718–354–4353. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period[s].* This section is effective from October 22 through December 31, 2020 but will only be enforced when Roosevelt Island Tidal Energy Project heavy lift operations are in progress.

Dated: October 20, 2020.

Jason P. Tama,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2020–24020 Filed 10–30–20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 4

[NPS–WASO–REGS; 30756; GPO Deposit Account 4311H2]

RIN 1024–AE61

General Provisions; Electric Bicycles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service promulgates regulations governing the use of electric bicycles, or e-bikes, within the National Park System. This rule defines the term ''electric bicycle'' and establishes rules for how they may be used. This rule implements Secretary of the Interior Order 3376, ''Increasing Recreational Opportunities through the use of Electric Bikes,'' on lands administered by the National Park Service.

DATES: This rule is effective on December 2, 2020.

ADDRESSES: The comments received on the proposed rule and an economic analysis are available on *www.regulations.gov* in Docket ID: NPS–2020–0001.

FOR FURTHER INFORMATION CONTACT: Jay Calhoun, Regulations Program Manager, National Park Service; (202) 513–7112; *waso_regulations@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Use and Management of Bicycles

Bicycling is a popular recreational activity in many units of the National Park System. Cyclists of all skill levels and ages enjoy riding on roads and designated bicycle trails for scenery, exercise, and adventure. Visitors bicycle alone, with friends, or with family. From leisurely rides to challenging alpine climbs, bicycles offer spectacular opportunities to experience the resources of the National Park System.

National Park Service (NPS) regulations at 36 CFR 4.30 govern the use of bicycles on NPS-administered lands. These regulations identify where bicycles are allowed, manage how bicycles may be used, and allow superintendents to restrict bicycle use when necessary. Bicycles are allowed on park roads and parking areas open to public motor vehicles. Bicycles are also allowed on administrative roads that are closed to motor vehicle use by the public but open to motor vehicle use by the NPS for administrative purposes, but only after the superintendent determines that such bicycle use is consistent with protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and will not disturb wildlife or park resources. The use of bicycles on trails is subject to a thorough approval and review process. When bicycle use is proposed for a new or existing trail, the NPS must complete a planning process that evaluates bicycle use on the specific trail, including impacts to trail surface and soil conditions, maintenance costs, safety considerations, potential user conflicts, and methods to protect resources and mitigate impacts. For both new and existing trails, the NPS must complete NEPA analysis that concludes that bicycle use on the trail will have no significant impacts. The superintendent must prepare and the regional director must approve the same written determination that is required for allowing bicycles on administrative roads. Each of these documents must be made available for public review and comment. For new trails outside of developed areas, the NPS must publish a special regulation designating the trail for bicycle use, which is subject to a separate public comment period.

Adherence to the procedures in these regulations helps ensure that bicycles are allowed only in locations where, in the judgment of the NPS, their use is appropriate and will not cause unacceptable impacts. The NPS has completed the process required by these regulations in many NPS units, including the following that have special regulations designating trails for bicycle use: Rocky Mountain National Park (36 CFR 7.7), Saguaro National Park (36 CFR 7.11), Cuyahoga Valley National Park (36 CFR 7.17), Hot Springs National Park (36 CFR 7.18), Grand Teton National Park (36 CFR 7.22), Mammoth Cave National Park (36 CFR 7.36), Sleeping Bear Dunes National Lakeshore (36 CFR 7.80), New River Gorge National River (36 CFR 7.89), Chattahoochee River National Recreation Area (36 CFR 7.90), Bryce Canyon National Park (36 CFR 7.94), Pea Ridge National Military Park (36 CFR 7.95), and Golden Gate National Recreation Area (36 CFR 7.97).

Introduction of Electric Bicycles

While bicycling has been a decades-long tradition in many park areas, the appearance of electric bicycles, or e-bikes, is a relatively new phenomenon. An e-bike is a bicycle with a small electric motor that provides power to help move the bicycle. As they have become more popular both on and off NPS-managed lands, the NPS has recognized the need to address this emerging form of recreation so that it can exercise clear management authority over e-bikes and provide clarity to visitors and stakeholders such as visitor service providers.

Similar to traditional bicycles, the NPS believes that, with proper management, the use of e-bikes may be an appropriate activity in many park areas. E-bikes advance the NPS's ''Healthy Parks Healthy People'' goals to promote national parks as a health resource.[1] Specifically, e-bikes can increase bicycle access to and within parks. E-bikes make bicycle travel easier and more efficient because they allow bicyclists to travel farther with less effort. E-bikes can expand the option of bicycling to more people by providing a new option for those who want to ride a bicycle but might not otherwise do so because of physical fitness, age, or convenience, especially at high altitude or in hilly or strenuous terrain. Also, when used as an alternative to gasoline- or diesel-powered modes of transportation, e-bikes can reduce greenhouse gas emissions and fossil fuel consumption, improve air quality, and support active modes of transportation for park staff and visitors. Similar to traditional bicycles, e-bikes can decrease traffic congestion, reduce the demand for vehicle parking spaces, and increase the number and visibility of cyclists on the road.

Policy Direction for Managing E-Bikes

Secretary's Order 3376

On August 29, 2019, Secretary of the Interior Bernhardt signed Secretary's Order 3376, ''Increasing Recreational Opportunities through the use of

[1] For more information about how the NPS promotes the health and well-being of park visitors through the Healthy Parks Healthy People movement, visit *https://www.nps.gov/subjects/healthandsafety/health-benefits-of-parks.htm.*

Electric Bikes.'' The purpose of this Order is to increase recreational opportunities for all Americans, especially those with physical limitations, and to encourage the enjoyment of lands and waters managed by the Department of the Interior. The Order emphasizes the potential for e-bikes to reduce the physical demands of operating a bicycle and therefore expand access to recreational opportunities, particularly for those with limitations stemming from age, illness, disability or fitness, and in more challenging environments, such as high altitudes or hilly terrain. E-bikes have an electric motor yet are operable in a similar manner to traditional bicycles and in many cases appear indistinguishable from them. For these reasons, the Order acknowledges there is regulatory uncertainty regarding whether e-bikes should be managed similar to other types of bicycles, or, alternatively, considered motor vehicles. The Order states that this regulatory uncertainty has led to inconsistent management of e-bikes across the Department and, in some cases, served to decrease access to Federally owned lands by users of e-bikes. In order to address these concerns, the Order directs the NPS and other Department of the Interior agencies to define e-bikes separately from motor vehicles and to allow them where other types of bicycles are allowed.

NPS Policy Memorandum 19–01

On August 30, 2019, the Deputy Director of the NPS, Exercising the Authority of the Director, issued Policy Memorandum 19–01, Electric Bicycles. This policy satisfies a requirement in the Secretary's Order that all Department of the Interior agencies adopt policy and provide appropriate public guidance regarding the use of e-bikes on public lands that conforms to the policy direction set forth in the Order.

The Memorandum defines an e-bike as ''a two- or three-wheeled cycle with fully operable pedals and an electric motor of less than 750 watts that provides propulsion assistance.'' This definition is consistent with the definition of ''low speed electric bicycle'' in the Consumer Product Safety Act (15 U.S.C. 2085) and the definition of ''electric bicycle'' in the laws governing the Federal Aid Highway Program (23 U.S.C. 217(j)(2), except that the definition in the Memorandum does not include requirements from those statutes that an e-bike may not exceed 100 pounds or reach 20 mph when powered solely by the motor. Instead, the Memorandum, consistent with the Secretary's Order and many states that have promulgated regulations for e-bikes, refers to a three-class system that limits the maximum assisted speed of an e-bike:

- *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.
- *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.
- *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.

Consistent with the Order, the Memorandum announces a policy that e-bikes are allowed where traditional bicycles are allowed and that e-bikes are not allowed where traditional bicycles are prohibited. The Memorandum refers to regulations for bicycles in paragraphs (f), (g), and (h) of 36 CFR 4.30 that relate to closures and other use restrictions, other requirements, and prohibited acts. The Memorandum requires that these provisions also govern the use of e-bikes so that the use of e-bikes and bicycles are generally regulated in the same manner.

Paragraph (f) of section 4.30 allows superintendents to limit or restrict or impose conditions on bicycle use or close any park road, trail, or portion thereof to bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. The Memorandum authorizes superintendents to limit or restrict or impose conditions on e-bike use for the same reasons, provided the public is notified through one or more methods listed in 36 CFR 1.7. When using this authority, the Memorandum advises superintendents to understand state and local rules addressing e-bikes so that the use of e-bikes within a park area is not restricted more than in adjacent jurisdictions, to the extent possible.

