

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 84 total days that would prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0145 to read as follows:

§ 165.T05–0145 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following areas are a safety zone: These coordinates are based on datum NAD 83.

(1) *Area 1.* All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′49.10″ N, 076°59′32.46″ W, thence south to 38°21′40.04″ N, 076°59′30.62″ W, thence east to 38°21′43.52″ N, 076°59′15.22″ W, thence south along the shoreline to 38°21′52.49″ N, 076°58′59.70″ W, and west back to the beginning point, located between Charles County, MD and King George County, VA.

(2) *Area 2.* All navigable waters of the Potomac River within 1,500 feet of the explosives barge located in approximate position 38°21′21.47″ N, 076°59′45.40″ W.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone. The term also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative. If a vessel or person is notified by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative that they have entered the safety zone without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners wishing to transit any of these safety zone areas must first contact the Skanska-Corman-McLean, Joint

Venture designated representative, the on-site project manager by telephone number 785–953–1465 or on Marine Band Radio VHF–FM channels 13 and 16 from the pusher tug Miss Stacy to request permission. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, Skanska-Corman-McLean, Joint Venture, or designated representative to the mariner regarding the conditions of entry to and exit from any area of the safety zone. The COTP or the COTP's representative can be contacted by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcasts on VHF–FM marine band radio announcing specific enforcement dates and times.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be in effect, and subject to enforcement, from 12:01 a.m. on November 8, 2023, to 11:59 p.m. on January 30, 2023.

Dated: November 1, 2023.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2023–24561 Filed 11–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AD52

Prohibitions in Region 8, Southern Region

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Chattooga Wild and Scenic River is located in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina, and the Chattahoochee National Forest in Georgia. Forest Service regulations generally prohibit floating activities on the Chattooga Wild and Scenic River unless authorized by a permit. On January 31, 2012, the U.S. Department of Agriculture (USDA), Forest Service issued decisions to change some of the locations where, and

conditions under which, boating would be allowed. The 2012 decision included segments of the Chattooga Wild and Scenic River in North Carolina, which was not included in the original rule. Consequently, the Forest Service is amending the regulations to reflect the new management direction more accurately for the Chattooga Wild and Scenic River.

DATES: This rule is effective December 7, 2023.

ADDRESSES: The rulemaking record for this final rule contains all the documents pertinent to this rulemaking. These documents are available for inspection and copying at the office of the Director, Wilderness and Wild and Scenic Rivers, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue SW, Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect or copy these documents are encouraged to call Stephen Chesterton, Wild and Scenic Rivers Program Manager at 202–205–1398 beforehand to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: John Campbell, Regional Wilderness and Wild & Scenic River Program Manager, Southern Region, 404–805–8110. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Purpose for the Amendment

In 1974, Congress designated the 57-mile Chattooga River (and its 15,432-acre corridor) as a component of the National Wild and Scenic River System. The uppermost portion of the Chattooga Wild and Scenic River is located in the Nantahala National Forest (NF) in North Carolina. The river then flows in a southerly, south-westerly direction to form the boundary between Georgia and South Carolina, and also the boundary between the Chattahoochee NF (in Georgia) and the Sumter NF (in South Carolina).

In the initial 1976 river management plan for the Chattooga River, the U.S. Forest Service used zoning to manage the upper and lower segments of the river for different recreational opportunities. As part of the initial zoning effort, management direction prohibited floating on the upper segment above GA/SC Highway 28 (which includes a section of the river in the Sumter NF in South Carolina, a

section of the river in the Chattahoochee NF in Georgia, and all of the sections of the river in the Nantahala NF in North Carolina).

Under the authority of 36 CFR 261.70(a)(7), these prohibitions were codified at 36 CFR 261.77 (**Federal Register**, 43 FR 3706, January 27, 1978). In general terms, 36 CFR 261.77 prohibits floating activities on the Chattooga Wild and Scenic River unless authorized by a permit. Consistent with the river management plan that is incorporated into the forest plans, the original terms and conditions of the permits issued pursuant to 36 CFR 261.77 allowed floating on the Chattooga Wild and Scenic River but only on that portion of the river located downstream of GA/SC Highway 28. Therefore, due to the combination of 36 CFR 261.77 and the terms of the self-registration permit issued pursuant to that regulation, floating was only allowed on that section of the river downstream of GA/SC Highway 28 and prohibited upstream from that location. However, in 2012 that management direction changed, allowing for an increase in boating opportunities upstream of GA/SC Highway 28. To be consistent with this new management direction, this final rule amends 36 CFR 261.77.

