



**Comments Regarding Proposed Changes to  
302 CMR 11, 302 CMR 12 – Division of Forest and Parks Regulations**

Massachusetts Department of Conservation and Recreation

Attn.: Laura Dietz

251 Causeway Street, Suite 600

Boston, MA 02114

## **I. Introduction**

The Bicycle Product Suppliers Association (BPSA) and PeopleForBikes are pleased to provide comments regarding the proposed changes to Title 302, parts 11 and 12 of the Code of Massachusetts Regulations, which would amend the regulations governing the use of bicycles on lands managed by the Department of Conservation and Recreation (DCR). We support the DCR revising these regulations to keep them up to date. However, we are concerned that the proposed regulations do not appropriately address the use of electric bicycles (“e-bikes”) on DCR property. We believe the draft regulations may result in confusion amongst both park users and park officials regarding what an e-bike is and where it may be ridden. We ask that DCR alter the provisions that govern electric bicycles to conform to existing federal law and Massachusetts policy, and ensure that the rules governing their use are clear.

## **II. The Bicycle Product Suppliers Association and PeopleForBikes**

The BPSA is the national trade association of companies that manufacture and distribute bicycles and related accessories. BPSA members include some of the largest bicycle manufacturers in the world, including many leaders in the production of e-bikes. PeopleForBikes is a national advocacy organization with more than one million individual members, including more than 35,000 in Massachusetts, that promotes the safe use and enjoyment of bicycles. PeopleForBikes is also an industry coalition, with members spanning all segments of the bicycle industry from retailers to suppliers.

## **III. Background - Electric Bicycles and Electric Bicycle Law**

Electric bicycles, or e-bikes, are very similar to traditional bicycles in both appearance and operation, but have a small electric motor that helps propel the rider. Importantly, these devices are distinct from other two-wheeled motorized devices such as mopeds, scooters, or motor-driven cycles with respect to both their manufacture and use. E-bikes come in two primary types: 1) pedal-assist models, where the motor is engaged only while the rider is also pedaling to move the bicycle; and 2) throttle-assist models, where the motor can provide assistance or propulsion with or without the rider pedaling. E-bikes also have several important distinctions from other forms of motorized vehicles. The electric motor makes their operation silent and emission free, and most users consistently operate the pedals to contribute human power to their operation.

### *a. E-Bike Policy - Overview of Federal and State Law*

The federal government has recognized that electric bicycles more closely resemble traditional bicycles rather than motor vehicles, and have regulated them accordingly. Public Law 107-319 established that electric bicycles are regulated as consumer products under the Consumer Product Safety Act, and more specifically, subject to the same regulations that govern traditional, human-powered bicycles. Thus, electric bicycles are regulated by the Consumer Product Safety Commission, and must comply with the bicycle safety standards at 16 C.F.R. Part 1512. In addition, electric bicycles are explicitly not “motor vehicles” for the purposes of federal law, and are not subject to National Highway Traffic Safety Administration vehicle standards. As a

practical matter, Public Law 107-319 ensures that electric bicycles are designed, manufactured, and tested like traditional bicycles for the purposes of consumer product safety law. Thus, electric bicycles are supplied with the same safety equipment found on bicycles (e.g., reflectors) rather than equipment found on motor vehicles (e.g., turn signals).

The main provisions of Public Law 107-319 are codified at 15 U.S.C. § 2085. Under this provision, an electric bicycle is referred to as a “low-speed electric bicycle,” which is defined as “a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.” The speed limit in the federal law governs the maximum speed that the device can travel when operating under motor power alone; it does not specify how fast the device can travel when operating under combined human and motor power.

Significantly, the federal law governing e-bikes does not preempt any state traffic laws or vehicle codes. While there is a preemption provision in Public Law 107-319, that provision is limited in scope to product safety regulation. To help avoid ambiguities with respect to the operation of e-bikes, integrating electric bicycles into state traffic codes has been an important priority for the bike industry. Twenty-six states have already incorporated e-bikes into their traffic codes and regulated them similarly to traditional bicycles.<sup>1</sup> This area is constantly evolving, with seven states passing legislation to recognize e-bikes in just the last two legislative sessions.

Three states have now adopted a more advanced system of defining and regulating electric bicycles based on a system of three classifications. This regulatory regime was first passed in California in late 2015. Tennessee and Utah followed suit in 2016. The class system makes significant improvements to the federal definition by grouping electric bicycles that meet the federal standard into different classifications based on whether they are pedal or throttle assisted, and places a cap on the maximum assisted speed that the bike travel. These classes are as follows:

1. Class 1 electric bicycle - 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 - 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 - 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, and equipped with a speedometer.<sup>2</sup>

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<sup>1</sup> [www.peopleforbikes.org/pages/e-bikes](http://www.peopleforbikes.org/pages/e-bikes)

<sup>2</sup> For the codifications of the class system definitions in California, Tennessee, and Utah, please see the following citations: CAL. VEH. CODE § 312.5 (Assembly Bill 1096); TENN. CODE § 55-8-2(1)-(4) (Senate Bill 1705); UTAH CODE § 41-6a-102(16) (Senate Bill 130).

