

## Comment

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The Proposed Revisions to 26 CFR 261.77 should not be promulgated. The CFR Revisions contradict and contrast the 2012 Plan Amendment Decisions cited as justification for these revision. Therefore, there exists no supporting analysis to justify the CFR revisions.

The notable contradictions include:

1. The 2012 Forest Plan Amendments Decisions states that floating is "not Allowed" above highway 28, with limited well defined exceptions. This while, the proposed CFR claims that the 2012 Decisions "allows floating" with undefined restrictions and infinitely expands Forest Officials discretion. Allowed" contradicts "Not Allowed".
2. The geographic scope of the 2012 Decisions were based on the boundary of the Chattooga Wild and Scenic River, which includes state-owned streams and private property. Conversely, the proposed CFR asserts these same 2012 Decisions only pertain to the National Forest System. These scopes are inconsistent.
3. While the 2012 Plan Decision lists exceptions to a complete floater prohibition, the proposed CFR revisions provide no limitation at all. The CFR cite to "conditions" of the floater permit or authorization that are not included as supporting documentation for public review. Specificity of the 2012 Decision contrasts the CFR's ambiguity.
4. Finally, the 2012 Assessment (EA) supporting the 2012 Decisions is too narrow in scope to support the broadly proposed CFR changes. Allowing floating and infinity expanding Forest Officials discretion to authorize floating was never assessed in the narrowly focused 2012 Environmental Assessment (EA). It should not be allowed to become legally binding law in this CFR revision process.

These proposed CFR changes significantly alter the meaning of the 2012 Forest Plan Documentation and Decisions that were relied upon to justify and support the proposed

change. These attempts to retroactively alter the 2012 Decisions and EA, while expanding agency authority within a CFR revision process, are particularly egregious because of the litigation history associated with the upper Chattooga Decisions. Multiple federal courts have relied upon the continuation of the floating prohibitions on the four miles of Chattooga upstream of Greens Creek and where and when anglers are present in these ultimate rulings. see *Whitewater v. USFS* 2010-2014. Contradicting the basis for these court rulings invalidates court findings.

The proposed 26 CFR 261.77 should be amended to reflect the actual 2012 Planning Documents. Under the 2012 Plan Amendment Decisions, floating remains prohibited except where it is explicitly authorized. Conditions of the floater permit or authorization, should reflect the 2012 Decisions and be included as support documentation with this CFR for public review. Finally, the unlimited expansion of forest official discretion should be again limited to authorizing use within the limited scope of the exceptions listed in the 2012 Plan Decision on page A-1. The following paragraph could be added to the document to further enforce the restrictions as previously adopted.

(g) Nothing in the foregoing paragraphs (a)-(f) shall be deemed to constitute any change in the restrictions that became effective as of January 31, 2012 pursuant to Decision Notices implementing Alternative 13A under the U.S. Forest Service's January 2012 Environmental Assessment Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor, or to authorize any such change in those restrictions, or otherwise to alter the scope of those Decision Notices.

Thank you for your time and consideration.