Paragraph (g) of section 4.30 states that bicycle use is subject to certain NPS regulations that apply to motor vehicles. Specifically, bicycle use is subject to regulations in sections 4.12 (Traffic control devices), 4.13 (Obstructing traffic), 4.20 (Right of way), 4.21 (Speed limits), 4.22 (Unsafe operation), 4.23 (Operating under the influence of alcohol or drugs). The Memorandum applies these provisions in the same manner to e-bikes. Paragraph (g) also states that, unless specifically addressed by NPS regulations, the use of a bicycle is governed by state law, which is adopted and made part of section 4.30. The Memorandum requires superintendents to adopt state law in the same manner for e-bikes. State laws concerning the definition, safety operation, and licensing of e-bikes vary from state to state. A growing number of states use the three-class system to differentiate between the models and top assisted speeds of e-bikes.

Paragraph (h) of section 4.30 prohibits possessing a bicycle in wilderness and contains safety regulations for the use of bicycles. Specifically, paragraphs (h)(3)–(5) establish rules relating to operation during periods of low visibility, abreast of another bicycle, and with an open container of alcohol. The Memorandum applies these provisions in the same manner to e-bikes.

The Memorandum directs the superintendents of any NPS unit with e-bikes present to implement the actions required by the policy using their regulatory authority in 36 CFR 1.5(a)(2). This authority allows superintendents to designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity. As of the date of this rule, more than 380 units of the National Park System have implemented the e-bike policy under the authority in 36 CFR 1.5(a)(2) and have published notice of this action in the park-specific compilation of management actions required by 36 CFR 1.7(b), referred to as the superintendent's compendium. This means that for each of these NPS units, e-bikes are already allowed subject to the rules governing them that are set out in the compendium and no further action would be needed to reauthorize continued use of e-bikes under this regulation.

Final Rule

As explained above, Secretary's Order 3376 directs the NPS to revise 36 CFR 1.4 and any associated regulations to be consistent with the Order. The Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and Bureau of Reclamation (Reclamation) are also revising their regulations for consistency with S.O. 3376. Specifically, the Order directs the NPS, BLM, FWS, and Reclamation to add a definition for e-bikes consistent with 15 U.S.C. 2085, and expressly exempt all e-bikes as defined in the Order from the definition of motor vehicles.

This rule accomplishes these directives as related to the NPS, and once effective, will supersede and replace Policy Memorandum 19–01. The rule amends 36 CFR 1.4 to add a new definition of ''electric bicycle'' that is the same as the definition used in the Policy Memorandum, with one minor difference. The definition in the Memorandum refers to the definition of ''electric bicycle'' in the Consumer Product Safety Act (15 U.S.C. 2085), which limits the power of the motor to less than 750 watts. Many manufacturers sell e-bikes with motors having exactly 750 watts. In order to avoid the unintended consequence of excluding many devices from the regulatory definition of an e-bike due to a one-watt difference in power, the definition of e-bikes in this rule includes devices of not more than 750 watts.

The rule explicitly excludes e-bikes from the definition of ''motor vehicle'' found at 36 CFR 1.4. This clarifies that, except as stated in section 4.30(g), e-bikes are not subject to the regulations in 36 CFR part 4 that apply to the use of motor vehicles. The NPS does not need to change the existing definition of ''bicycle'' to distinguish them from e-bikes because the definition of bicycle includes only those devices that are ''solely human powered.'' E-bikes are excluded from this definition because they have an electric motor that helps power the device.

Consistent with the Secretary's Order and the Policy Memorandum, this rule states that e-bikes may be allowed on roads, parking areas, administrative roads and trails that are open to traditional bicycles. The rule also states that superintendents will designate the areas open to e-bikes and notify the public pursuant to 36 CFR 1.7. E-bikes are not allowed in other locations. E-bikes are allowed on administrative roads and trails where bicycles are allowed without the need to undertake the procedural steps in paragraphs (b)–(e) of section 4.30 that were required when traditional bicycles were first allowed in those locations. If a superintendent proposes to designate an administrative road or trail for e-bike use where traditional bicycles are not yet allowed, then the superintendent would need to follow the procedural steps required by paragraphs (b)–(e) in order to designate those locations for bicycle and e-bike use.

Although bicycles and e-bikes will be defined differently, the rule applies certain regulations that govern the use of bicycles to the use of e-bikes in the same manner as the Policy Memorandum. These regulations are explained in more detail above and include rules of operation and adoption of state law to the extent not addressed by NPS regulations. The rule also gives superintendents the authority to limit or restrict e-bike use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. If warranted by these criteria, superintendents may use this authority to manage e-bikes, or particular classes of e-bikes, differently than traditional bicycles in particular locations. For example, a superintendent could determine that a trail open to traditional bicycles should not be open to e-bikes, or should be open to class 1 e-bikes only. Every restriction or closure that limits the use of e-bikes must be supported by a written record explaining the basis for such action. The record will explain why e-bikes are managed differently than traditional bicycles if that is the effect of the restriction or closure. All such restrictions and closures should be listed in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

Except for administrative actions taken by the NPS in limited circumstances, the Wilderness Act prohibits mechanical transport in wilderness areas designated by Congress. 16 U.S.C. 1133(c). Accordingly, paragraph (h)(2) of section 4.30 prohibits possessing a bicycle, a form of mechanical transport, in a wilderness area established by Federal statute. For the same reason, the rule prohibits the possession of e-bikes in designated wilderness areas, even though this prohibition already exists under the Wilderness Act.

Except on park roads and other locations where the use of motor vehicles by the public is allowed, the rule prohibits an operator from exclusively using the electric motor to move an e-bike without pedaling for an extended period of time. This restriction is consistent with the Policy Memorandum and intended to allow the public to use e-bikes for transportation and recreation in a similar manner to traditional bicycles. It only affects the use of Class 2 e-bikes, which have a motor that may be used exclusively to propel the e-bike.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on April 8, 2020 (85 FR 19711). The NPS accepted comments on the rule through the mail, by hand delivery, and through the Federal eRulemaking Portal at *www.regulations.gov.* The comment period closed on June 8, 2020. The NPS received more than 17,000 comments on the proposed rule from individuals and 71 organizations. A summary of the pertinent issues raised in the comments and NPS responses are provided below. After considering public comments and after additional review, the NPS made several minor changes in the final rule which are explained in the responses to comments below.

1. Comment: One commenter raised concerns about the use of shared e-bikes within park areas, in particular the impacts from riders leaving e-bikes in undesirable locations when the rental expires.

NPS Response: Many e-bike rental companies encourage customers to end their trips responsibly; establish acceptable parking locations within service areas; require that e-bikes be parked in accordance with applicable laws and regulations; define prohibited acts—including locking the e-bike to trees or other structures, as well as blocking pathways, sidewalks, or ramps; and assess penalties for parking e-bikes outside of service areas and in violation of the rental agreement. The NPS expects that these rental agreements and penalties will largely deter riders from leaving e-bikes within park units in undesirable locations when the rental expires. The NPS will also work with local jurisdictions to ensure e-bikes are managed appropriately.

In circumstances where a rental company is engaging in business within an NPS unit, written authorization from the NPS is required under 36 CFR 5.3. The NPS will work with companies who seek written authorization to conduct these businesses to develop terms and conditions in the permit, contract, or other written authorization that mitigate against this potential harm.

2. Comment: One commenter asked the NPS to require superintendents that decide to allow e-bikes in park areas to develop a plan that educates riders about where e-bikes are allowed and proper trail etiquette to minimize impacts to other users of the trail.

NPS Response: This rule gives superintendents the discretion to establish any safety measures deemed necessary to ensure that e-bikes are used in a manner that maintains a safe and enjoyable experience for all visitors. Superintendents are encouraged to go beyond what is stated in the rule and conduct community outreach and education campaigns to ensure that the proper riding behaviors are adhered to for the benefit of all NPS visitors. Before visiting an NPS unit, visitors are encouraged to check the park website to

find out what areas of the park are accessible, what activities are available, and which facilities are open. Upon arrival, visitors can obtain additional information at the Visitor Center or a Ranger Station. Signage is often used at common access points, such as trailheads, road crossings, and junctions with other types of trails as a means of communicating with park visitors. NPS websites, park brochures, and signage present a variety of information to visitors, including educational materials that provide guidance on trail etiquette to mitigate the potential for user conflict and to help establish user norms. Typical information resources identify the kind of use allowed, provide route names, trail direction and appropriate practices for yielding to others, and will be similarly utilized to educate visitors about e-bike rules and etiquette.

3. Comment: One commenter raised an issue specific to the use of e-bikes in National Park System units in Alaska. This commenter requested that the NPS allow the use of e-bikes where traditional bicycles are currently allowed in Alaska, which are generally allowed throughout NPS units in Alaska—including off-trail and in wilderness—under the Alaska National Interest Lands Conservation Act (ANILCA). This commenter stated that treating e-bikes differently than traditional bicycles in Alaska would create public confusion from an inconsistent management framework and reduce opportunities for public access and recreation.

