bikes, or the types of roads or trails, for e-bike use in the NWRS because there are more than 565 national wildlife refuges, and the established purposes, habitats, public uses, topography, infrastructure, and many other conditions at individual national wildlife refuges can differ greatly. This rule and the Administration Act allow local refuge managers to limit, restrict, or impose conditions on e-bike use where necessary to manage visitor-use conflicts and ensure visitor safety and resource protection.

*Comment (17):* Many commenters stated concern about future high-speed e-bike use on national wildlife refuges, or concern about how the FWS will manage or enforce the rule regarding future technologies, design standards, features, and capabilities for Class 1, Class 2, and Class 3, and other types or classes of e-bikes.

*Our Response:* The FWS acknowledges that advances in technology and future e-bike specifications may result in some e-bike models, types, classes, or other specifications falling outside the definition of e-bikes established in the final rule. As one commenter noted, e-bike technology is in the early stages of development. The FWS is unable to predict the performance capabilities for e-bikes in the future and appreciates that the technology used in e-bikes is likely to continue to evolve at a rapid pace. However, the FWS concludes that the definition of e-bikes and three classes in the final rule, in combination with a refuge manager's ability to determine if e-bikes are compatible, are sufficient to manage national wildlife refuges appropriately in the future.

*Comment (18):* Some commenters stated that the economic consequences of the displacement of traditional trail users must be addressed in the final rule. Some commenters stated that the proposed rule lacks a “risk and needs assessment” and that lack must be addressed in the final rule.

*Our Response:* The FWS prepared an economic and threshold analysis for the proposed rule, which concluded that the rule itself 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. However, the economic and threshold analysis and proposed rule discussed the potential for an increase in conflicts between trail users following site-specific implementation of the rule, as well as an increase in the risk of injury or need for rescue. Since we know current traditional bicycling comprises only two percent of the average annual recreational visits, we estimate that increasing opportunities for e-bikes would most likely correspond with a small percentage of visits and a similar small percentage of displacement for traditional trail users. 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 on other trail users across all FWS roads and trails at this time. This rule and the Administration Act allow local refuge managers to limit, restrict, or impose conditions on e-bike use where necessary to manage visitor-use conflicts and ensure visitor safety and resource protection. This will allow the FWS to evaluate the effects of e-bike use at a site-specific level, where more detailed information on potential effects is available.

*Comment (19):* We received comments stating that e-bikes are motorized vehicles and should not be allowed in, or adjacent to, designated wilderness areas in the NWRS. Some

commenters stated that the rule text should include that e-bikes are prohibited in designated wilderness areas.

*Our Response:* As with traditional bicycles, e-bikes are not allowed in designated wilderness areas and may not be appropriate for back-country trails. We do not agree to change the rule text as the Wilderness Act (16 U.S.C. 1133(c)) and National Wildlife Refuge System Wilderness Stewardship Policy (610 FW 1) already prohibit public use of motor vehicles, motorized equipment, and mechanical transport in wilderness areas designated by Congress. When a refuge manager makes a compatibility determination, he/she must consider applicable laws, including those related to designated wilderness areas. Therefore, bicycles and e-bikes are already prohibited in all designated wilderness areas on national wildlife refuges, and a refuge manager cannot deem e-bike use as an appropriate use in designated wilderness areas.

*Comment (20):* Several commenters questioned how the FWS's definition of "electric bicycle" in the rule would affect how e-bikes are treated under other laws that do not adopt the same definition or management framework. One comment stated that the final rule text should state that e-bikes are not allowed on National Scenic Trails that exist within units of the NWRS per the provisions of the National Trails System Act. One comment stated that e-bikes should be prohibited on the Appalachian Trail where other bicycles are prohibited. One comment stated that FWS should prohibit e-bikes on trails funded by the Recreational Trails Program, which are for nonmotorized use only.