On January 31, 2012, the Chattahoochee-Oconee, Nantahala and Sumter National Forests issued Decision Notices that amended their forest plans to incorporate new management direction for the Chattooga Wild and Scenic River. These changes were based upon an Environmental Assessment titled “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” Generally, these new decisions allow floating along certain segments of the Chattooga Wild and Scenic River above GA/SC Highway 28, contingent upon certain restrictions.

In the previous regulations at 36 CFR 261.77, the sections of the river that lie within the Nantahala NF in North Carolina were not addressed. This area instead has been regulated by Forest Supervisor’s closure order pursuant to subpart B of 36 CFR part 261. To be consistent with the new management direction, this final rule amends 36 CFR 261.77 to include those sections of the river that lie within the Nantahala NF.

The original regulations at 36 CFR 261.77(d) and (e) also only addressed the portion of the river within the boundaries of the Chattahoochee National Forest. This final rule changes this to be applicable to “any portion or segment of the Chattooga River within National Forest System land.” Through the public comment period, it was

pointed out the original regulation made a distinction between States because the 1971 Wild and Scenic River Report for the Chattooga River identified that the State of South Carolina has title to the riverbed and water from the mean high-water mark to the middle of the river. However, it has been firmly established in law and by the courts that the Secretary of Agriculture has the authority to regulate the public use of waters within the boundaries of a Wild and Scenic River.

Another change in the proposed rule involved an effort to use more accurate and consistent terminology by replacing the term “special use permit” with “special use authorization.” This however, created a certain amount of confusion with the public. In an effort to reduce the uncertainty as to how to interpret the use of the term “special use authorization,” this final rule maintains the original term of “special use permit” and clarifies that the other type of permit authorizing use is a “self-registration floating permit.”

Lastly, to better serve the public, this final rule amends 36 CFR 261.77 by eliminating references to specific locations where self-registration permits are made available to the public. Instead, the Forest Service will use other means to inform the public of the variety of places where it can go to obtain permits to float the Chattooga Wild and Scenic River.

Public Comments on the Proposed Rule and Responses

Overview

On January 19, 2016, the Forest Service published a proposed rule in the **Federal Register** (Vol. 81, No. 11, pages 2788–2791) seeking public comment in amending regulations at 36 CFR 261.77 related to prohibitions in Region 8, Southern Region. The proposed rule was posted electronically on the **Federal Register** website at <https://www.federalregister.gov> and on the local agency’s website at <https://www.fs.usda.gov/scnfs>. The proposed rule would prohibit floating activities on the Chattooga Wild and Scenic River (WSR) unless authorized by permit.

During the 60-day comment period, which ended on March 21, 2016, the Forest Service received 13 letters or electronic messages in response to the proposed rule, resulting in a total of 594 comments. Of the 13 letter/email responses, 9 came from individuals, 1 from a State Government agency, 1 from an environmental organization, 1 from a whitewater organization, and 1 from a homeowners association. Copies of the letters/emails received can be seen on

the website for the Francis Marion and Sumter National Forests website at <https://www.fs.usda.gov/scnfs>. A complete report of all the comments received and their responses are available by contacting the Forest Service (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

General Comments

Comment. Some of the comments from respondents focused on whether the Forest Service should allow boating in the upper segment of the Chattooga Wild and Scenic River (Chattooga WSR). Some respondents stated that they are against boating under any circumstances in the Chattooga WSR, specifically in the Grimshawes area to Bull Pen Bridge.