NPS Response: ANILCA authorizes the use of nonmotorized surface transportation methods for traditional activities and for travel to and from villages and homesites within National Park System units 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; however, 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, the NPS is not in favor of creating different rules for e-bikes in Alaska than it does for e-bikes everywhere else within the National Park System. The stated purpose of Secretary of the Interior Order 3376 is to simplify and unify the regulations of e-bikes on lands managed by the Department of the Interior. The NPS shares this goal of a consistent management framework within the National Park System. Outside of Alaska, NPS regulations allow the use of bicycles on roads and trails only. 36 CFR 4.30. 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 superintendent. Although the special allowance in Alaska for traditional bicycles is not limited to roads and trails, the NPS declines to extend this special allowance for e-bikes in Alaska. The NPS has no data on the level of bicycle use on more than 20 million acres in Alaska that are off-trail and not in designated wilderness. The lack of data would make it very difficult to anticipate the impacts of allowing e-bikes in those same, vast locations—impacts that could include concerns about public safety associated with remote, cross-country travel, protection of resources in sensitive biomes such as tundra, and management objectives such as preserving wilderness character in eligible wilderness.

4. Comment: Several commenters questioned how the NPS'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 for e-bikes established by the NPS in this rule. For example, one commenter referred to the definition of ''electric bicycle'' in the laws governing the Federal Aid Highway Program. 23 U.S.C. 217(j)(2). The commenter states that this definition is different than the NPS definition in the rule and has implications for the types of uses that are allowed on pedestrian and bicycle trails funded by the Federal Highway Administration under the Recreational Trails Program. One commenter suggested that the use of e-bikes could adversely affect the ability of the NPS or user groups to obtain funds for trails that come with restrictions on motorized use.

NPS Response: The NPS's definition of ''electric bicycles'' applies to management of electric bicycles within the National Park System 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 National Park System. Using the general scenario presented by the commenter, if a trail within the National Park System is constructed or maintained with federal highway funds in a manner that restricts the use of e-bikes as that term is defined under a separate federal law, then the superintendent 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. There could be circumstances where superintendents must choose between using federal funds for trail construction and limiting that trail to traditional bicycles or finding an alternative funding source and allowing e-bikes on the trail. The NPS believes that superintendents are in the best position to make these judgements and this rule provides them with the discretion to do so.

5. Comment: One commenter questioned the NPS's authority under the NPS Organic Act (54 U.S.C. 100101) to create a management framework for e-bikes that allows superintendents to make decisions about e-bike use that—in certain cases—could allow e-bikes in more places and with more associated impacts than are allowed by the state where the park is located. This commenter stated that allowing the superintendent to create rules that are different than what is allowed by the state would create public confusion and an expectation that all three classes of e-bikes are allowed within the National Park System.

NPS Response: The framework in this rule gives superintendents the discretion to determine the appropriate level of e-bike use in park areas, with the important limitation that e-bikes may only be allowed on roads and trails where traditional bicycles are allowed. All management decisions made by a superintendent, including a decision under this rule to allow the use of e-bikes, are subject to NPS Management Policies that prohibit the superintendent from allowing a visitor use activity that would cause unacceptable impacts or impairment of park resources under the NPS Organic Act. This is true no matter what decision states make about the use of e-bikes in areas under their jurisdiction. The NPS does not agree that a decision by a superintendent to allow e-bikes in more places and with more associated impacts than a state would allow is *per se* a violation of the impairment mandate in the NPS Organic Act. One of the purposes of this rule is to create a consistent management framework for the use of e-bikes across the National Park System, in part because all NPS units are subject to the same management standard articulated in the NPS Organic Act. Adequate public notice and community outreach will mitigate the potential for confusion in situations where the rules of e-bikes in park areas are different than the rules in adjacent or nearby state

lands. In order to reduce the potential that this will create a perception that all three classes of e-bikes are allowed in all park areas, the NPS has revised the regulatory text in 36 CFR 4.30(i)(1) to clarify that, in some cases, only certain classes may be allowed.

6. Comment: Some commenters stated that allowing e-bikes on trails is subject to NPS regulations governing the use of off-road motor vehicles (ORVs) in 36 CFR 4.10 which states that ORV routes and areas must be designated by special regulation and only in national recreation areas, national seashores, national lakeshores and national preserves. One commenter objected to the NPS excluding e-bikes from the definition of ''motor vehicle'' because e-bikes are inherently motorized. Another commenter stated that e-bikes should be regulated as motor vehicles by the NPS because of a recent ruling by the U.S. Customs and Border Protection (CBP) that e-bikes are to be grouped with low-powered (less than 1kW) electric motorcycles for purposes of excluding them from a 25% tariff imposed by the Trump Administration on products imported from China.

NPS Response: This rule revises 36 CFR 1.4 to make clear that e-bikes are not regulated as ''motor vehicles'' under NPS regulations, including the regulations in 36 CFR 4.10 that govern the use of ORVs. As a result, the use of e-bikes is not subject to the restrictions that apply to the designation of ORV routes and areas in 36 CFR 4.10. The fact that e-bikes have a small electric motors does not compel the NPS to define or regulate them in the same manner as motor vehicles that in the vast majority of cases are larger, heavier, and powered by internal combustion engines that output much more than 1 hp. The NPS is free to exclude e-bikes from the regulatory definition of ''motor vehicles'' and manage them separately as it has previously done with snowmobiles. The fact that a majority of states have adopted regulatory schemes for e-bikes that are separate from regulations applying to motor vehicles supports the NPS making the same distinction in its regulations. Rulings from the CPB about the imposition of tariffs on foreign products imported into the United States are not relevant to how the NPS manages visitor use activities in park areas, including the use of e-bikes.

7. Comment: Several commenters questioned whether the NPS has the authority to create an exception to Executive Order 11644 (Use of off-road vehicles on the public lands) by promulgating this rule, which authorizes superintendents to allow motorized devices on public lands without following the requirements set forth in the E.O.

NPS Response: Executive Order 11644 was issued by President Nixon in 1972 and amended by President Carter in 1977 through Executive Order 11989. The Executive Order establishes policies and procedures that federal agencies must follow to manage the use of ''off-road vehicles'' on public lands. The stated purpose of the Executive Order is 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 applies to the use of ''off road vehicles,'' which are defined as motorized vehicles designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, with certain exceptions that are not relevant to this discussion. Although e-bikes are ''motorized'' in the literal sense because they have a small electric motor, the NPS does not believe that they were intended to be regulated as ''off-road vehicles'' under the Executive Order, to the extent they were even considered for inclusion.

The first sentence of the Executive Order identifies the types of vehicles that were of concern in 1972—''motorcycles, minibikes, trial bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others.'' Although this list is not exhaustive, the devices that were named in almost all cases used internal combustion engines for power, rather than an electric motor, and none relied on the rider pedaling the vehicle to provide most of the power to the vehicle. For these reasons, e-bikes are inherently different than the types of ''off-road vehicles'' listed under the Executive Order.

Further, e-bikes were not identified anywhere in the Executive Order and for good reason. Although e-bike prototypes were developed as far back as the 19th century, the technological advances needed to popularize them, such as torque motors and power controls, were not developed until the mid-1990s. In 1979, after the Executive Order was amended by President Carter, the Council for Environmental Quality (CEQ) issued a report entitled ''Off-Road Vehicles on Public Land.'' The report discusses the requirements of the Executive Order in great detail and evaluates efforts undertaken by federal land management agencies to comply with its requirements. E-bikes are not mentioned anywhere in the report. The preface of the report acknowledges that the inclusion of snowmobiles in the definition of ''off-road vehicle'' was controversial at the time and identifies other types of ''motorized vehicles'' that were typically understood to be included within the definition—''motorcycles of various sorts (minibikes, dirt bikes, enduros, motocross bikes, etc.), four-wheel drive vehicles such as Jeeps, Land Rovers, or pickups, snowmobiles, dune buggies, and all-terrain vehicles.'' Just as in the Executive Order, e-bikes are not on this list. Neither the Executive Order nor the CEQ report suggests that President Nixon or President Carter intended for the Executive Order to apply to small, quiet, light vehicles powered by a small electric motor, such as e-bikes as defined in this regulation. This supports an interpretation of the Executive Order that the term ''off-road vehicles'' should not be understood to include e-bikes as defined in this rule.

In addition to this evidence that the Executive Order was not intended to apply to e-bikes, the NPS believes that it is appropriate to exclude e-bikes from the requirements of the Executive Order because e-bikes do not cause the kinds of impacts that the Executive Order was intended to mitigate. For example, e-bikes have an electric motor which at most emits a low steady whine when engaged, rather than an internal combustion engine capable of generating much louder noise. Therefore, e-bikes are not likely to cause the sort of sound-related impacts that would result in harm to wildlife behavioral patterns or create conflicts with visitors seeking a natural and quiet experience, factors that the Executive Order requires the agencies to consider when permitting off-road vehicles. Although the NPS acknowledges that the effects of noise on wildlife differ across taxonomic groups and that reactions to sound are different for every visitor, the use of e-bikes as defined in this rule is not expected to degrade the quietude in an unacceptable manner above and beyond the use of traditional bicycles. During the NPS's review of the current literature, the NPS did not find any studies measuring the decibels generated from e-bike motors or components. Nevertheless, because the noise produced by an e-bike comes from either the sound of the tire on the road or trail, or the electric motor when it is engaged, the sound levels that comes from traditional and electric bikes are reasonably similar. 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.