*Our Response:* The FWS's definition of "electric bicycles" applies to management of electric bicycles within the NWRS under the framework established by this rule. It does not modify or affect other Federal laws and regulations in circumstances where they apply to the use of electric bicycles within the NWRS. For example, if a trail within the NWRS is constructed or

maintained using funding sources which may prohibit or be inconsistent with e-bike use, such as the Recreational Trails Program and other Federal funding sources authorized by Title 23, Chapter 2 of the United States Code, then the refuge manager would not have the authority to designate e-bikes for use on that trail in a manner that conflicts with the other, applicable Federal law. Similarly, the FWS and refuge managers will manage the National Scenic Trails, including the Appalachian National Scenic Trail, that exist within the NWRS in accordance with the National Trails System Act.

*Comment (21):* Several commenters stated that the FWS must adhere to all existing State and Federal conservation easements and resource-management plans when determining if e-bike use should be allowed.

*Our Response:* E-biking implementation will be consistent with governing laws and regulations, including existing State and Federal conservation easements and other existing legal agreements. While easements do not usually include public use, refuge managers will have to take easements with public use, if any, into account when planning and making compatibility determinations. Under the Administration Act and FWS policy (602 FW 3), the NWRS manages national wildlife refuges according to an approved Comprehensive Conservation Plan (CCP), which describes the desired future conditions of the refuge and provides long-range guidance and management direction to achieve refuge purposes, including management guidance and direction on public uses. Any changes to public use on refuges need to be consistent with the refuge's CCP.

*Comment (22):* We received a comment stating that the rule should require that e-bikes operated within the NWRS be certified by an accredited, independent third-party certification

body that examines electrical systems to achieve electrical and fire safety certification. Several commenters stated that e-bike batteries could overheat, burn, and cause fire danger.

*Our Response:* The U.S. Consumer Products Safety Commission (CPSC) is responsible for evaluating and making recommendations about electrical safety standards for consumer products manufactured and sold in the United States. E-bike manufacturers are required to comply with mandatory standards set by the CPSC. Product certification and safety requirements are not established or mandated by the FWS. A refuge manager may make a determination at any time to manage an existing public use with regard to public safety, resource protection, and visitor protections.

*Comment (23):* Some commenters stated that the FWS must maintain a sign standard and post areas, trails, and roads open to e-bikes with signs that clearly indicate allowed uses and types or classes of e-bikes.

*Our Response:* The FWS will work with the other land-management agencies within the Department of the Interior to design and post signs, to the extent possible. The goal of this effort is to create a consistent approach for signs when possible indicating where e-bikes are allowed on national wildlife refuges and other public lands managed by the Department of the Interior. As with all existing and new public uses allowed on a national wildlife refuge, refuge managers have the discretion to establish any safety, communication, outreach, and education measures deemed necessary to ensure that e-bikes are used in a manner that maintains a safe and enjoyable experience for all visitors.

*Comment (24):* Some commenters stated that the FWS has not sufficiently analyzed the economic implications of the rule. Other commenters stated that the FWS does not have the financial resources or employees to adequately manage e-bike use. Commenters stated that the

proposed rule and e-bike use on nonmotorized trails would result in increased operations costs associated with: trail maintenance; trail monitoring and repairs; cultural resources damage; additional search-and-rescue operations; sign acquisition and installation; personal injury and liability claims; law-enforcement efforts; fish, wildlife, and plant management and administration; and other management and monitoring activities.

*Our Response:* As with many public uses in the NWRS, there are financial and staffing costs to operate public-use programs. This rule does not mandate the use of e-bikes anywhere in the NWRS. To help avoid situations where refuge managers do not have the resources to properly manage e-bikes, this rule and the Administration Act give refuge managers the discretion to allow e-bike use where it is an appropriate and compatible use (see our response to *Comment (4)*). When determining if a new or existing public use is compatible, FWS regulations require refuge managers to evaluate reasonably anticipated impacts of a particular use on refuge resources, and if “adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the FWS or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the NWRS mission.” 603 FW 2.12(A)(7). This process enables the refuge manager to determine the allowance of e-bike use on a site-specific basis—the refuge manager may determine that it is a compatible use, or that it is not a compatible use. The refuge manager should not allow e-bikes if there would be insufficient funds or personnel to properly manage this use. The refuge manager will consider potential user conflicts and other public health and safety concerns in accordance with NEPA and other applicable laws as part of a site-specific analysis. Liability, if any, in the event that accidents or injuries were to occur as a result of or in

conjunction with e-bike use would be determined in accordance with applicable laws, which may include the Federal Tort Claims Act.

