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## **International Mountain Bicycling Association Review and Analysis of U.S. Forest Service eMTB Guidance and Directives compared to the Bureau of Land Management eMTB Rule**

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### **Summary and Background:**

IMBA's mission is to create, enhance and protect great places to ride mountain bikes. Therefore, this analysis is written specific to electric mountain bikes (eMTBs). However, much of this also applies to electric bikes (e-bikes) generally, such as those used on paved surfaces. That said, commuter and pavement focused bikes are outside the mission of IMBA and therefore outside the scope of this analysis.

On March 31, 2022, the U.S. Forest Service (USFS) finalized the long awaited [e-bike guidance](#). The guidance establishes directives for the process for how eMTBs are and will continue to be managed on motorized roads and trails, and how eMTBs will be authorized in the future on USFS non-motorized mountain bike trails across the country. The guidance incorporated a number of IMBA's recommendations made throughout the development process going back to at least 2018 with a [public comment period in October 2020](#).

The final guidance has some great elements: it requires a local public process to adequately collect local sentiment on possible pros and cons of eMTB access, thorough NEPA and Travel Management planning; the guidance distinguishes between class 1, class 2 and class 3 eMTBs to ensure quality experiences for all trail users; and the guidance manages eMTBs as a new category, separate from traditional mountain bikes. These steps are all in line with [IMBA's recommendations](#).

While this is a step forward in addressing access for eMTBs on federal land, this policy falls short in that the process will take place under an abbreviated Travel Management Plan (TMP). The TMP will reclassify "non-motorized trails" as "limited motorized trails" where eMTBs are eventually authorized. These trails will then go on to the Motor Vehicle Use Map (MVUM) which does not include non-motorized trails. This could lead to funding complications, lead to increased user conflicts (even if just perceived), and could fundamentally shift affected non-motorized trail allocations across the forest system.

The final Bureau of Land Management (BLM) [rule was released](#) on October 2, 2020. The final rule adopted the 3-class definition of e-bikes and, when meeting certain criteria, treats e-bikes in the same manner as bicycles. The rule confirms decisions will be made at the local level with local input, and finally must follow NEPA guidelines when considering changes to allow eMTBs on non-motorized trails. These steps are all in line with [IMBA's recommendations](#) made during the rule-making process and in the [public comment period](#) that took place in May and June of 2020. Unfortunately, the BLM rule allows land managers to consider all classes of eMTBs on non-motorized trails rather than only considering class 1 eMTBs.

The following is a fairly nuanced technical analysis, and what these decisions generally mean for eMTB access and the process that will take place from IMBA's perspective. There are and will always be exceptions to these decisions as land managers try to navigate the specific scenarios land managers face, but this is the general process.

### **USFS eMTB guidance and directives as compared to the BLM eMTB rule:**

#### **Similarities:**

- Neither agency's non-motorized trails are automatically opened to eMTBs simply because they have finalized their directives. This is a common public misconception. In fact, few USFS/BLM non-motorized trails have been opened to eMTBs since these directives have been finalized. Only trails with a supporting NEPA decision that allow eMTBs, or motorized vehicles in general (see below), are open to eMTBs.
- The two agencies both define eMTBs as motorized vehicles in their underlying regulations. For the BLM, a conditional exclusion/exemption from the underlying motorized definition can be applied for use on non-motorized trails only when certain use (pedaling) and design criteria (3-Class) are met and a trail is accompanied by a NEPA decision allowing eMTB use. Modified eMTBs or other designs and uses outside the criteria parameters (throttle use only) would be "out-of-class" and considered and managed as motorized. The BLM websites are somewhat misleading in claiming BLM defines e-bikes as bicycles, when that is the case only when their own required criteria (above) are all applied. For USFS an eMTB is a motorized vehicle regardless of class or use.
- Both agencies already allow eMTBs on most, if not all, designated motorized areas, roads, routes, and trails (exceptions might be for mixed-use considerations on some level 1-type roads or tunnels deemed unsafe for non-highway legal vehicles like bikes/e-bikes, ATVs, UTVs, etc or other one-off scenarios).
- Both require a procedural National Environmental Policy Act (NEPA) assessment with public comments to determine which non-motorized trails will allow eMTBs before access is granted. Avoiding NEPA for any on-the-ground action is generally not possible.
- Both agencies recognize the 3-Class eMTB structure and allow for independent decisions to be made for which class(es) are allowed on which trails.