Also, a review of available models shows that e-bikes are generally much lighter than even the lightest off-road

vehicle listed in the Executive Order, which limits their potential damage to natural resources in the form of soil compaction and erosion. A typical e-bike model weighs about 45–50 pounds, which is only slightly heavier than a typical traditional bicycle at 30–35 pounds. In comparison, minibikes, which are the lightest off-road vehicle listed in the Executive Order, weigh an average of 115–130 pounds. Typical trial bikes weigh about 145 pounds and motorcycles typically weigh 300–400 pounds. A recent study conducted by the International Mountain Biking Association measured relative levels of soil displacement and erosion resulting from traditional, non-motorized mountain bikes, e-bikes, and gasoline-powered dirt bikes and found that soil displacement and tread disturbance from e-bikes and traditional, non-motorized mountain bikes were not significantly different, and both were much less than those associated with gasoline-powered dirt bikes. Although this study focused on the impacts from Class 1 e-bikes, the impacts from Class 2 and 3 e-bikes would not be substantially different, especially given the prohibition on using the throttle to power a Class 2 e-bike without pedaling for an extended period of time and applicable speed limits on trails. Additionally, this rule authorizes e-bike use only on roads and trails designated by the superintendent and does not authorize cross-country use of e-bikes which thus mitigates the impacts that the Executive Order was intended to address regarding direct over-land travel.

Finally, distinguishing e-bikes from other motor vehicles is consistent with the fact that e-bikes are not considered to be motor vehicles under 49 U.S.C. 30102, are not subject to regulation by National Highway Traffic Safety Administration, and are regulated similar to non-motorized bicycles by the U.S. Consumer Product Safety Commission (CPSC). For these reasons, the NPS does not believe that Executive Order 11644 was intended to or should be applied to e-bikes.

8. Comment: One commenter stated that the rule fails to consider whether the addition of e-bikes to park areas will affect visitor carrying capacities that are required to be established for each NPS unit under the National Parks and Recreation Act of 1978 and must be considered by the superintendent when evaluating new recreational uses of park areas under NPS Management Policies, specifically sections 8.2 (Visitor Use), 8.2.1 (Visitor Carrying Capacity); and 8.2.2.1 (Management of Recreational Use).

NPS Response: The Act cited by the commenter is codified at 54 U.S.C. 100502(3) and requires that general management plans for each unit of the National Park System include ''identification of and implementation commitments for visitor carrying capacities for all areas of the System unit.'' NPS Management Policies define ''carrying capacity'' as the ''use that can be accommodated while sustaining the desired resource and visitor experience conditions in the park.'' Setting and staying within carrying capacities can be a useful tool for superintendents to help ensure that park uses do not cause unacceptable impacts to park resources and values.

This rule does not require superintendents to allow e-bikes in the park areas they manage, it simply authorizes them to do so on roads and trails where traditional bicycles are also allowed. The NPS operates under the assumption that any decision made by a park superintendent will comply with applicable laws and policies and be consistent with applicable general management plans. The NPS expects that park superintendents will evaluate whether the addition of e-bikes would affect visitor carrying capacities identified in general management plans or other planning documents, together with all other factors that would inform whether the use of e-bikes is appropriate or not.

9. Comment: Many commenters raised concerns about the potential impacts e-bikes would have on park resources 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 with more gear into more remote and undisturbed areas. Commenters cited the potential for disturbing wildlife, 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 for certain riders who could travel 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 single-track, 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 that are compatible with a quiet and natural environment.

NPS Response: The NPS agrees that park resources must be protected and user conflicts should be avoided where e-bikes are allowed. However, this rule does not mandate the use of e-bikes in any park area. This rule establishes a general framework that can be used by superintendents to allow e-bikes on designated roads and trails where traditional bicycles are already allowed. Existing NPS regulations require a robust evaluation of the potential impacts that traditional bicycles would have on designated trails before they can be allowed. See 36 CFR 4.30(d) and (e). The addition of e-bikes on roads or any of these trails is subject to the discretion of the superintendent who is required by policy to consider the impacts that a new park use such as e-bikes would have on park resources and visitor experience. NPS Management Policies clearly state that in using discretionary authority, superintendents will allow only uses that are appropriate to the purpose for which the park was established and can be sustained without causing unacceptable impacts. Superintendents may not allow e-bikes if doing so would impair a park's resources, values, or purposes.

Existing studies about the relative impact between traditional bicycles and e-bikes demonstrate that impacts from e-bikes are similar to impacts from traditional bicycles notwithstanding some disparities associated with visitor safety that the NPS believes can be mitigated if necessary by the superintendent at the park level. For example, one study, *Comparison of environmental impacts from MTB-Class 1 eMTB, and motorcycles: soil displacement and erosion on bike-optimized trails in a Western Oregon Forest, IMBA Trail Solutions (2016),* found that impacts from Class 1 eMTBs were similar to traditional mountain bicycles, while motorcycles led to much greater soil displacement and erosion. The study found that an emerging body of research suggests that when it comes to impacts to soils, water quality, and vegetation, the primary issue is not the type of user, but the way the trail is designed and constructed. Therefore, the NPS does not expect the addition of e-bikes to cause significant additional erosion on trails or degradation of plant habitats.

Additionally, a review of available literature by Boulder County, Colorado concluded that all forms of recreation may have some negative impacts to wildlife habitat and behavior, but there is little research to suggest that e-bikes have greater negative impacts on trails

or wildlife than regular bikes and mountain bikes. *See Boulder County E-bike Pilot Study Results and Policy Recommendation,* 2019. Another study of the impacts of motorized and nonmotorized recreation on elk in Eastern Oregon, *USFS. Seeking ground less traveled: Elk responses to recreation (2009),* found that all recreation uses impacted ungulate behavior, but that ATV use was most disruptive to elk compared to mountain biking, hiking, and horseback riding. NPS does not expect e-bike use to have a significantly larger impact to wildlife behavior compared to traditional bicycles.

Regarding visitor safety and user conflicts, as stated above, e-bikes will only be authorized on roads and trails where traditional bicycles are already allowed. These trails have undergone rigorous analysis to ensure that hikers and bicyclists can safely share the trail without causing visitor conflicts. The addition of e-bikes would not significantly alter this analysis. First, all cyclists must follow applicable speed limits for trails which negates many of the concerns about e-bikes' faster speed capabilities. In addition, the terrain and slope of some trails provides a natural limitation to the speed at which a cyclist can reasonably move. Further, although some studies showed average riding speeds on electric mountain bikes are slightly faster than conventional mountain bikes, other studies found that, perhaps counterintuitively, average e-bike speeds were less than average conventional bike speeds which may reflect the slightly older demographics of e-bike riders, and that differences in speed between e-bikes and bicycles are most pronounced on the uphill segment of a trip. (Hall et. al. 2019; Langford, Cherry et al. 2017).

The rule also makes clear that superintendents have the authority to modify, restrict, or discontinue e-bike use if it creates concerns about public health and safety or the protection of natural or cultural resources. For these reasons, the NPS does not believe that e-bikes will cause unacceptable impacts in parks.

10. Comment: One commenter raised a concern about the safety of the electrical systems used in e-bikes, in particular the risk that e-bike batteries could malfunction, combust, and spark wildfires. This commenter recommended that the NPS require that e-bikes be certified to the UL 2849 electric system safety standard in order to help ensure the safety of e-bikes and reduce the likelihood of a catastrophic wildfire resulting from the use of an e-bike that does not have a properly managed electrical system.

NPS Response: The 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 CPCS. The NPS defers to the expertise held by the CPSC for setting safety standards associated with the electrical systems used in e-bikes and for this reason declines to require the UL 2849 standard for e-bikes used in park areas. If the use of e-bikes in park areas results in unforeseen safety issues or threats to natural resources, the rule allows superintendents to restrict or stop the use of e-bikes until such risks can be properly addressed. This is consistent with NPS Management Policies Section 8.1.2 which requires superintendents to further manage, constrain or discontinue park uses that cause unanticipated and unacceptable impacts revealed through monitoring.

11. Comment: Several commenters stated that the introduction of e-bikes will require the NPS to undergo a substantial revision of existing sign standards to clearly identify where e-bikes are allowed, and further which classes are allowed. One commenter recommended that the NPS maintain a trail sign standard with allowable use demarcations to depict traditional bicycles and e-bikes independently.