*Comment (25):* Some commenters stated the rule disregards research demonstrating adverse impacts from e-bikes and has not analyzed e-bike compatibility.

*Our Response:* This rule does not mandate e-bike use throughout the NWRS. This rule and the Administration Act give refuge managers the discretion to allow e-biking if it is found to be an appropriate and compatible use. The FWS will consider the suitability of e-bike use on specific roads and trails through subsequent analysis consistent with the requirements of NEPA and other applicable laws. Potential impacts for a proposed use are evaluated on a case-by-case basis and not as part of this rulemaking process.

Refuge managers base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of e-biking on refuge resources. The refuge manager should base the analysis on readily available information, including local experience and understanding of the refuge and other information provided by the State, Tribes, proponent(s) or opponent(s) of e-biking, or through the compatibility-determination public review and comment period. 603 FW 2.11(E). The FWS received the studies and reports that were submitted as part of the comments on the proposed rule. All relevant studies and reports will be considered by the refuge manager in the compatibility-determination process.

*Comment (26):* 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.”

*Our 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. The rule merely establishes a definition of e-bikes and creates a process for refuge managers to consider whether to authorize e-bike use on public lands. Under that process, refuge managers will evaluate whether to allow for e-bike use on roads and trails, in consideration of specific criteria. The rule maintains the public's ability to participate in any such FWS decision-making process while preserving refuge managers' discretion to approve or deny e-bike use 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. Because the future decision-making processes through which refuge managers could allow e-bikes must comply with NEPA and other laws providing for public participation, the public will continue to have an opportunity to provide input. Moreover, because the rule provides refuge managers with complete discretion to determine whether e-bikes—or only certain classes of e-bikes—are appropriate on a specific road or trail, it preserves the FWS's ability to minimize the impacts that e-bikes could have on resources or other users of the public lands. The rule, because it is administrative and procedural in nature and would not result in any on-the-ground changes or other environmental effects, therefore satisfies the first prong of the categorical exclusion at 43 CFR 46.210(i).

*Comment (27):* Some commenters requested an environmental analysis, environmental impact statement (EIS), or programmatic EIS to analyze the rulemaking and e-bike impacts. 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.”

*Our Response:* This rule is administrative and procedural in nature and satisfies the second prong of the categorical exclusion at 43 CFR 46.210(i). There are more than 565 national

wildlife refuges, and the established purposes, wildlife and plants, habitats, public uses, number of visitors, and many other conditions at individual national wildlife refuges can differ greatly, making nationwide NEPA analysis for the rule infeasible. This rule and the Administration Act give refuge managers the discretion to allow e-bike use where it is an appropriate and compatible use. We will address potential environmental impacts and social issues at the site-specific level. The FWS will consider the suitability of e-bike use on specific roads and trails through subsequent analysis consistent with the requirements of NEPA and other applicable laws. The environmental effects will vary from refuge to refuge, and, as such, are too broad, speculative, or conjectural at this stage to lend themselves to meaningful analysis. The FWS concludes that site-specific NEPA analysis is required in order to obtain meaningful analysis regarding environmental effects.

*Comment (28):* Some commenters stated that the FWS must analyze the impacts the rule would have on the landscape, natural resources, and other visitors. One commenter stated that the FWS must analyze such impacts before opening up all nonmotorized trails to motors.

*Our Response:* This rule does not mandate the use of e-bikes at any national wildlife refuge. The rule is administrative and procedural in nature and the rule itself will have no impacts on safety, the visitor experience, or refuge natural and cultural resources. The rule defines permitted types of e-bikes and establishes a general framework that can be used by a refuge manager to allow e-bikes on designated roads and trails. E-bike implementation decisions for each national wildlife refuge must be based on local conditions, potential impacts, resource data, and relevant studies. The rule and the Administration Act enable the refuge manager to determine if e-biking is an appropriate and compatible use on a site-specific basis, and the rule does not mandate opening all nonmotorized trails to motors.