PeopleForBikes and the BPSA have worked to make this classification system the model for e-bike regulation in the United States, and have collaborated with law enforcement, state and local governments, and advocates to implement it.

*b. Massachusetts E-Bike Policy*

Massachusetts has not incorporated electric bicycles into its traffic laws. However, the Massachusetts Registry of Motor Vehicles has provided guidance with respect to how electric bicycles that fall within the federal definition at 15 U.S.C. § 2085 should be regulated. According to the agency’s moped registration form, e-bikes that meet the federal definition do not need to be registered with the RMV as mopeds. The relevant language from their moped registration forms is as follows:

**Low Speed Electric Bicycle**

If all of the following apply, a bicycle will be deemed a “low-speed electric bicycle” under Federal law (15 U.S.C. § 2085) and will not have to be registered with the RMV:

- Has two or three wheels
- Has fully operable pedals
- Has an electric motor of less than 750 watts (one horsepower)
- Has a maximum speed of less than 20 MPH on a paved level surface, when powered solely by the motor

Massachusetts Registry of Motor Vehicles, Bicycle Conversion to Motorized Bicycle (Moped) Affidavit of Owner (attached as Ex. 2).

Exempting electric bicycles from licensing and registration is consistent with the evolution of e-bike policy at the federal and state level. The implication of the RMV’s guidance is that e-bikes should be treated like bicycles for the purposes of the state’s traffic laws - consistent with the national trend. In other states, e-bikes are overwhelmingly being recognized as a type of bicycle that requires similar legal treatment.

While electric bicycles still comprise a relatively small percentage of the overall bicycle market in the United States, they are the most rapidly growing segment of the bicycle industry. As technology continues to improve and consumer awareness of electric bicycles expands, the market for these devices is likely to increase considerably, mirroring growth that the European electric bicycle market has already experienced. Thus, it is important that land managers consider issues related to e-bikes when implementing regulations, as agencies will see increased use of these devices in areas under their jurisdiction in the coming years.

**IV. Comments**

We are advocating that the Department alter the proposed regulations in order to make the status of electric bicycles on DCR property consistent with other state policies. More specifically, we disagree with the classification of an “electric bicycle” as a “motorized personal vehicle” in the draft regulations. E-bikes belong in a regulatory scheme that is parallel to that of traditional bicycles, rather than being grouped with a miscellaneous class of electric devices. We propose

DCR define electric bicycles with an independent definition, and clarify the rules regulating their operation on paved surfaces.

*a. Summary of Proposed Traffic Rules - 302 CMR 11*

Part 11 of 302 CMR relates to the operation of vehicular traffic on DCR property. These regulations ensure that road use in the park is orderly and consistent with Massachusetts traffic law. We support the DCR's objective of having traffic regulations that are congruous with other policies within the state, and helping users understand their obligations when accessing DCR property. However, we are concerned by the part 11 rules that govern electric bicycles, and the contrast between their regulation and that of traditional bicycles.

The proposed regulations would define the term "bicycle" as "a two wheel non-motorized vehicle designed to be used both on and off paved surfaces and over unimproved terrain." This definition is clearly intended to include only traditional, human-powered bicycles and exclude electric bicycles. Electric bicycles are instead included within the definition of a "Motorized Personal Vehicle." This term includes "any two-wheeled conveyance powered by a motor, including, but not limited to, a self-balancing board, electric scooter, or electric bicycle." The term "electric bicycle" is not defined, and thus has no parameters on wattage or speed.

A critical aspect of the proposed regulations are the rules governing the use of roads on DCR lands. While "bicycles" have access to roadways and are governed by the state's bicycle laws, "Motorized Personal Vehicles" have more restrictive access. These devices are prohibited "except in accordance with laws and regulations relating to registration and operation, including, but not limited to, those in M.G.L. c. 90."

*b. Effect of Proposed 301 CMR 11 on Electric Bicycles*

The implications of the proposed regulations for e-bikes are significant. As an initial matter, an electric bicycle is not defined. This brings immediate confusion as to what devices fall within the category. A definition for electric bicycle would provide much needed clarity.

In addition, e-bikes are not subject to the laws governing traditional bicycles in terms of either their equipment or conduct on roadways. As noted above, this structure is the standard for all states that have defined electric bicycles and addressed on-road e-bike use. In contrast to that standard, the proposed rules would require e-bikes to comply with registration and licensing requirements from the state vehicle code, and it is not clear whether e-bike riders should abide the traffic laws for bicycles, or other types of vehicles.

We are particularly concerned that e-bikes are referenced in connection with licensing and registration requirements. As we interpret current Massachusetts policy, e-bikes have no licensing or registration requirement. The RMV has been clear with respect to how they will treat the an e-bike - the agency has exempted it from registration. It is critical that DCR's regulations are in alignment with the RMV's treatment of electric bicycles, and permit their operation on roadways without registration and licensing.