NPS Response: The NPS agrees that the successful introduction of e-bikes into park areas depends upon clear and consistent communication to the public about where e-bikes are allowed, and further which classes are allowed. The NPS is working with the other land management agencies within the Department of the Interior to establish standard signs for e-bikes. E-bikes will have symbols that are distinct from those used to depict traditional bicycles. The goal of this effort is to create a consistent visual framework indicating where e-bikes are allowed on public lands managed by the Department of the Interior.

12. Comment: Several commenters questioned whether the NPS has the financial resources to properly manage the use of e-bikes under this rule given the preexisting backlog of deferred maintenance projects in the National Park System. Commenters cited costs associated with: (1) Installing and maintaining signage to identify where e-bikes are allowed; (2) improving trail infrastructure to accommodate e-bikes (*e.g.,* trail widening, lane marking, parking facilities); (3) repairing trail damage from the use from e-bikes; (4) ensuring an adequate law enforcement presence; and (5) engaging in and incurring liability from search and rescue activities caused by visitors traveling beyond their ability level into more remote and challenging terrain.

NPS Response: The NPS acknowledges that there will be costs associated with the management of e-bikes within the National Park System, including those cited by the commenters. To help avoid situations where superintendents do not have the resources to properly manage e-bikes, this rule does not mandate the use of e-bikes anywhere in the National Park System. It gives superintendents to discretion to allow them where they are appropriate. NPS Management Policies Section 8.1.2 requires superintendents to consider total costs to the NPS when evaluating whether a proposed park use is appropriate. In the event that accidents or injuries occur as a result of or in conjunction with e-bike use, liability, if any, would be determined in accordance with applicable laws, which may include the Federal Tort Claims Act.

13. Comment: Several commenters questioned whether aspects of the rule would be difficult to enforce, in particular the prohibition on using the throttle to move the e-bike without pedaling that applies only to Class 2 e-bikes. Commenters also questioned whether NPS law enforcement officers would be able to differentiate between e-bikes and traditional bicycles, and classes of e-bikes in circumstances where a superintendent has prohibited certain classes of e-bikes in particular locations. Commenters emphasized that these enforcement challenges would be exacerbated by potential violations occurring at high speeds and in remote locations.

NPS Response: The NPS acknowledges that the aspects of the rule cited by the commenters 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 park areas. For example, regulations governing use of off-road vehicles at 36 CFR 4.10 prohibit operation of an off-road vehicle in a manner that causes unreasonable damage to the surface of a park road or route. Determining when a violation of this regulation occurs can be fact-specific, requiring the exercise of specialized judgment on the part of law enforcement officers. Similarly, determining whether a violation of the prohibition on extended use of throttle power without pedaling occurs will involve the exercise of specialized skill, training, and judgment by law

enforcement officers. Based on its experience enforcing other regulations that condition how the public recreates on public lands, the NPS believes that law enforcement officers have the expertise necessary to properly exercise their discretion to enforce the limitations on how Class 2 e-bikes may be used in a reasonable manner that ensures protection of public health, safety, and resources and users of the public lands. The NPS has also modified the regulatory text to make clear that using the throttle on a Class 2 e-bike without pedaling is only prohibited if it is done for an extended period of time. This will help law enforcement officials focus only on the more egregious cases of users using the throttle to move Class 2 e-bikes without pedaling.

With respect to differentiating among traditional bicycles and e-bikes, and among classes of e-bikes, the NPS notes that 28 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 NPS expects that its law enforcement officers will use their specialized skill, 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. Identifying violations of NPS regulations that occur at speed is not a novel challenge for NPS law enforcement officers. These individuals are tasked on a daily basis with enforcing speed limits and equipment and operational requirements for the use of motor vehicles and vessels used within remote park areas. See, for example, 36 CFR parts 3 and 4.

14. Comment: Several commenters suggested changes to the requirement in the proposed rule that except where use of motor vehicles by the public is allowed, using the electric motor to move an e-bike without pedaling is prohibited. One commenter recommended that the NPS remove this requirement in order to allow riders to take advantage of the throttle-only capabilities of Class 2 e-bikes on e-bike lanes and paths where such use is appropriate. Another commenter noted that Class 2 e-bikes often have a function that allows the rider to disable the throttle-only capability and that the rule should require that this be disabled as a better regulatory alternative to prevent throttle-only use.

NPS Response: The NPS acknowledges that there may be situations where the use of the throttle-only power may be appropriate and useful in limited duration. This could be the case in particular for park visitors who use e-bikes as to access and enjoy park areas in a manner that would not be possible with traditional bicycles. In limited duration, the throttle could be used without pedaling to get started, for a quick burst of power to climb a hill, or to move safely through an intersection. In order to more precisely tailor this restriction on the use of Class 2 e-bikes, the NPS has revised the final rule to only prohibit the use of throttle-only power for an extended period of time. This change will allow riders of Class 2 e-bikes to benefit from throttle-only power for limited durations while ensuring that e-bike use, where allowed, will continue to be used in a manner that is consistent with traditional, non-motorized bicycles. Due to this change in the final rule, the NPS declines to adopt the proposal to require riders of Class 2 e-bikes to disable the throttle-only function.

15. Comment: One commenter suggested that the NPS revise the definition of ''electric bicycles'' to include a requirement that the device have a seat or saddle for the rider so that e-bikes are distinguished from other types of electric mobility devices that are designed to be stood upon, such as e-scooters.

NPS Response: The NPS believes that the requirement in the definition that e-bikes have ''fully operable pedals'' is sufficient to distinguish e-bikes from other mobility devices with electric motors.

16. Comment: One commenter questioned the effectiveness of requirement in the definition of ''electric bicycle'' that the electric motor produce no more than 750 watts of power. This commenter noted that e-bike manufacturers are offering multi-speed transmissions that increase the efficiency of the motor, which means that the speed of e-bikes is less a function of the size of the motor than the number of gears and gear ratios.

NPS Response: The NPS appreciates that the technology used in e-bikes is likely to continue to evolve at a rapid pace, and that the electric motors and batteries will become more efficient over time. The advancements in transmission described by the commenter may increase the acceleration rate of e-bikes but cannot increase the top assisted speed beyond 20 mph (for Class 1 and 2 e-bikes) or 28 mph (for Class 3 e-bikes) without transforming the device into a motor vehicle for purposes of NPS regulations. The NPS believes that the limitations on top assisted speed and power output are sufficient to prevent technological advancements from allowing devices that qualify as e-bikes to behave like motorcycles or other motor vehicles in a manner that represents a significant departure from the types of devices that fall within the NPS definition of an ''electric bicycle'' today.

17. Comment: Several commenters asked the NPS to limit the discretion given to superintendents in this rule to determine where e-bikes may be used, and which classes may be used, within the NPS units they administer. Here are some of the ways these commenters proposed to categorically manage the use of e-bikes:

- Prohibit the use of Class 2 and 3 e-bikes on non-motorized trails where traditional bicycles are allowed.
- Allow Class 1 e-bikes on administrative roads and improved surface trails, but not single-track trails.
- Allow Class 2 e-bikes only on administrative roads.
- Allow Class 3 e-bikes only in locations open to public motor vehicle traffic.
- Prohibit Class 2 and 3 e-bikes on natural surface trails.
- Prohibit the use of three-wheeled e-cycles with a combined tire tread width wider than 15 inches on trails where traditional bicycles are allowed.
- Prohibit e-bikes on any trails that do not already allow motorized use, which would eliminate all trails from consideration except for ORV and snowmobile routes.
- Prohibit e-bikes on trails with groomed snow that are also used by over-snow vehicles.
- Allow e-bikes only on paved trails.
- Prohibit Class 2 e-bikes on all improved surface and shared use trails open to traditional bicycles due to their throttle-only capabilities.
- Allow Class 1 e-bikes anywhere traditional bicycles are allowed without any requirement that those locations be designated by the superintendent.

NPS Response: The varied and diverse approaches suggested by the commenters demonstrates how difficult it would be to establish categorical rules for where e-bikes may be used in park areas at the national level. The framework in this rule establishes sensible sideboards for the use of e-bikes by: (1) Adopting a commonly used state-adopted definition of ''electric bicycle'' that limits motor size and top assisted speed; (2) restricting e-bikes to roads and trails where traditional bicycles are allowed; and (3) ensuring that e-bikes are used like traditional bicycles by prohibiting the extended use of Class 2 e-bikes with throttle-only power. Further restricting the discretion

of superintendents to determine whether e-bikes should be allowed could prevent visitors from using e-bikes to access and enjoy park areas without any opportunity to evaluate whether such use is appropriate. For example, categorically prohibiting e-bikes on trails that are not ORV or snowmobile routes runs counter to evidence identified in previous responses to comments suggesting that impacts from e-bikes are more like impacts from traditional bicycles than motor vehicles.