Applying the NEPA process at a site-specific level allows the FWS to evaluate the potential effects of e-bike use for a particular national wildlife refuge and to consult with the appropriate Federal, State, and local resources agencies regarding potential resource impacts. For example, regarding potential wildlife impacts, it would be shortsighted for a rule of this nature to prescribe disturbance thresholds for wildlife at all national wildlife refuges, as local conditions vary significantly at the more than 565 units in the NWRS throughout the country. Analyzing e-bike use on a case-by-case basis allows for site and specific species information concerning disturbance thresholds to be incorporated into that decision process. Furthermore, as mentioned in our response to *Comment (4)*, the refuge manager can reevaluate the compatibility of a use at any time if conditions change or new information becomes available.

*Comment (29)*: One commenter stated that impacts must be analyzed in the rulemaking process and the rule cannot be categorically excluded under 43 CFR 46.210(i). Some commenters stated that extraordinary circumstances under 43 CFR 46.215 are applicable to this rulemaking, making it ineligible for a categorical exclusion.

*Our Response*: As noted in the NEPA section in the preamble to this rule, we determined that this rule falls under the class of actions listed in 43 CFR 46.210(i). A refuge manager will determine if e-biking is a compatible use before allowing it on a national wildlife refuge. This determination must be made on a case-by-case basis. E-bike use on a refuge will not be allowed, per the rule, without a compatible-use determination and appropriate NEPA analysis specific to the particular refuge. Potential impacts are not ripe for analysis until or unless the use of e-bikes is proposed on one of the more than 565 national wildlife refuges where the specific context is known and the intensity of impacts can be evaluated. The FWS has also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215

that would require further analysis under NEPA, as outlined individually below.

Commenters cited the following extraordinary circumstances under 43 CFR 46.215:

(a) Significant impacts on public health and safety.

*Comment (29)(a):* Commenters state that they provide documentation of significant safety impacts of e-bikes within their comment, including citations to numerous supporting studies.

*Our Response:* The FWS acknowledges there are potential safety concerns with e-bike use or any proposed use. The refuge manager will analyze public health and safety impacts on a site-specific basis as required when determining compatibility for e-bike use. Potential safety issues regarding e-bike use on specific roads and trails will be considered by the refuge manager when making the determination as to whether e-bikes will be allowed on those trails. In analyzing the potential impacts of e-biking, refuge managers will use and cite available sources of information from available research and studies. Therefore, public health and safety will not be affected by the rule.

(b) Significant impacts on natural resources and unique geographic characteristics, refuge and recreation lands, migratory birds, and other resources.

*Comment (29)(b):* Commenters state that the rule will have significant impacts on national wildlife refuge resources cited in 43 CFR 46.215(b).

*Our Response:* The rule does not change current allowed refuge uses and therefore has no significant impacts to vulnerable categories identified in 43 CFR 46.215(b). If e-bike use is proposed in one of these vulnerable categories on a national wildlife refuge, then the significance of impacts would be a factor in determining the level of NEPA analysis required for the proposed use.

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

*Comment (29)(c):* Commenters stated that the comments submitted by key stakeholders who expressed passionate, substantial, and varied viewpoints in support of or in opposition to the rule fit the definition of highly controversial in 43 CFR 46.215(c).

*Our Response:* The language in 43 CFR 46.215(c) pertains to whether the environmental effects are highly controversial (i.e., there is significant scientific disagreement about whether a specific action will impact the environment, and how), as opposed to whether a general topic, such as e-bike use on public lands, is controversial. Paragraph (c) does not apply to this rule because the rule does not have any direct impacts but may apply to future site-specific determinations a refuge manager may make when determining if e-bike use is compatible on roads or trails.

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

*Comment (29)(d):* Commenters state that the categorical exclusion should not apply due to unique risks that e-bikes present, as a result of fast speeds and as the first and only motorized use in back-country areas.