Response. Forest Plan Amendments signed in 2012 for the Nantahala, Chattahoochee-Oconee and Sumter National Forests permit boating under certain conditions in the upper segment of the Chattooga WSR from the confluence of Green Creek and the Chattooga WSR in North Carolina to a spot where boaters are required to take their boats out of the water near the confluence of Lick Log Creek and the Chattooga WSR in South Carolina. Boating is permitted from December 1st to April 30th during daylight hours (starting 30 minutes before sunrise and 30 minutes after sunset) when flows are 350 cubic feet per second or greater at the USGS water gage at Burrells Ford. The final rule is consistent with this management direction.

Comment. One respondent was concerned with safety and the remote access for search and rescue teams to do their jobs.

Response. The Forest Service analyzed this concern in the 2012 environmental assessment, “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor” (2012 EA) associated with the Forest Plan Amendments for the Nantahala, Chattahoochee-Oconee and Sumter National Forests. The 2012 EA disclosed, based on likely use levels and information from other rivers of similar difficulty, accidents, injuries, and fatalities would likely be low and few would require search and rescue responses.

Comment. Some respondents requested that a new section be added to the final rule that references the 2012 EA and Decision Notices to ensure that there is no change to restrictions and to the scope of the decisions with the issuance of the final rule.

Response. Additional rule language is not needed. The final rule is consistent with the Forest Plan Amendments signed in 2012 for the Nantahala,

Chattahoochee-Oconee and Sumter National Forests. The purpose of this regulation is not to specify the terms of any permit but rather to establish the framework that boating on the Chattooga River is prohibited except where authorized under permit. It is then up to site-specific decisions, which will be made following the National Environmental Policy Act (NEPA) procedures and involving the public, to determine the actual terms of any permit that allows boating. The Regulatory Certifications, Environmental Impact section, clearly provides reference to the 2012 EA and the signed Decisions Notices that incorporate plan amendments. The forest plan amendments provide sufficient management direction for the three national forests.

Comment. One respondent supported boating in the upper Chattooga without a permit.

Response. Forest Plan Amendments signed in 2012 for the Nantahala, Chattahoochee-Oconee and Sumter National Forests require individual boaters to fill out a self-registration floating permit.

Comment. Some respondents stated that the proposed rule revisions are inconsistent with the 2012 EA and Decision Notices and would invalidate court rulings that upheld Forest Service management of the Chattooga WSR. Further, the respondents contend that the proposed rule circumvents the agency decision-making process and judicial oversight under the Administrative Procedures Act (APA).

Response. The final rule is consistent with the 2012 EA and Decision Notices and amendments to the Nantahala, Chattahoochee-Oconee and Sumter National Forests. The Forest Service has received favorable court rulings in the following court cases relative to the 2012 EA: Civil Action No.: 8:09–2665–MGL, Amended Order and Opinion; 7/30/2013 US Court of Appeals for the Fourth Circuit, No. 13–1960, 11/05/2014; and Civil Action No.: 8:12–CV–3455–BHH, Opinion and Order. The US District Court, District of South Carolina, Greenville Division found “. . . that the Forest Service’s 2012 Plan for Management of the Chattooga WSR complies with the federal law analyzed . . .”. In 2016 the Nantahala, Chattahoochee-Oconee and Sumter National Forests signed site-specific decisions for specific boater put-in and take-out locations on the Chattooga WSR. This is consistent with the forest plan amendments signed in 2012. Some of these access sites were constructed in 2016. In addition, biophysical monitoring relative to recreation

impacts has been completed and specific monitoring as specified in the 2012 plan amendments began in 2015. There has been and continues to be considerable public interest in Forest Service management activities on the Chattooga WSR. The Forest Service is required to comply with NEPA, the APA and other Federal laws during revisions or amendments to land management plans and during planning of site-specific projects.

Comment. Some respondents believe that the Forest Service should have considered all the actions and decisions as connected actions that should have been considered in a single review process.

Response. All management actions and decisions have been informed by the Environmental Assessment (EA), “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” The Regulatory Certifications, Environmental Impact section, in the final rule clearly provides reference to the 2012 EA and Decision Notices that incorporate plan amendments into the Nantahala, Chattahoochee-Oconee and Sumter forest plans. The final rule is consistent with current management on the three national forests.

Comment. Some respondents contend that the proposed rule changes would allow floating through private property unless explicitly restricted; and that the proposed rule asserts the 2012 Decisions allow floating unless explicitly restricted.