Superintendents are most familiar with the natural and cultural resources, operating budgets, and visitor use patterns in a park area, and therefore are in the best position to determine whether e-bikes, or specific classes of e-bikes, should be allowed on roads or trails where traditional bicycles are allowed. The rule provides superintendents with the flexibility to parse and delineate the exact type of e-bike use, if any, that is most appropriate in a park area. Taking just some of the examples raised by the commenters, if the top assisted speed of Class 3 e-bikes would cause unacceptable safety concerns on a particular trail, the superintendent can prohibit Class 3 e-bikes on that trail. If a single-track trail is too narrow to accommodate the width of three-wheeled e-bikes without causing unacceptable impacts to natural resources, the superintendent can prohibit those types of e-bikes on that trail. If allowing e-bikes on groomed trails used by snowmobiles would create unacceptable safety concerns or user conflicts, the superintendent can prohibit that use. If allowing Class 2 e-bikes on a single-track trail would cause unacceptable user conflicts or safety issues due to their throttle-only capabilities (even when used only for short durations), then the superintendent could allow Class 2 e-bikes only on administrative roads that are sufficiently wide to accommodate that type of traffic.

In response to a suggestion from one commenter, the NPS has clarified in the final rule that the superintendent may decide to allow only specific classes of e-bikes in certain locations. This was always the intent of the rule and is part of the reason why the NPS used a definition of ''electric bicycle'' that distinguishes between classes. The NPS agrees with this commenter that the type of power activation and top assisted speed that distinguish the three classes necessitate a more granular level of decision making and allowances based on individual classes. Another commenter requested that the NPS state in the rule that e-bikes may be allowed on paved and unpaved trails. The NPS does not think this is necessary because the reference to ''trails'' in the rule without any qualifier means either type of trail.

18. Comment: One commenter questioned whether the prohibition in the rule of possessing an electric bicycle in a wilderness area established by Federal statute would prevent the transport of e-bikes mounted on motor vehicles through wilderness areas. Another commenter stated that the NPS should allow e-bikes in wilderness because they are quieter and otherwise have less impacts that horses.

NPS Response: The use of motor vehicles is prohibited in wilderness areas designated under the Wilderness Act, whether or not they are transporting e-bikes. 16 U.S.C. 1133(c). The Wilderness Act also prohibits other forms of mechanical transport, a term that includes e-bikes, leaving the NPS with no authority to allow e-bikes in wilderness areas designated under the Act. 16 U.S.C. 1133(c).

19. Comment: One commenter stated that e-bikes should only be allowed if their use will not impede or result in the elimination of access for traditional bicycles.

NPS Response: This rule authorizes superintendents to allow e-bikes only on roads and trails where traditional bicycles are allowed. Superintendents may not designate a road or trail for e-bike use and then subsequently prohibit the use of traditional bicycles in that location.

20. Comment: One commenter asked the NPS to clarify why certain regulations in 36 CFR part 4 that apply to traditional bicycles do not apply to e-bikes under the rule. In particular, the commenter asked the NPS to explain why 36 CFR 4.30(h)(1) does not apply to e-bikes.

NPS Response: 36 CFR 4.30(h)(1) prohibits riding a traditional bicycle off park roads and parking areas, except on administrative roads and trails that have been authorized for bicycle use. This rule contains its own provisions about where e-bikes may be used. Applying paragraph 4.30(h)(1) to the use of e-bikes would suggest that e-bikes are allowed everywhere traditional bicycles are allowed. This would not be accurate under this rule, which requires superintendents to take an administrative action to designate roads and trails where traditional bicycles are allowed for e-bike use, before e-bikes are allowed in those locations. Similar explanations exist for why other provisions in part 4 apply to traditional bicycles but not to e-bikes—namely, that this rule contains its own provisions for e-bike use that make referencing regulations elsewhere in part 4 unnecessary. For example, paragraph (i)(6) of this rule adopts and applies non-conflicting state law to the use of e-bikes which makes applying section 4.2 (State law applicable) or paragraphs 4.30(g)(2) and (h)(6) unnecessary. Another example is paragraph (i)(4) of this rule which prohibits possessing an electric bicycle in a wilderness area. This makes applying paragraph 4.30(h)(2) to the use of e-bikes unnecessary.

21. Comment: One commenter addressed the topic of adopting non-conflicting state law. This commenter recommended that the NPS adopt non-conflicting state law in order to avoid confusing the public by a situation where the NPS would allow more liberal (*i.e.,* less restrictive) use of e-bikes in park areas than would otherwise be allowed by the state. This commenter also suggested a minor edit to paragraph (i)(6) that would refer to the regulations in 36 CFR chapter I as controlling over state law, instead of the current reference to the regulations in section 4.30. This would ensure that the NPS definitions of ''electric bicycle'' and ''motor vehicle'', which appear in 36 CFR 1, control in the event of conflicting state definitions.

NPS Response: Paragraph (i)(6) of the rule adopts non-conflicting state law and applies it to the use of e-bikes in park areas. This means that to the extent the superintendent has designated locations for e-bike use that conflict with what the state allows, the superintendent's designations would control. Regardless of which authority (NPS or state) is more liberal about the use of e-bikes, the NPS rule will control in park areas. In an opposite example to the one raised by the commenter, if the state allows e-bikes on unpaved trails, but the superintendent has not designated unpaved trails in the park for e-bike use, then e-bikes would not be allowed on unpaved trails in the park. Visitor use of park areas should not be determined by the state. That is why where state law is adopted elsewhere in NPS regulations, it applies only to the extent there is no conflict with NPS regulations. The NPS declines to adopt a regulatory framework where it would defer entirely to the state on matters of visitor use, even if that deference would only occur if visitor use is more restricted by the state. This would be an abdication of the NPS's legal responsibility to manage visitor use and enjoyment of the National Park System.

The NPS appreciates the suggestion by the commenter to refer to ''this chapter'' in paragraph (i)(6) for the

reasons stated by the commenter and has made this change in the final rule.

22. Comment: One commenter suggested that the rule should allow e-bikes anywhere traditional bicycles are allowed unless the superintendent closes a location to the use of e-bikes.

NPS Response: The ''open unless closed'' regulatory framework suggested by the commenter would allow e-bikes on roads and trails across the National Park System without any opportunity for superintendents to evaluate whether they are an appropriate use of park areas. This would place a substantial burden on superintendents to close roads and trails to the use of e-bikes in order to stop unacceptable impacts to resources and visitor experience that would begin to occur immediately upon the effective date of this rule. It would also require the NPS on a national level to try and evaluate the potential impacts from e-bike use across the National Park System under applicable policy and law prior to the rule becoming effective. With more than 400 units making up the National Park System, each containing unique and dynamic administrative capabilities, values, resources, and visitor use patterns, a programmatic evaluation of these impacts would be impracticable. The NPS prefers the ''closed unless open'' approach in this rule that requires superintendents to take an affirmative action by designating a road or trail for e-bike use before they are allowed. This approach will allow superintendents to evaluate whether a location is appropriate for e-bike use in accordance with the policy guidance discussed above and the legal requirements (*e.g.* National Environmental Policy Act) discussed below.

23. Comment: One commenter asked why the rule does not prohibit devices with electric motors that output more than 750 watts of power.

NPS Response: A device with an electric motor that outputs more than 750 watts of power will not qualify as an e-bike under the definition of ''electric bicycle'' in this rule. As a result, the superintendent will lack to authority to allow those types of devices on roads and trails open to traditional bicycles under this rule. Such devices will fall under the definition of ''motor vehicle'' and be regulated as such. As a result, it would not be appropriate to ban them as the commenter suggests. This analysis is true of any device that fails to meet the criteria in the definition of ''electric bicycle''—including devices with a top assisted speed greater than 28 mph or without operable pedals.

24. Comment: One commenter suggested that the rule should allow seniors to use all classes of e-bikes on roads and trails open to traditional bicycles.

NPS Response: The NPS appreciates that the propulsion assistance offered by e-bikes can provide particular benefits to park visitors with physical limitations, including seniors. The NPS expects that superintendents will consider all potential benefits and costs when they evaluate whether to allow e-bikes in a park area under this rule. It would not be prudent, however, to require superintendents to allow seniors to use all classes of e-bikes in all locations open to traditional bicycles, without any opportunity to first evaluate whether that would cause unacceptable impacts, visitor conflicts, or safety concerns—for both the senior riders and other park visitors.

25. Comment: Several commenters suggested that the NPS establish annual registration, licensing, and insurance requirements for the use of e-bikes in park areas.

NPS Response: The NPS believes that rules about registration, licensing, and insurance should be determined by the states, which are more experienced and equipped to implement such requirements. Creating a separate set of federal requirements would be overly burdensome and create potential confusion with the visiting public. The rule allows the NPS to enforce whatever requirements are established by the state under paragraph (i)(6) which adopts non-conflicting state law and applies it to the use of e-bikes in park areas.