*Our Response:* The rule does not determine where e-bikes will be used. The potential impacts of e-bike use are dependent on where such use is proposed. Any environmental effects associated with future decisions will be subject to the NEPA process, and potential impacts will be analyzed at the refuge-specific level. In response to speed concerns for e-bike use, a refuge manager may “describe any stipulations (terms or conditions) necessary to ensure compatibility.”

603 FW 2.11. Stipulations may include limiting speed or locations so that the use could be safely conducted.

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

*Comment (29)(e):* Commenters stated that the rule establishes a precedent for future actions and opens the floodgates for numerous similar technological impacts.

*Our Response:* The rule is necessary in order to allow effective management of this evolving technology and address the rapidly expanding use of e-bikes on public land. As discussed in our response to *Comment (15)*, the FWS concludes that the definition provided in the rule, including the requirement for fully operable pedals, motor type, motor power specifications, and permitted number of wheels, is sufficient to allow use of e-bikes and does not apply to similar technological impacts, other electric mobility devices, and other electric vehicles or uses such as scooters or skateboards.

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

*Comment (29)(f):* Commenters state that cumulative impacts of hundreds of units approving e-bikes will be significant when considered nationwide.

*Our Response:* The categorical exclusion for the rule change makes no assertion as to the level of NEPA analysis required for any proposed use area for e-bikes. A proposed use area for e-bikes is independent of any other proposed use area. The level of NEPA analysis required would be determined by the nature of the proposed action.

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

*Comment (29)(g):* Commenters stated that many FWS 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.

*Our Response:* The rule does not change current uses; therefore, the rule change does not impact historic properties. If e-bike use is proposed on roads or trails, then potential impacts on historic properties would be a factor in determining the level of NEPA analysis required for the proposed use.

(h) Significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat.

*Comment (29)(h):* The proposed rule violates the Endangered Species Act.

*Our Response:* The rule is administrative and procedural in nature. The rule itself will have no impact on threatened or endangered species. We address this comment specifically in our response to *Comment (8)*.

*Comment (30):* Commenters stated that a categorical exclusion cannot be applied to justify post-hoc decision-making since Secretary's Order 3376 directed that "e-bikes shall be allowed where other types of bicycles are allowed." The commenters stated that to apply a categorical exclusion to justify post-hoc decision-making is arbitrary and capricious and directs predetermined outcomes.

*Our Response:* The rule does not mandate that e-bike use is allowed in the NWRS, and the FWS is not applying a categorical exclusion to allow predetermined outcomes. The rule and the Administration Act give refuge managers the discretion to allow e-bike use if and where it is an appropriate and compatible use (see our response to *Comment (4)*). Secretary's Order 3376

and the rule do not require refuge managers to always allow e-bike use. Since the NEPA determinations must be made at a site-specific level, the invocation of the categorical exclusion is contemporaneous with the decision-making, not post hoc.

*Comment (31):* Many commenters expressed concern about enforcement of the rule or potential actions and impacts that could occur if e-bike users are allowed where traditional bicycles are allowed, especially on nonmotorized trails. Some commenters stated that the rule may facilitate illegal trail creation or trail access by e-bike users or other vehicle users, and that such illegal use would be difficult to enforce. Some commenters stated that e-bikes could be modified to exceed allowable horsepower and speed limits, which would be difficult to detect and enforce. Commenters also stated that it would be difficult to distinguish some e-bikes from traditional bicycles, or between classes of e-bikes defined in the final rule. Commenters emphasized that these enforcement challenges would be exacerbated by potential violations occurring at high speeds and in remote locations.

