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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 27

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

RIN 1018–BE68

National Wildlife Refuge System; Use of Electric Bicycles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, have adopted a policy, and we propose to adopt consistent regulations, pertaining to the use of electric bicycles (otherwise known as “e-bikes”). These proposed changes are intended to increase recreational opportunities for all Americans, especially for people with physical limitations. We solicit comments on proposed

regulations that will provide guidance and controls for the use of e-bikes on the National Wildlife Refuge System.

DATES: Written comments will be accepted through [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. FWS–HQ–NWRS–2019–0109 by any one of the following methods:

- Federal e-rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–HQ–NWRS–2019–0109.
- Mail: Address comment to Public Comments Processing, Attn: Docket No. FWS–HQ–NWRS–2019–0109; U.S. Fish and Wildlife Service; MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041.
- Hand-deliver: U.S. Fish and Wildlife Service; MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Maggie O’Connell, National Wildlife Refuge System - Branch Chief for Visitor Services, 703–358–1883, maggie_oconnell@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), governs

the administration and public use of refuges, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) governs the administration and public use of refuges and hatcheries. The National Wildlife Refuge System Administration Act closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use upon a determination that the use is compatible with the purposes of the refuge and the National Wildlife Refuge System mission. The action also must be in accordance with the provisions of all laws applicable, consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest.

These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans. The Refuge System is an unparalleled network of 568 national wildlife refuges and 38 wetland management districts. More than 59 million Americans visit refuges every year. You can find at least one refuge in every State and every U.S. territory, and within a 1-hour drive of most major cities.

The U.S. Fish and Wildlife Service (FWS) administers the Refuge System via regulations contained in title 50 of the Code of Federal Regulations (CFR). These regulations help to protect the natural and cultural resources of refuges, and to protect visitors and property within those lands. In their current form, these regulations generally prohibit visitors from utilizing motorized vehicles on refuges other than on designated routes.

Electric Bicycles

Secretary's Order 3376 directs Department of the Interior (DOI) bureaus to begin the process of obtaining public input on proposed new regulations that will clarify that operators of

low-speed electric bicycles (e-bikes) should enjoy the same access as conventional bicycles, consistent with other Federal and State laws. Refuge managers will have the ability in the short term to utilize the flexibility they have under current regulations to accommodate this new technology, that assists riders as they pedal, in a way that allows them to enjoy the bicycling experience.

DOI's guidance will enable visitors to use these bicycles with a small electric motor (not more than 1 horsepower) power assist in the same manner as traditional bicycles. The operator of an e-bike may use the small electric motor only to assist pedal propulsion. The motor may not be used to propel an e-bike without the rider also pedaling.

A majority of States have adopted e-bike policies, most following model legislation that allows for the three classes of e-bikes to have access to bicycle trails. The DOI e-bike guidance seeks to provide consistency with the State and local rules where possible.

In 2019, approximately 1.4 million people bicycled at 197 national wildlife refuges. The Refuge System's new e-bike guidance provides expanded options for visitors who wish to ride a bicycle and who may be limited by fitness level or ability.

Similar to traditional bicycles, e-bikes are not allowed in designated wilderness areas and may not be appropriate for back-country trails. The focus of the DOI guidance is on expanding the traditional bicycling experience to those who enjoy the reduction of effort provided by this new e-bike technology. Local refuge and land managers will limit, restrict, or impose conditions on bicycle use and e-bike use where necessary to manage visitor use conflicts and ensure visitor safety and resource protection.

E-bikes make bicycle travel easier and more efficient, because they allow bicyclists to travel farther with less effort. 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 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.

This Proposed Rule

The regulations in 50 CFR part 27 pertain to prohibited acts on refuge lands. The current regulations in § 27.31 generally prohibit use of any motorized or other vehicles, including those used on air, water, ice, or snow, on national wildlife refuges except on designated routes of travel, as indicated by the appropriate traffic control signs or signals and in designated areas posted or delineated on maps by the refuge manager.

Under the proposed amendment, which is set forth at the end of this document, e-bikes would be allowed where other types of bicycles are allowed, and e-bikes would not be allowed where other types of bicycles are prohibited. DOI proposes to adopt a definition of “e-bike” that is informed by the definition of “low-speed electric bicycle” found at 15 U.S.C. 2085 and that meets the requirements of one of three classes of e-bikes.

Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked by the date specified in **DATES**.

We will post your entire comment on <http://www.regulations.gov>. Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Compliance With Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has waived review of this proposed rule and, at the final rule stage, will make a separate decision as to whether the rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This proposed rule is an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In 2019, there were approximately 1.4 million bicycle visits on 197 refuges (34.6 percent of all refuges). Of these 197 refuges, 136 refuges had fewer than 1,000 bicycle visits. These visits comprised approximately 2 percent (=2.34%) of total recreational visits for the Refuge System.

Under the proposed rule, recreational activities on refuges could be expanded by allowing e-bikes where determined by the appropriate refuge manager. As a result, recreational visitation at these stations may change. The extent of any increase would likely be dependent

upon factors such as whether current bicyclists change from using traditional bicycles to e-bikes, whether walking/hiking visits change to e-bike visits, or whether other recreational visitors decrease visits due to increased conflicts. The impact of these potential factors is uncertain. However, we estimate that increasing opportunities for e-bikes would correspond with less than 2 percent of the average recreational visits due to the small percentage of current bicycling visits.

Small businesses within the retail trade industry (such as hotels, gas stations, sporting equipment stores, and similar businesses) may be affected by some increased or decreased station visitation due to the proposed rule. A large percentage of these retail trade establishments in the local communities near national wildlife refuges and national fish hatcheries qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule would have a significant economic effect on a substantial number of small entities in any region or nationally.

Therefore, we certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

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

Takings (Executive Order 12630)

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

Federalism (Executive Order 13132)

In accordance with E.O. 13132, this proposed rule does not require the preparation of a federalism assessment.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not

required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We have determined that the proposed rule falls under the class of actions covered by the following Department of the Interior categorical exclusion: “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” (43 CFR 46.210(i)). Under the proposed rule, a refuge manager must first make a determination that e-bike use is a compatible use before allowing e-bike use on a national wildlife refuge. This determination must be made on a case-by-case basis. Therefore, the environmental impacts of the proposed rule are too speculative to lead to meaningful analysis at this time. The Service will assess the environmental impacts of e-bike use in compliance with NEPA at the time a refuge manager determines whether e-bike use is compatible.

Government-to-Government Relationship with Tribes

In accordance with E.O. 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249), the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22961), and 512 DM 2, we will consult with federally recognized tribal governments to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

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

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

List of Subjects in 50 CFR Part 27

Wildlife refuges.

Proposed Regulation Promulgation

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

PART 27—PROHIBITED ACTS

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

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

Subpart C—Disturbing Violations: With Vehicles

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

§ 27.31 General provisions regarding vehicles.

* * * * *

(m) If the refuge manager determines that electric bicycle (also known as an e-bike) use is a compatible use on roads or trails, any person using the motorized features of an e-bike as an assist to human propulsion shall be afforded all the rights and privileges, and be subject to all of the duties, of the operators of non-motorized bicycles on roads and trails. An e-bike is a two- or three-wheeled electric bicycle with fully operable pedals and an electric motor of not more than 750 watts (1 h.p.) that meets the requirements of one of the following three classes:

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

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

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

* * * * *

Dated: _____.

Rob Wallace,

Assistant Secretary for Fish and Wildlife and Parks.