26. Comment: One commenter suggested the NPS undertake a systematic inventory and evaluation of all existing bicycle trail assets within the National Park System to ensure they are designed to safely accommodate the use of e-bikes. The commenter refers the NPS to the American Association of State Highway Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities and the American Trails Shared Use Path Design guidelines, both of which recommend that the paved tread on shared use paths should be at least 10 ft wide, with a graded shoulder at least 2 ft wide on either side of the path. On shared use paths with heavy volumes of users, the commenter states that tread width should be between 12 ft to 14 ft and that, in all cases, shared use paths should not exceed a grade of 5%.

NPS Response: The NPS agrees that superintendents should carefully consider the context and characteristics of existing bicycle trails that are being considered for e-bike use. Many NPS multiuse trails are significant to the historical, cultural, or environmental context of the park and were designed prior to modern design guidelines and standards. If trail widening is not possible or is not an immediate solution, there are other options superintendents can implement to help alleviate potential trail conflicts, crowding, or resource and visitor impacts. In 2018, the NPS published an Active Transportation Guidebook to support walking and bicycling in park areas. This Guidebook provides references to national design standards and guidelines for multi-use trail widths, which is consistent with the guidelines cited by the commenter. The Active Transportation Guidebook also states that superintendents should assess routes, on a trail-by-trail basis, to determine whether e-bikes are appropriate by considering speed and safety, trail width and use-volume for accommodation of additional users, trail surface, and soil conditions. The NPS appreciates the documents cited by the commenter and will include them in a working inventory of resources that superintendents can use to evaluate the appropriateness of e-bikes on particular trails. At this time, the NPS does not have the resources available to undertake a systematic inventory and evaluation of all trails across the National Park System. The NPS believes a more prudent approach is to allow superintendents to make those suitability determinations on a trail-by-trail basis at the park level when the need arises.

27. Comment: One commenter asked the NPS to address whether e-bikes can or should be given a special accommodation as an ''other power-driven mobility device'' (OPDMD) under U.S. Department of Justice (DOJ) regulations implementing the Americans with Disabilities Act of 1990. In particular, the commenter asked the NPS to address a scenario where a rider provides credible assurance that an e-bike is used because of a disability, which is the standard established by DOJ Guidance on ''Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices'' for whether a particular type of OPDMD can be accommodated.

NPS Response: This rule does not address whether persons with disabilities may use e-bikes as a reasonable accommodation on NPS facilities, including paths, trails, and roadways. Determining if a person with a disability can use an e-bike as an OPDMD requires the same analysis as any other OPDMD. Credible assurance is not the only factor used in this analysis. The DOJ guidance cited by the commenter requires a series of factors to

be considered. These factors include, but are not limited to, the type and speed of the device, the facility's volume of pedestrian traffic, the facility's design and operational characteristics, whether safe operation of the device is feasible, and whether the use of the device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources. Park superintendents or their designees with assistance from the NPS Accessibility Program will make these determinations on a case-by-case basis. The NPS Accessibility Program can be reached via email at *accessibility@nps.gov*.

28. Comment: Several commenters suggested changes to the process for designating bicycle trails for e-bike use. One commenter recommended the NPS require notice-and-comment rulemaking prior to allowing e-bikes outside of developed areas in order to ensure there is a full opportunity for public participation and review of such decisions. Another commenter suggested that e-bikes be allowed on non-motorized bicycle trails only after the NPS undergoes the same planning and decision-making process that was required by NPS regulations before allowing traditional bicycles on those trails. Another commenter suggested that e-bikes be allowed only for those who need motorized assistance and then only by permit.

NPS Response: NPS regulations promulgated in 1987 required the NPS to issue a special regulation, specific to the individual NPS unit, if bicycles were to be used outside of developed areas. The NPS adopted this special regulation requirement to ensure maximum public input on decisions to allow traditional bicycles outside of developed areas. In 2012, the NPS revised the process for allowing bicycles to focus on park planning and environmental compliance under the National Environmental Policy Act (NEPA), rather than the special rulemaking process. See 77 FR 39927. NPS regulations still require notice-and-comment rulemaking to allow bicycles on new trails outside of developed areas. As discussed above, the thorough process in today's bicycle regulations at 36 CFR 4.30 ensure that traditional bicycles are allowed in park areas only where the impacts of such use have been thoroughly considered. Based on the available studies, the NPS believes that incremental impacts from e-bike use in a particular location would not be substantially different than already occurring impacts from traditional bicycles. For this reason, the NPS does not find it necessary to require in every instance notice-and-comment rulemaking or the specific planning processes and environmental compliance measures that may have been required when traditional bicycles were allowed in the first place. Superintendents are required by NEPA to evaluate the impacts of any decision to allow e-bikes and the pathway of compliance will be tailored to the circumstances of each decision. Superintendents are encouraged to engage with the public prior to allowing e-bikes so that they can better understand potential impacts to resources and visitors, support for, and controversy associated with, allowing e-bikes.

The use of e-bikes is not the type of visitor use that would justify the regulatory and administrative burdens associated with a permit requirement. As long as the superintendent has determined that a location is appropriate for e-bike use, visitors will be free to use e-bikes in that location subject to the prescriptions in this rule.

29. Commenter: One commenter stated that decisions to close a location or otherwise restrict the use of e-bikes under the superintendent's discretionary authority in paragraph (i)(7) of the rule should be subject to compliance with NEPA and the rule should state that as an affirmative requirement.

NPS Response: The NPS requires that superintendents act in accordance with applicable law and policy. This is true in every case whether or not this requirement is stated explicitly. If a decision to close or otherwise restrict the use of e-bikes warrants a compliance measure be taken under NEPA or under any other applicable law or policy, the superintendent must take that measure. This does not need to be affirmatively stated in the rule for it to be required.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. 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. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771).

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M–17–21). This rule addresses regulatory uncertainty regarding the use of electric bicycles in the National Park System by clearly stating that they may be used where traditional bicycles are allowed when designated by the superintendent.

Regulatory Flexibility Act

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.*). This certification is based on information contained in the economic analyses found in the report entitled ''Draft Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Regulations Addressing the Designation of Electric Bicycle Use in Units of the National Park System''. The report is available on *www.regulations.gov* in Docket ID: NPS–2020–0001.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). 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

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The

rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. 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)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects the use of electric bicycles on federally-administered lands. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. 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 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

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. The NPS 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 of 1969

Categorical Exclusion Applies

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. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) which applies to ''policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

This regulation meets both prongs of this categorical exclusion. First, the rule is administrative, legal, and procedural in nature because it simply clarifies and codifies in regulation that superintendents have the authority to allow e-bikes in their units but does not itself take any action or require superintendents to take any action in their park units. Further, the regulation simply clarifies and resolves existing ambiguity regarding superintendents' discretion to allow e-bikes in parks, rather than explicitly transitioning e-bikes from a stricter management regime to a more relaxed one. Prior to this regulation, NPS regulations were unclear as to how e-bikes were regulated as neither the regulatory definition of ''motor vehicles'' nor ''bicycles'' explicitly included e-bikes. Due in part to this ambiguity, most park compendiums did not specifically address e-bikes until the NPS recently determined in Policy Memorandum 19–01 that e-bikes should be treated in a similar manner to traditional bicycles. This regulation simply resolves this ambiguity in the NPS's regulations and codifies the decision made in the policy memorandum but does not change the regulatory treatment of e-bikes from one established management regime to another in a way that would result in an expanded range of potential environmental impacts.

Second, this regulation's environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the environmental effects of allowing e-bikes in specific parks will be or have already been subject to NEPA analysis on a park-by-park basis. Each park unit has its own enabling legislation, unique resources that must be protected, and specific circumstances related to visitor use, trails, and bicycles use that must be considered prior to determining whether e-bike use should be allowed. Also, the regulation allows park superintendents to designate the specific roads and trails that e-bikes may be allowed on, and authorizes them to set restrictions on the classes, speed, and other aspects of e-bikes use where they are authorized. Given the wide variety of resources, terrains, and visitor use patterns in parks across the country, as well as the broad discretion to determine the scope of e-bike use at the park level, conducting NEPA analysis at the National Park System level would be too speculative and imprecise to make definitive statements about the level of impacts. For this reason, an evaluation of environmental impacts under NEPA would therefore be ineffective at the System level.

Many units of the National Park System already allow the use of e-bikes where traditional bicycles are allowed under the direction of the Policy Memorandum. The Policy Memorandum required those units to evaluate the environmental impacts of allowing e-bikes under NEPA. Because traditional bicycles were already an established presence in areas where e-bikes were recently allowed, traditional bicycles were part of the baseline of existing conditions from which the environmental impacts of e-bikes were measured. Therefore, the impacts potentially caused by the implementation of the Policy Memorandum were limited only to those impacts from e-bikes that differ from the existing impacts of traditional bicycles. As a result, for most units a categorical exclusion has applied.