Response. The final rule prohibits boating on the Chattooga WSR on National Forest System land abutting the river unless authorized by permit. All trails and access points to the Chattooga WSR are located on the Nantahala, Chattahoochee-Oconee and Sumter National Forests. All permitted boating activity occurs down-river from private land. Floating activities authorized by permit will take place entirely through National Forest System land abutting the Chattooga River. Existing trailhead locations enable recreationist to get to the Chattooga WSR using Forest Service trails and access points. Any changes to the existing terms of the permit would need to be approved through a separate NEPA analysis that would involve the public.

Comment. The proposed rule contradicts the Courts understanding of the 2012 Plan by allowing floating use of the Chattooga River unless explicitly restricted.

Response. The final rule is intended to update prohibitions in Region 8, Southern Region, to now be consistent with the Decision Notices (one for each

National Forest) signed on January 31, 2012, which were based upon an Environmental Assessment (EA) titled “Managing Recreation uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” The final rule prohibits boating on the Chattooga WSR on National Forest System land abutting the river unless authorized by permit. The final rule does not “allow floating use of the Chattooga River unless explicitly restricted” as the commenter alleges—rather it says the opposite. The final rule establishes that boating on the Chattooga River is prohibited unless explicitly allowed under the terms of a permit.

Comment. The proposed CFR revision expands Forest Service discretion to issue special use authorizations without limitations.

Response. The self-registration floating permit for private boating has been in use for many decades on the lower segment of the Chattooga WSR. An amended version of this permit that includes the conditions for boating in the upper segment (above GA/SC Highway 28) has been in use since 2012.

Based on public comments received during the comment period on the proposed rule, the final rule will replace the word “permit” with the term “self-registration floating permit” when referring to private boaters wishing to boat on the Chattooga River. The conditions for boating are listed on the back of the self-registration floating permit and are consistent with forest plan direction for the Nantahala, Chattahoochee-Oconee and Sumter National Forests.

While the proposed rule included the term “special use authorization,” which from 36 CFR 251.50, is the more appropriate term to use, the term “special use authorization” is also a broader term that includes other types of “authorizations.” This has led to some confusion and consequently, the final rule will replace the term “special use authorization” with the original term “special use permit” when referring to commercial boating that is authorized on the lower segment of the Chattooga WSR. Commercial boating on the upper segment of the Chattooga WSR (above GA/SC Highway 28) is currently prohibited under the terms of the previous decisions. Any changes to the terms of these permits can only be made following the NEPA procedures and involving the public.

Comment. Some respondents stated that the proposed rule is inconsistent with the 2012 Decision Notices and the existing 36 CFR 261.77 language by specifying that the prohibitions are applicable to “National Forest System

land” instead of “any area of the . . . National Forest abutting the Chattooga River”.

Response. The term “National Forest” can be interpreted to include private lands within a proclaimed National Forest. However, the intent of this rule is not to regulate activities on privately-owned lands. Therefore, it was determined that the applicable term to use in these regulations is “National Forest System land”.

Comment. Some respondents contend that the original CFR (261.77(d)) included a copy of a Chattooga-specific floater permit that listed the conditions of the permit. The proposed rule revision provides no permit conditions whatsoever. This leaves the proposed rule “undefined” and “limitless.” Without listing the conditions of the floater permit, it is impossible to know if the CFR revisions are consistent with the 2012 Decisions and forest plan amendments.

Response. The Forest Service intends to issue a revised self-registration floating permit that is consistent with current management of the river as stated in the 2012 Decisions and plan amendments for the Nantahala, Chattahoochee-Oconee, and Sumter National Forests. The permit will list the conditions for private boating on the upper segment of the Chattooga River WSR on the back of the self-registration floating permit. The purpose of this regulation is not to specify the terms of any permit but rather to establish the framework that boating on the Chattooga River is prohibited except where authorized under permit. It is then up to site-specific decisions, which will be made following the NEPA procedures and involving the public, to determine the actual terms of any permit that allows boating.