*Our Response:* The FWS acknowledges that implementation of the rule may pose 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. With their experience enforcing other regulations that condition how the public recreates on public lands, law enforcement officers have the expertise necessary to properly exercise their discretion to enforce the rule that ensures protection of public health, safety, and resources and users of the public lands. Moreover, the enforcement challenges posed by this requirement are warranted given the requirement's potential benefits to affected public land resources and users. For example, determining when a potential violation of the requirement that Class 2 e-bikes be used in a manner where the motor is not used exclusively to propel the rider for an extended period of

time will involve the use of specialized skill, training, and judgment by law enforcement officers. With respect to differentiating among traditional bicycles and e-bikes, and among classes of e-bikes, the FWS notes that most States require e-bikes to have a label that displays the class, top assisted speed, and power outlet of the electric motor. Some e-bikes can be differentiated from traditional bicycles by simple observation. In other cases, the FWS expects that its law enforcement officers will involve the use of their specialized skills, training, and judgment to enforce this requirement, even if the e-bike is not labeled, through observation of riding behaviors, questioning, or other means of investigation. FWS law enforcement officers are tasked on a daily basis with enforcing speed limits and equipment and operational requirements for the use of motor vehicles used within the NWRS.

*Comment (32):* We received many comments opposing the proposed rule due to concerns about the potential impacts e-bikes would have on natural resources, safety, and the visitor experience. Several commenters stated that e-bikes would cause greater cumulative impacts to the natural environment than are caused by traditional bicycles due to their ability to travel longer distances into more remote areas. Many commenters noted the potential for disturbing wildlife, plants, and their habitats, watersheds, ecosystems, grooving and erosion of ground surfaces, degradation of sensitive plant habitats, and negative impacts on geological features and cultural and archeological sites. Other commenters stated that e-bikes would create safety risks if riders travel farther, into more remote areas, and through more challenging terrain than would be possible with traditional bicycles. Safety concerns were also raised about the speed of e-bikes, in particular on narrow and winding trails with limited sight lines, and the increased potential for accidents and conflicts with other trail users, such as hikers and horseback

riders. According to some commenters, adding e-bikes to shared trails would cause overcrowding and marginalize other forms of recreation.

*Our Response:* This rule does not mandate the use of e-bikes in the NWRS. The rule is administrative and procedural in nature and the rule itself will have no impacts on safety, the visitor experience, or national wildlife refuge natural and cultural resources. This rule establishes a general framework that can be used by refuge managers if they allow e-bikes on certain roads and trails where traditional bicycles are already allowed. As discussed in the response to *Comment (4)* above, the allowance of e-bikes on roads or trails is subject to the discretion of the refuge manager who must complete a rigorous compatibility-determination process to consider the impacts that e-bike use would have, including impacts on refuge resources and visitor experience. Refuge managers will allow only uses that they determine to be appropriate and compatible to the purpose for which the refuge was established and can be sustained without causing unacceptable impacts to public safety, natural and cultural resources, and other public uses. These required evaluations and determinations are not modified or changed by this rule.

E-bike implementation decisions for each national wildlife refuge must be based on local conditions, potential impacts, resource data, and relevant studies. Applying the NEPA process at a site-specific level will allow the FWS to evaluate the potential effects of e-bike use for a particular national wildlife refuge and to consult with the appropriate Federal, State, and local resource agencies regarding potential resource impacts. E-biking or any proposed use could impact visitors and resources in similar or different ways at the more than 565 units in the NWRS. Analyzing and describing the reasonably anticipated impacts of e-bike use on a case-by-case basis is an important factor that we consider when allowing or not allowing a refuge use.

*Comment (33):* One commenter stated that the rule would be inconsistent with the direction in Executive Order 11644, “Use of Off-Road Vehicles on the Public Lands,” (amended by Executive Order 11989), noting that there is no exception for low-power vehicles.

*Our Response:* Executive Order 11644 was issued by President Nixon in 1972 and amended by President Carter in 1977 through Executive Order 11989. It establishes 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 those users. The Executive Order 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. The FWS concludes that e-bikes should not be regulated as “off-road vehicles” under the Executive Order for the reasons discussed below.