In some units of the National Park System, the superintendent may have not yet opened bicycle trails to e-bikes, or may have closed a location to the use of e-bikes or otherwise restricted their use. In these units, any future decision to allow e-bikes in a new location or manner will be subject to an evaluation of the environmental impacts of that decision at that time. This will also be true for locations where, in the future, traditional bicycles and e-bikes are introduced for the first time. If a superintendent proposes to designate an administrative road or trail for e-bike use where traditional bicycles are not yet allowed, the superintendent will

need to follow the same procedural steps in order to designate those locations for bicycle and e-bike use. In both circumstances described above, the environmental effects of this rule are too broad to be analyzed at the National Park System level and environmental analysis under NEPA is best conducted at the park level.

The NPS 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.

Response to NEPA Comments

Several commenters asserted that the NPS has failed to conduct a proper analysis of the foreseeable impacts of this rule and that the preparation of an environmental assessment or environmental impact statement is required. The NPS disagrees with this interpretation of NEPA and believes the categorical exclusion cited above is appropriate for this rule. Further, some commenters have requested that the NPS conduct a programmatic NEPA review. CEQ has stated that agencies have discretion to determine whether a programmatic approach is appropriate. In this case, for reasons discussed below, and in light of the fact that the categorical exclusion cited above requires a case-by-case NEPA review at the park level before e-bike use could be authorized at any specific park unit, the NPS does not believe a programmatic approach is appropriate.

The framework established by this rule provides superintendents with an opportunity to evaluate the effects of e-bike use at the park level, where more detailed information about potential effects is available, prior to allowing such use. Superintendents who decide to allow e-bikes in a park area must base that decision on reasonably obtainable scientific, technical, and economic data, and other information. Research and data on impacts and compatibility of e-bikes is still being developed. Available research, some of which was highlighted by commenters, indicates that certain classes of e-bikes have similar impacts to trails and other trail users as traditional bicycles. When e-bikes are considered at the park level, user conflicts, resource impacts, and other issues specific to each park unit could influence a superintendent's decision to allow them or not.

This rule does not require that e-bikes be allowed anywhere in the National Park System. As noted above, units of the National Park System vary significantly in terms of the criteria that would influence the decision to allow e-bikes. Further, each park unit has its own enabling legislation, unique resources that must be protected, and specific circumstances related to visitor use, trails, and bicycles use that must be considered prior to determining whether e-bike use should be allowed. This would make a comprehensive NEPA analysis too broad, speculative, or conjectural to lend itself to a meaningful analysis, rendering such an analysis ineffective. Addressing potential environmental and social impacts are most meaningful at the park level. Superintendents 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 (*e.g.,* Endangered Species Act, Clean Water Act, National Historic Preservation Act) and policies. The regulatory framework established by this rule will allow superintendents to develop site-specific design features and mitigation strategies to reduce or negate potential adverse impacts, as needed.

Some commenters disagreed that none of the extraordinary circumstances listed under 43 CFR 46.215 apply to this rule. These commenters stated that this rule will have significant impacts on (1) public health and safety; (2) natural and cultural resources; (3) properties eligible for listing on the National Register of Historic Places; and (4) species and designated critical habitat for species listed, or proposed to be listed, under the Endangered Species Act (ESA). As stated above, this rule is not self-executing in the sense that it does not mandate the use of e-bikes anywhere in the National Park System. For this reason, the rule itself would not result in any physical impacts to park resources let alone significant impacts on any of the items identified in 43 CFR 46.215. Decisions to allow e-bikes in park areas will be subject to the NEPA process at the park level just like all other decisions that could have an effect on the human environment. Applying the NEPA process at a park-specific level will allow the NPS to evaluate detailed information on the potential effects of e-bike use in a particular park, consult with the U.S. Fish and Wildlife Service regarding impacts to endangered species, and develop site-specific project design features and mitigation strategies, if needed.

In addition to the extraordinary circumstances in 43 CFR 46.215 that are tied to impacts, commenters also stated that this rule will have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources; and have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. Commenters also stated that the rule will establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects; and have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

With regard to controversy, 43 CFR 46.215(c) pertains to whether the environmental effects are highly controversial. As stated in the Department of the Interior NEPA regulations, ''[c]ontroversial refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.'' 43 CFR 46.30. While e-bikes are still relatively new, there are a growing number of studies investigating e-bike use. The NPS's review of the current research shows that there does not appear to be any substantial disagreement or differing assumptions among scientists that affect the interpretation of evidence in this emerging body of literature. Overall, e-bikes are more like traditional bicycles than motor vehicles, and generally cause the same types and levels of impacts as traditional bikes. Furthermore, the rule would not result in unresolved conflicts concerning alternative uses of available resources. While the rule clarifies that e-bikes should be treated in a similar manner to traditional bicycles, it does not authorize any consumptive or exclusive use of park resources. It merely allows a new type of use on bicycle trails that is substantively similar to bicycles but does not prohibit or restrict any other user group.

This rule would not have highly uncertain, and potentially significant environmental effects, or involve unique or unknown environmental risks. First, as stated above, the rule itself does not authorize nor mandate e-bike use at any park unit and therefore without additional action at the park level, no impacts would occur. In addition, as stated above, a review of available information indicates the impacts of e-bikes are generally similar to impacts from bicycle use and there is no information indicating that the additional impacts from e-bikes may be significant. This is reinforced by the fact that most NPS units that have allowed e-bikes and have completed a site-specific NEPA review have applied a

categorical exclusion. While the use of e-bikes is relatively new, the available literature demonstrates a consensus regarding what potential impacts may be, and there is nothing to indicate that the impacts of e-bike use would be highly uncertain.

This rule does not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. The extraordinary circumstance listed at 43 CFR 46.215(e) requires both a precedent or decision in principle for future action and for the precedent or decision in principle to have potentially significant environmental effects. Neither criteria apply. This rule does not establish a precedent for future action nor make any decisions about future actions. As discussed above, it is not self-executing in the sense that it does not mandate the use of e-bikes anywhere in the National Park System; it merely authorizes superintendents to allow them where traditional bicycles are allowed. The Superintendent at each park unit will have the discretion to allow e-bike use—or not—on a case-by-case basis. The discussion above addresses why this rule would be not result in any significant impacts.

The NPS also disagrees with the comment that the rule would have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. Impacts to resources and visitors would not occur on a national scale; rather, impacts would be experienced by visitors at each park unit at the time of their visit and resources affected would be at the park level, not at a national scale. Therefore, there would not be any meaningful ''cumulative impacts'' at a national scale, that are greater than the sum of the individual park-level impacts. Furthermore, as discussed above, due to the specific circumstances at each park unit, the NPS does not believe a programmatic NEPA review is warranted.

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 in not required.

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. NPS–2020–0001.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, the National Park Service amends 36 CFR parts 1 and 4 as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 2. In § 1.4 amend paragraph (a) by adding, in alphabetical order, the definition for ''Electric bicycle'' and revising the definition for ''Motor vehicle'' to read as follows:

§ 1.4 What terms do I need to know?

(a) * * *

* * * * *

Electric bicycle means a two- or three-wheeled cycle with fully operable pedals and an electric motor of not more than 750 watts that meets the requirements of one of the following three classes:

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

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

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

* * * * *

Motor vehicle means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or water, except an electric bicycle, a snowmobile, and a motorized wheelchair.

* * * * *

PART 4—VEHICLES AND TRAFFIC SAFETY

■ 3. The authority citation for part 4 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 4. Amend § 4.30 by adding paragraph (i) to read as follows:

§ 4.30 Bicycles

* * * * *

(i) *Electric bicycles.* (1) The use of an electric bicycle may be allowed on park roads, parking areas, and administrative roads and trails that are otherwise open to bicycles. The Superintendent will designate the areas open to electric bicycles, or specific classes of electric bicycles, and notify the public pursuant to 36 CFR 1.7.

(2) The use of an electric bicycle is prohibited in locations not designated by the Superintendent under paragraph (i)(1) of this section.

(3) Except where use of motor vehicles by the public is allowed, using the electric motor exclusively to move an electric bicycle for an extended period of time without pedaling is prohibited.

(4) Possessing an electric bicycle in a wilderness area established by Federal statute is prohibited.

(5) A person operating or possessing an electric bicycle is subject to the following sections of this part that apply to bicycles: §§ 4.12, 4.13, 4.20, 4.21, 4.22, 4.23, and 4.30(h)(3)–(5).

(6) Except as specified in this chapter, the use of an electric bicycle is governed by State law, which is adopted and made a part of this section. Any act in violation of State law adopted by this paragraph is prohibited.

(7) Superintendents may limit or restrict or impose conditions on electric bicycle use, or may close any park road, parking area, administrative road, trail, or portion thereof to such electric bicycle use, or terminate such condition, closure, limit or restriction after:

(i) Taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives; and

(ii) Notifying the public through one or more methods listed in 36 CFR 1.7, including in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

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