- Because of the above, both agencies recognize eMTBs are separate from traditional bikes (human powered, analog, non-electric, etc.) and management decisions can be independently applied, even if access is shared.
- Both agencies' eMTB directives do not apply wholly to policies and claims under the Americans with Disabilities Act (ADA). While the directives might have marginal influence on land use allocations, the directives remain regulated by separate regulatory environments. IMBA will continue to support fair, responsible, and sustainable access for the trail community's diverse athletes independent of IMBA's eMTB policy positions.
- Both agencies' new directives resulted in official federal "encouragement" for agency managers to consider access decisions that could allow eMTB access specifically to traditionally non-motorized trails.

### **Differences:**

The primary difference between USFS and BLM is the resulting effect of each directive on the process for determining eMTB access to non-motorized trails and access outcomes when applied to each agency's aforementioned unique regulatory structure. However, in reality, at least as of this writing, each agency's implementation of new eMTB directives will actually be much more similar than they are different.

As a reminder, effectively, both agencies' respective e-bike directives only apply to access to non-motorized trails, since eMTBs are and will continue to be managed the same as eMTBs have been managed on motorized roads and trails. According to the USFS, *"the Forest Service currently allows e-bikes on all Forest Service roads that are already open to motorized vehicles, as well on 60,000 miles of motorized trails, which represent 38% of all trails the agency manages."*

Before one can understand the different eMTB directives, it is necessary to understand some basic differences with how agencies approach travel management planning (TMPs) and the general spectrum of uses.

TMPs were originally established to address designations for motorized vehicles or off-highway vehicles (OHVs) on public lands. The USFS TMP process results in a Motor Vehicle Use Map (MVUM), which is the legal map of designations for where the public can travel on national forest lands with various types of motorized vehicles. The BLM TMP process does not have an equivalent for this final MVUM step. At times, both agencies include non-motorized trail designations within the scope of their motorized planning processes for a variety of reasons, but it is not required by either agency. The BLM has included non-motorized trails in their TMP scope more often due to the BLM's stated focus on a broader recreation management philosophy. The USFS has done this as well, it's just more rare.

What prevents either agency from doing it more is primarily money-based. A larger planning scope drives up the sheer cost of more analysis and demands more staff capacity. Both are in short supply. The BLM leans more toward management polygons that are defined as either

“Motorized- Open, Closed or Limited”. Open and Closed are fairly straightforward but Limited is the nuanced zone where routes are uniquely designated for individual modes of travel along the spectrum.

Mode of travel spectrum:



While exceptions apply, a mode of travel designation will automatically allow the mode of travel to the right on the spectrum but not to the left of the stated mode. For example: If motorcycles are allowed then usually bikes, horses, and foot travel are allowed (spectrum right) but not ATVs, UTVs and full size vehicles (spectrum left). This matters in where eMTBs fall into the spectrum. eMTBs are in the middle and now define the space between motorized and non-motorized. Herein lies the problem. In practical terms eMTBs are neither perfectly motorized nor perfectly non-motorized. Since the power of eMTB motors also falls into a spectrum, some classes or models may lean toward one side of the spectrum rather than the other. And of course from an experiential rider standpoint, while arguably it may seem most riders seek a mountain bike trail experience, this also ranges along the spectrum based on individual preference. This is why this issue has somehow become a management conundrum. Risk-averse agencies fearing costly legal challenges also plays a role.

So while the BLM sees the land more in polygons of management, the USFS (overly simplified) sees trails as more linear features within landscapes with management prescriptions. Maybe this stems from the more forested USFS lands versus the more open range of BLM lands. The BLM tends to manage trails within polygons in those open, closed and limited categories and apply trail-by-trail designations that fit the parameters of those polygons. The USFS tends to manage trails by individual designation and less by polygons, but their prescriptions play a framework role.

Why does this matter? It matters because it seems the BLM tends to see less the black and white differences of motorized versus non-motorized, while the USFS still embraces a binary difference. The BLM has the advantage of moving fluidly (relatively speaking for a bureaucracy) within the mode of travel spectrum above and simply defines the allowed use on designated trails irrespective (or less so) of black and white motorized/non-motorized. The USFS, on the other hand, long ago dug its heels in on whether travel was motorized or non-motorized. These unwritten fluid or strict philosophies have led to today’s landscape. In the opinion of IMBA, the BLM will have a marginally easier time adjusting to or evolving with eMTBs than the USFS will. This is evident in each agency’s respective directives.

The technical difference comes down to this:

**BLM:** (this is also true for the other DOI agencies of NPS, FWS, BOR)

- BLM decided for eMTBs that meet certain equipment (OEM 3-class categorization) and type of use (ie. speed and active pedaling) criteria, eMTBs could be afforded a

conditional exemption from the “motorized” definition which would allow eMTBs to be authorized, through NEPA, on non-motorized trails without any further policy or regulatory effects. Essentially the exemption would allow eMTBs to be treated like non-motorized bikes and be afforded all the same management allocations where determined appropriate...again under a NEPA decision. (Remember, NEPA is unavoidable. It cannot be sidestepped or bypassed.) BLM can do this because BLM is more fluid.