The 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. Almost all of the off-road vehicles listed in the Executive Order: “motorcycles, minibikes, trial bikes, snowmobiles, dune-buggies, [and] all-terrain vehicles” use internal combustion engines for power rather than an electric motor, and none rely on the rider pedaling the vehicle to provide most of the power to the vehicle as this rule requires. Moreover, the off-road vehicles to which the Executive Order was clearly intended to apply are uniformly larger, louder, and capable of achieving greater speeds than Class 1, 2, and 3 e-bikes. For these reasons, e-bikes are inherently different than the types of “off-road vehicles” listed under the Executive Order. There is no indication in any materials contemporaneous to its issuance that suggest that Executive Order 11644 was intended to apply to e-bikes. That 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.

As a result of those engineering differences, e-bikes tend to have impacts that are like traditional, nonmotorized bicycles and unlike those that result from the larger, more powerful off-road vehicles that Executive Order 11644 was intended to mitigate. These differences will inherently limit the resource impacts and user conflicts that the minimization criteria in Executive Order 11644 was designed to address. For example, the off-road vehicles referenced in Executive Order 11644 are powered by internal combustion engines that generate loud noises (i.e., anywhere from 90–110 decibels, depending on the type of vehicle) that can carry over long distances. By comparison, 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, nonmotorized bicycles and substantially less than those resulting from typical off-road vehicle use. Also, unlike all the vehicles listed in the Executive Order, e-bikes do not emit exhaust that could impact air quality and the health of nearby users.

A review of available models shows that Class 1, 2, and 3 e-bikes are generally much lighter than even the lightest off-road vehicle listed in the Executive Order. A typical e-bike weighs approximately 45–50 pounds, which is only slightly heavier than a typical traditional, nonmotorized bicycle's weight of 30–35 pounds. In comparison, minibikes, which are the lightest off-road vehicle listed in Executive Order 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 lower speeds that they can reach, limits their potential to damage soil through compaction and erosion. Finally, managing Class 1, 2, and 3 e-bikes similarly to traditional, nonmotorized 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 and, therefore, are not subject to regulation by the National Highway Traffic Safety Administration. Instead, e-bikes are regulated similar to nonmotorized bicycles and considered consumer products regulated by the Consumer Product Safety Commission.

### **Changes from the Proposed Rule**

We received comments that asked us to clarify or eliminate the requirement in the proposed rule that a person must be using the motorized features of an e-bike as an assist to human propulsion. Many commenters stated that this requirement was impractical and unenforceable. In response, we are revising the proposed rule as follows: (m) If the refuge manager determines that electric bicycle (also known as e-bike) use is a compatible use on roads or trails, any person using an e-bike in a manner where the motor is not used exclusively to propel the rider for an extended period of time, shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of nonmotorized bicycles on roads and trails.

We agree there are times during a ride when an e-bike user may not be pedaling, just as there are times when a traditional bicycle user may not be pedaling. We agree that the proposed

rule language could cause difficulty for a person to operate an e-bike in a similar manner to traditional bicycles, and that the proposed rule would be difficult to enforce.

The FWS changed the language in the final rule in paragraph (m) to better reflect its intent that e-bike motors, via throttle-only operation, may be used for limited durations, but should not be used to propel the rider for extended periods of time. The new language clarifies for users and law enforcement officers that e-bikes can be operated in a similar manner as traditional bicycles. Law enforcement officers will use observation, situational analysis, and professional judgment to determine if a potential violation of the regulation occurs.

### **Compliance With 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 (OMB) will review all significant rules. The OIRA has determined that this rule is not a significant regulatory action as defined by Executive Order 12866.

Executive Order (E.O.) 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.

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This rule is an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action. This rule addresses regulatory uncertainty regarding the use of e-bikes in the NWRS by defining e-bikes and clarifying that any person using an e-bike shall be afforded all of the rights and privileges, and be subject to all of the duties, of the operators of nonmotorized bicycles on roads and trails, when such use is deemed appropriate and compatible.

This rule is not self-executing. The rule, in and of itself, does not change existing allowances for e-bike usage on national wildlife refuges. It neither allows e-bikes on roads and trails that are currently closed to off-road vehicles but open to mechanized, nonmotorized bicycle use, nor affects the use of e-bikes and other motorized vehicles on roads and trails where off-road vehicle use is currently allowed.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small

entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The rule is administrative in nature and will not, in and of itself, result in any foreseeable impacts because this rule only establishes a general framework that can be used by refuge managers if they allow e-bikes on certain roads and trails where traditional bicycles are already allowed. However, for transparency, we discuss current traditional bicycle use on refuges and potential changes in recreation use if refuge managers determine that e-bikes are appropriate and compatible to the purpose for which the refuge was established.