Comment. Some respondents maintain that the locations for obtaining a permit should be listed like they were in the original CFR (261.77(d)) as they have served a purpose of providing egress points to discrete locations on the River. The rule should include the new locations of where boaters can obtain a permit as this would direct boaters to the approved locations to initiate their trip.

Response. The Department expanded the number of kiosk locations for obtaining information and self-registration floating permits after the 2012 Decisions were signed. The new kiosk locations are adjacent to trailheads close to the locations where boating is permitted for public convenience. It is not necessary to define those in the final rule and information on where and how to get permits along with boating

requirements can be shared in a number of venues (Forest Service websites for example).

Comment. The text of the proposed rule does not explicitly detail any of the twelve boating restrictions enumerated in the 2012 Decision Notices.

Response. The final rule only addresses floating prohibitions on the Chattooga WSR. The self-registration floating permit lists the conditions for boating which are consistent with the 2012 Decision Notices and forest plan amendments for the Nantahala, Chattahoochee-Oconee, and Sumter National Forests. This allows flexibility in future management as forest plans are revised or amended and new site-specific decisions are made following NEPA procedures. The purpose of this regulation is not to specify the terms of any permit but rather to establish the framework that boating on the Chattooga River is prohibited except where authorized under permit. It is then up to site-specific decisions, which will be made following the NEPA procedures and involving the public, to determine the actual terms of any permit that allows boating.

Comment. One respondent asked that the final rule clarify that closure orders may still be used to restrict or even prohibit boating to prevent degradation of the Chattooga’s Outstandingly Remarkable Values (ORVs).

Response. The final rule does not limit Forest Service authority to issue closure orders as needed.

Comment. One respondent contends that by not stipulating where permits may be obtained, that eventually permit kiosks will be removed entirely. Without permit boxes being present at trailheads, an impression will invariably develop that no permits are required.

Response. The wording in the final rule is clear, that boating on the Chattooga WSR is prohibited without a permit and the permit specifies the conditions for floating the river. Self-registration stations are not being eliminated but have increased with stations being located at key trailheads that provide access to the upper segment of the River where boating takes place. The Forest Service has maintained self-registration stations on the lower segment of the Chattooga WSR since designation and has even added three additional stations on the lower segment over the years. Along with the permit itself, the self-registration stations provide information on rules and regulations.

Comments on Regulatory Certifications in the Proposed Rule

Environmental Impact

Comment. One respondent contends that the proposed rule can only be applied to that portion of the Chattooga WSR within the geographic scope of the Environmental Assessment (EA), “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor” to which it tiers.

Response. The 1976 and 1985 forest management plans prohibited boating above GA/SC Highway 28. The 2012 forest plan amendments for the Nantahala, Chattahoochee-Oconee, and Sumter National Forests permitted boating under certain conditions on National Forest System land abutting the Chattooga River. These amendments did not change the status quo on any prohibition that already exists on National Forest System land above the confluence of the Chattooga River and Green Creek all the way to the upper limit of the Chattooga WSR Corridor. The 2012 Decisions simply made conditional exceptions to the long-standing prohibition on floating above GA/SC Highway 28 on National Forest System land abutting the Chattooga WSR. This was reiterated in the July 30, 2013, Amended Order and Opinion from Judge Mary G. Lewis in Civil Action No.: 8:09_2665–MGL, page 4.

No Takings Implications

Comment. Some respondents maintain that a taking analysis was not completed for the proposed rule as required by Executive Order 12630. In addition, the respondents want language added to the final rule that floating is prohibited above the confluence of Green Creek, a section of the River that contains private property.

Response. The final rule does not pose a risk of taking private property. The potential impacts to private lands were evaluated in the Environmental Assessment (EA), “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” The portions of the River that are permitted for boating are located on National Forest System land and do not include private property or public use of private land. Any changes to what might be allowed under permit can only be made following the NEPA procedures and involving the public.

Federalism and Consultation and Coordination With Indian Tribal Governments

Comment. Some respondents stated that some segments of the Chattooga

River are owned by the State and are therefore beyond the scope of Forest Service statutory authority.