- Any NEPA process to determine eMTB access on BLM lands would fall under two possible scenarios:

*Scenario A.* The area polygon being assessed is defined as “motorized-limited” where for simplicity and expediency sake the process can avoid the hassle of creating the conditional exemption and just designate, through NEPA, eMTBs as an allowed use along the spectrum on some set or subset of trails. eMTBs sort of remain defined as motorized under this scenario made possible by the fluidity of management discussed above.

*Scenario B.* The area polygon being assessed is defined as “motorized-closed” (essentially a non-motorized area) and the BLM proposes to allow eMTBs on some subset of trails within the polygon. In order to do this, the BLM needs to do NEPA to apply the eMTB motorized exemption and then define which classes of motorized will be allowed. The BLM will then need to enforce the unique criteria that affords the exemption (no solely throttled use, no over class speed, etc.). The BLM is applying fluidity to the use of the exemption here in a more traditional format of non-motorized use.

#### **USFS:**

- The USFS guidance determined eMTBs are motorized vehicles regardless of use or class. There is no spectrum fluidity, no exemption or special treatment. Motorized vehicles, or OHVs, can only be allowed on motorized roads, trails and areas. USFS decided eMTBs strictly cannot be allowed on non-motorized trails.
- But the USFS did, at least, acknowledge there is significant public demand for eMTB riding experiences more akin to non-motorized trail experiences versus motorized roads and trails. USFS recognized those desired experiences can best be provided and achieved by finding a way to allow eMTBs on non-motorized trails. So the rule aimed to find a way within a strict philosophy to establish a process to allow eMTBs on some designated bike trails.
- The scenario for designating eMTBs is more straightforward than the BLM, but it does have ramifications.
  - a. First, the USFS will need to open up a TMP process because eMTB access will require making a decision on a motorized vehicle. Scope of the “Purpose and Need” of the TMP can be limited to the assessment of eMTB access, instead of full OHV use.
  - b. The problem is USFS can’t allow a motor on a non-motor trail—a strict traditionalist philosophy.

- c. So, the bottom line is any non-motorized trail must be reclassified as limited-motorized if eMTBs are to be allowed, albeit limited to the approved class(es) of eMTBs. It still results in a reclass of non-motorized to motorized in the official system books.
- d. According to the USFS, there is no way around this.

### **Ramifications:**

The ramifications are mostly similar, with one distinct difference as alluded to above.

- **Resources and Capacity.** Both the USFS and BLM have neither ample resources nor capacity to take on costly and lengthy NEPA planning. But NEPA can't be sidestepped. It is unfortunate NEPA will slow the process of eMTB access decisions. IMBA has long supported robust NEPA as it works to avoid land uses that would be detrimental to mountain biking experiences and long-term interests. IMBA will never assume a short-sighted position undermining the value of NEPA laws for self serving gain. But, IMBA continues to support NEPA reform generally and specifically supports a range of expedited NEPA measures for eMTB access. IMBA stated this in depth in past comments on both the [BLM recommended rule](#) and [USFS recommended guidance](#).
- **Designation by Class.** While IMBA has maintained the best path forward was to limit shared bike access on non-motorized trails to class 1 eMTBs, both the BLM and USFS chose to apply policies to the 3-Class system. From informal conversations with leadership in both agencies, there seems to be little intention to go beyond allowing Class 1 eMTBs on trails for the foreseeable future. While this fits IMBA's recommendations, this would be an informal agency preference versus a hard and fast rule. It also would not apply to ADA (Americans with Disabilities Act) claims or allowances.
- **Federal Funding.** While IMBA feels the BLM rule is better in general when compared to the USFS guidance, it is not without its unique ramifications. Utilization of the BLM's conditional exemption will lead to funding challenges with the Congressionally enacted Recreational Trail Program (RTP) funding that stems from the Federal Highway Administration (FHWA), since FHWA defines e-bikes as motorized vehicles. RTP funds are divided up into motorized and non-motorized pots. Therefore, any BLM non-motorized trail that allows eMTBs will be disqualified from funding and may be found non-compliant with past funding if eMTBs become an allowed use. This can and likely will be addressed and corrected over time, but it will be a bumpy road to navigate initially. While the USFS avoids the above federal RTP funding complication of allowing a "motor vehicle" on "non-motorized" trails, the USFS guidance creates a unique conflict by potentially reclassifying any RTP "non-motorized" category funded trail to a "limited motorized" trail. This would also lead to a non-compliance violation of past funds.