In 2019, there were approximately 1.4 million bicycle visits on 197 refuges (34.6 percent of all refuges). Of these 197 refuges, 136 refuges had fewer than 1,000 bicycle visits. These visits comprised approximately 2 percent (=2.34%) of total recreational visits for the Refuge System. Under this rule, recreational activities on refuges could be expanded by allowing e-bikes where determined appropriate and compatible by the refuge manager. As a result, recreational visitation at these refuges may change. The extent of any increase would likely be dependent upon factors such as whether current bicyclists change from using traditional bicycles to e-bikes, whether walking/hiking visits change to e-bike visits, or whether other recreational visitors decrease visits due to increased conflicts. The impact of these potential factors is uncertain. However, we estimate that increasing opportunities for e-bikes would correspond with less than 2 percent of the average recreational visits due to the small percentage of current bicycling visits.

Small businesses within the retail trade industry (such as hotels, gas stations, sporting equipment stores, and similar businesses) may be affected by some increased or decreased

station visitation due to this rule. A large percentage of these retail trade establishments in the local communities near national wildlife refuges and national fish hatcheries qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in any region or nationally.

Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, 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. Will 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. Will 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*

This rule will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing

the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule would affect only visitors at national wildlife refuges, which are not private property.

*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. 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 FWS 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 (Executive Order 12988)*

In accordance with E.O. 12988, the Department of the Interior has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. 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.

### *Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### *National Environmental Policy Act*

We are required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. We have determined that this rule falls under the class of actions covered by the following Department of the Interior categorical exclusion: "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." 43 CFR 46.210(i).

Under the rule, a refuge manager must first make a determination that e-bike use is a compatible use before allowing e-bike use on a national wildlife refuge. This determination must be made on a case-by-case basis. E-bike use on a refuge will not be allowed under the rule without a compatible-use determination and appropriate NEPA compliance specific to the action with respect to a particular refuge. Potential impacts are not ripe for analysis until or unless the use of e-bikes is proposed on a specific national wildlife refuge where the context is known and the intensity of impacts can be evaluated. The FWS has also determined that the rule does not

involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### *Government-to-Government Relationship with Tribes*

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 FWS to address e-bike use in future compatibility determinations. The rule does not change existing allowances for e-bike use on FWS-administered public lands. The rulemaking does not commit the agency to undertake any specific action, and the FWS retains the discretion to authorize e-bike use where appropriate. We are committed to consulting with federally recognized Indian Tribes when appropriate on a site-specific basis as potential e-bike use is considered by the FWS.

#### **List of Subjects in 50 CFR Part 27**

Wildlife refuges.

#### **Regulation Promulgation**

In consideration of the foregoing, we hereby amend part 27, subchapter C of chapter I, title 50 of the Code of Federal Regulations as follows:

#### **PART 27—PROHIBITED ACTS**

1. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 685, 752, 690d; 16 U.S.C. 460k, 4601-6d, 664, 668dd, 685, 690d, 715i, 715s, 725; 43 U.S.C. 315a.

**Subpart C—Disturbing Violations: With Vehicles**

2. Amend § 27.31 by redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m) to read as follows:

**§ 27.31 General provisions regarding vehicles.**

\* \* \* \* \*

(m) If the refuge manager determines that electric bicycle (also known as e-bike) use is a compatible use on roads or trails, any person using an e-bike where the motor is not used exclusively to propel the rider for an extended period of time shall be afforded all of the rights and privileges, and be subject to all of the duties, of the operators of nonmotorized bicycles on roads and trails. An e-bike is a two- or three-wheeled electric bicycle 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 e-bike 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 e-bike 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 e-bike 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.

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**George Wallace,**

*Assistant Secretary for Fish and Wildlife and Parks.*