Response. The final rule recognizes that the Secretary of Agriculture has the authority to regulate the public use of waters within the boundaries of a Wild and Scenic River. (See 16 U.S.C. 551, 36 CFR 261.1(a)(4), 36 CFR 261.58(z), and Forest Service Manual 2354.01.) The Forest Service’s authority to manage recreational uses, including the regulation of floating, in the Chattooga Wild and Scenic River corridor was also challenged in *American Whitewater, et al. v. Tidwell, et al.* The U.S. District Court for the District of South Carolina upheld the decision of the Forest Service. The decision of the court was subsequently affirmed by the 4th Circuit Court of Appeals.

Regulatory Certifications for the Final Rule

Environmental Impact

The final rule amends an existing regulation to make it consistent with a USDA, Forest Service decision on the management of the Chattooga Wild and Scenic River, which lies within the Chattahoochee, Nantahala and Sumter National Forests. The Decision Notices (one for each National Forest) were signed on January 31, 2012, which were based upon an Environmental Assessment (EA) titled “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” The social and environmental effects of this decision are documented in this EA. The final rule amendment is to update the Forest Service regulations to be consistent with this new management decision.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The rule makes minor, technical changes to the Forest Service’s regulations. This rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the rule will not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism, and has determined that the rule conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Department recognized that one or more Indian Tribes may have direct interest in the management of Chattooga Wild & Scenic River. These Indian Tribes were consulted during the public comment period and no concerns with the proposed rule were expressed.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal Governments and the private sector. This rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal Government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 261

Law enforcement, National forests, Prohibitions.

Therefore, for the reasons set out in the preamble, part 261 of title 36 of the Code of Federal Regulations is amended as follows:

PART 261—PROHIBITIONS

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

Subpart C—Prohibitions in Regions

■ 2. Revise § 261.77 to read as follows:

§ 261.77 Prohibitions in Region 8, Southern Region.

(a) Using or occupying any area of National Forest System land abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized through a self-registration floating permit or through a special use permit. (The Chattooga River is located

in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina, and the Chattahoochee National Forest in Georgia.)

(b) Using or occupying within the scope of any commercial operation or business any area of National Forest System land abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized under a special use permit.

(c) Violating or failing to comply with any of the terms or conditions of any self-registration floating permit or special use permit authorizing the occupancy and use specified in paragraph (a) or (b) of this section is prohibited.

(d) Entering, going, riding, or floating upon any portion or segment of the Chattooga River within National Forest System land in, on, or upon any floatable object or craft of every kind or description, unless authorized through a self-registration floating permit or through a special use permit.

(e) Entering, going, riding, or floating within the scope of any commercial operation or business upon any portion or segment of the Chattooga River within National Forest System land in, on, or upon any floatable object or craft of every kind or description, unless authorized under a special use permit.

(f) Violating or failing to comply with any of the terms or conditions of any self-registration floating permit or special use permit authorizing the occupancy and use specified in paragraph (d) or (e) of this section is prohibited.

Andrea Delgado Fink,

Chief of Staff, Natural Resources and Environment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0272; FRL–11237–02–R8]

Air Plan Approval and Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions and disapproving portions of a state implementation plan (SIP) revision submitted by the State of Colorado to meet Clean Air Act (CAA) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) in the Denver Metro/North Front Range nonattainment area (DMNFR Area). Specifically, the EPA is approving the submitted enhanced monitoring SIP element as meeting applicable Serious area requirements for the 2008 8-hour ozone NAAQS, and is disapproving the contingency measure element of the SIP submittal. The EPA is taking this action pursuant to the CAA.

DATES: This rule is effective December 7, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2023–0272. All documents in the dockets are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6563, email address: fulton.abby@epa.gov. **SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means the EPA.

I. Background

The background and rationale for this action are discussed in detail in our August 14, 2023 proposed rule and our Response to Comments document for this action.¹ In the proposed rule, we proposed to approve the enhanced monitoring element and to disapprove the contingency measures element of the March 22, 2021 8-hour ozone attainment plan SIP submission from the State of Colorado for the DMNFR

¹ Proposed rule, Air Plan Approval and Disapproval; Colorado; Serious Attainment Plan Elements and Related Revisions for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 88 FR 54975; the response to comments document is in the docket.