In order to address these issues, we suggest that the final regulations at 302 CMR 11 be amended to make the following changes:

- 1) **Remove electric bicycles from the definition of "Motorized Personal Vehicles."** We

support the DCR’s objective of appropriately regulating new transportation technologies. However, devices with electric motors come in a wide range of forms, and electric bicycles require a unique set of regulations that more closely resemble those applicable to traditional bicycles. We are aware of no other state that has included electric bicycles within the same classification as devices such as self-balancing boards. States that have addressed e-bike use in their traffic laws have overwhelmingly defined e-bikes as a stand-alone classification, or within the definition of “bicycle.”

- 2) **Create a specific definition for “electric bicycles.”** A definition for electric bicycles would provide much needed clarity to both users and land managers. It would also facilitate the thoughtful regulation of electric bicycles in the future by allowing the Department to apply rules to this specific type of vehicle. We support the DCR adopting the class system definitions that are now the law in California, Tennessee and Utah. These definitions will become the 21<sup>st</sup> century standard for e-bike regulation in the United States.
- 3) **Clarify that electric bicycles may be used on roadways and paved infrastructure without licensing or registration.** The use of electric bicycles on roadways without any licensing or registration requirements is consistent with the policy of the RMV. It is unclear what type of registration or licensing might be required for e-bikes under the proposed DCR rules, and given the RMV’s guidance, it appears impossible that such documentation could be obtained. Clarifying that licensing and registration are not required for the on-road use of electric bicycles would minimize confusion for visitors and law enforcement.
- 4) **Clarify that electric bicycles may be used on paved, multi-use paths.** We are cognizant that the use of e-bikes on trail systems involves different issues (and potential user conflicts) that are not present on roadways. However, e-bikes may be ridden on bicycle paths in the vast majority of states where they have been defined and regulated. At the local level, programs to integrate electric bicycles into local trail systems have been successfully implemented in Boulder, Colorado<sup>3</sup> and Park City, Utah<sup>4</sup>, with no documented user conflict. Recent studies have also demonstrated that e-bike users typically operate their bicycles at speeds that are appropriate for multi-use paths.<sup>5</sup> Given this information, we would encourage the DCR to permit the use of electric bicycles on paved, multi-use paths at this time.

*c. Parks and Recreation Rules - 302 CMR 12*

We note that the rules governing access to other parts of DCR property in 302 CMR 12 are largely unchanged. In order to promote conformity between the traffic laws and the Parks and Recreation Rules, we suggest that DCR make minor changes to part 12 so that any rules that would affect electric bicycles are consistent with the definitions and rules in 302 CMR 11.

<sup>3</sup> <https://bouldercolorado.gov/goboulder/electric-assisted-bikes-policy-review>

<sup>4</sup> [http://www.parkrecord.com/park\\_city-news/ci\\_27960541/city-implements-e-bike-rules-under-pilot-program?source=rss](http://www.parkrecord.com/park_city-news/ci_27960541/city-implements-e-bike-rules-under-pilot-program?source=rss)

<sup>5</sup> *Risky Riding: Naturalistic Methods Comparing Safety Behavior from Conventional Bicycle Riders and Electric Bike Riders*, Lanford, J., Chen, J., & Cherry, C., ACCIDENT ANALYSIS AND PREVENTION (Sept. 2015) (summary available at [www.peopleforbikes.org/pages/e-bikes](http://www.peopleforbikes.org/pages/e-bikes)).

More specifically, we would suggest that a definition for electric bicycles (identical to that in 302 CMR 11) be included in 302 CMR 12. Further, the term “power-assisted bicycle” is also used in 302 CMR 12, which is not defined. The regulations should carefully distinguish e-bikes from this term. We also advocate that DCR modify 12.14(14) to ensure that there is no ambiguity with respect to whether e-bike riders must have licensing and registration when operating their devices on DCR property, which includes roads.

We are not advocating that the DCR create blanket rules that would regulate the use of e-bikes on natural surface trails at this time. We believe that access to unpaved trails by electric bicycles is best done at the discretion of DCR. We note that the class system is particularly helpful to ensuring that e-bike use on natural surface trails is done responsibly - there may be many locations where only Class 1 e-bike use is appropriate. Results from a study performed by IMBA examining the use of Class 1 electric mountain bikes on dirt trails concluded that their impact is similar to that of traditional mountain bikes, and considerably different from off-road motorcycles (Ex. 3).

The changes that would be needed to make the improvements we have suggested are relatively minor and straightforward. By simply adding a definition for electric bicycles, and making small adjustments to the proposed rules, the regulatory system for e-bikes on DCR property could be made clear and consistent with other Massachusetts state policies. We have attached a proposal for amending the regulations to achieve the goals outlined above (Ex. 1).

## **V. Conclusion**

Once again, we thank you for addressing this important subject, and we support your efforts to manage bicycle use on lands managed by the Department of Conservation and Recreation. We would welcome the opportunity to discuss electric bicycles in greater detail at any time, or arrange for officials from the Department to demo e-bikes and learn first hand how they work. If you have any additional questions regarding our comments, please contact Morgan Lommele, E-Bikes Campaigns Manager at PeopleForBikes, at 720-470-2981 or [morgan@peopleforbikes.org](mailto:morgan@peopleforbikes.org).