- The FHWA does not have an enforcement team capable of enforcing these violations. Other federal agencies such as BLM and USFS will likely seek to vet and avoid RTP funding violations in NEPA decisions, and would eliminate conflicting trails from consideration in any proposed action.
- The FHWA cannot administratively correct this regulatory conflict. Since RTP was a congressionally established program, where e-bikes were defined as motorized vehicles, it will take an act of congress to correct this conflict.
- RTP programs are managed individually by each state. RTP programs are divided into three funding pots (30% Motorized, 30% Non-motorized, and 40% Diverse). States may use the Diverse category [40% of RTP funding] to construct and maintain trails for both motorized and non-motorized use, including trails for non-motorized bikes and e-bikes.
- There are five funding categories RTP considers. Only category 3 can be utilized for a trail that allows both regular bikes and eMTBs. Such a trail cannot utilize categories 1, 2, 4, or 5. For more detail on the RTP categories, visit [RTPs State Suballocation Requirements page](#).
- **State Funding.** Both BLM and USFS directives also cause unique challenges for many state funding sources distributed via distinct motorized and non-motorized categories. Many, but not all, states define e-bikes as bicycles under respective state transportation codes. However, those state transportation codes are not always carried over to state natural resource departments. Applying for a state trails grant for a federal trail under the non-motorized category/committee may pose problems and be denied if the USFS trail will be classified as motorized. Applying instead to the motorized category/committee for a motorized trail only open to a type of electric bike may also pose problems and be denied for lack of motorized allowances. Likewise, if a state defines eMTBs as non-motorized, applicants would not be able to apply to the motorized grant committee for a bike exempted from motorized definition. It's convoluted. This could leave both eMTB advocates and MTB advocates without a funding stream for trails being considered for eMTB access. This could lead to rifts in the bike community based on the perceived baggage eMTBs bring to the funding table. There is not enough empirical data to confidently determine the reality or severity of these potential issues, but within current frameworks, they are considerations to address.
- **OHV Registrations.** Again, many, but not all, states define e-bikes as bicycles under respective state transportation codes. However, those state transportation codes are not always carried over to states' natural resource departments. Many states require OHV registrations for motorized use on state and federal trails. An eMTB owner can't register their bike as an OHV if the state does not recognize the eMTB as a motor vehicle. But the same eMTB owner also can't use an eMTB on USFS lands or some BLM lands if it's not registered with an OHV sticker or plated as such. This may not apply to all states and it won't apply to all scenarios, but it is a technical complication that will need to be addressed.

## **Next Steps:**

To gain new access to trails, local mountain bike and eMTB advocates will need to compel the USFS and any agency under DOI (BLM, NPS, FWS, BOR) to take action on assessing potential changes and modifications to local trail designations.

Currently, it appears the BLM can address this by including eMTB assessments within the scope of other concurrent project-level NEPA processes. BLM can also open up a limited scope, stand-alone project to implement the eMTB Rule with NEPA for a specific landscape or trail system. To avoid potential lawsuits, the BLM seems more intent to focus on already “limited motorized” polygons, as to not use the exemption/exclusion clause and attract possible legal challenges.

The USFS has to open up Travel Management Planning which is the official process for designating motorized use. It seems USFS TMPs could be limited in scope to eMTBs, but that is yet to be clear. Once a TMP process opens, other motorized advocates may want consideration of their uses as well, which will raise costs and lengthen time. IMBA has reason to believe the USFS may seek to do Regional-based Programmatic Environmental Assessments (EAs) to streamline the TMP designation process in locations where the impacts of allowing eMTBs are presumed to be minimal. The process will assess the potential impacts region-wide, allowing completion and implementation of local public scoping to then accelerate a decision.

Both processes are evolving and even agency managers are unclear on the shape these processes will take. Unfortunately, what agencies do know is they lack staff and resources to undertake this in large efforts.

While the eMTB directives are final, the access challenges are not. What remains the same is there is a need for continued unified advocacy, policy refinement and resource fundraising, as well as state and federal representation. Gaining access to trails for mountain biking is a process. The above challenges are not insurmountable for eMTB access, but there will be growing pains as these issues take time to address.

Addressing these challenges will require money, staff attention, regulatory leniency and some enforcement leniencies initially. These will need to be applied with considerable discretion until there are permanent fixes or modifications to both state and federal rules and regulations that can permanently resolve these inconsistencies. Until such time, and well beyond, IMBA will be seeking successful pathways to create, enhance and protect great places to ride mountain bikes for all mountain bikers.

**See you out on the trail!**

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