

(NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are not factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, and “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100, as follows:

#### PART 100—MARINE EVENTS [AMENDED]

■ 1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 9 a.m. on October 1 through 5 p.m. on October 3, 2004, add temporary § 100.T13–002 to read as follows:

#### § 100.T13–002 Special Local Regulations, Strait Thunder Hydroplane Races, Port Angeles, WA.

(a) *Regulated areas.* (1) The *race area* encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington: Point 1: 48°07′24″ N, 123°25′32″ W; Point 2: 48°07′26″ N, 123°24′35″ W; Point 3: 48°07′12″ N, 123°25′31″ W; Point 4: 48°07′15″ N, 123°24′34″ W. [Datum: NAD 1983].

(2) The *spectator area* encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington: Point 1: 48°07′32″ N, 123°25′33″ W; Point 2: 48°07′29″ N, 123°24′36″ W; Point 3: 48°07′24″ N, 123°25′32″ W, Point 4: 48°07′26″ N, 123°24′35″ W. [Datum: NAD 1983].

(b) *Definitions.* (1) For the purposes of this section, *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Port Angeles. The Coast Guard Patrol Commander is empowered to control the movement of vessels in the regulated area.

(2) For the purposes of this section, *Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or

other federal, state or local law enforcement vessel.

(c) *Special Local Regulations.* (1) From 9 a.m. on October 1, 2004 through 5 p.m. on October 3, 2004, non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds that will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Coast Guard Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

Dated: September 22, 2004.

**J.M. Garrett,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 04–21846 Filed 9–28–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 219

#### National Forest System Land and Resource Management Planning; Use of Best Available Science in Implementing Land Management Plans

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule; Interpretation.

**SUMMARY:** The Department of Agriculture is adopting this interpretative rule to clarify the intent of the transition section of the planning regulations regarding the consideration and use of the best available science to inform project decision making that implements a land management plan and, as appropriate, plan amendments.

**DATES:** This interpretative rule is effective September 29, 2004.

**ADDRESSES:** Written inquiries about this interpretative rule may be sent to the Director, Ecosystem Management Coordination Staff, USDA Forest Service, 1400 Independence Ave., SW.,

Mailstop Code 1104, Washington, DC 20250–1104.

#### FOR FURTHER INFORMATION CONTACT:

Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; Fax (202) 205–1012.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Agriculture is clarifying the effect of the transition provisions of the National Forest System land and resource management planning regulation at 36 CFR part 219 (65 FR 67514) adopted on November 9, 2000 (2000 planning rule). The transition provisions govern National Forest System planning during the transition period originally set forth in the 2000 planning rule and amended by interim final rules promulgated on May 17, 2001 (66 FR 27552), and May 20, 2002 (67 FR 35431).

Section 219.35(a) of the transition provisions requires the responsible official, during the transition period, to consider the best available science in implementing and, if appropriate, in amending existing plans. Section 219.35(b) currently allows the responsible official, during this period, to elect to prepare plan amendments and revisions using the provisions of the 1982 planning rule. Section 219.35(d) currently exempts projects implementing land and resource management plans from compliance with the substantive provisions of the 2000 planning regulation during the transition period.

The transition period began on November 9, 2000. The May 17, 2001 and May 20, 2002 interim final rules amended the 2000 planning rule to extend the transition period until final adoption of the proposed revision to the 2000 planning rule published on December 6, 2002 (67 FR 72770). During this period, while the substantive provisions of the 2000 rule are not binding, the transition provisions remain in effect.

Considerable uncertainty has arisen regarding the impact of the 2000 planning rule and the transition provisions. Some courts have properly determined the 1982 planning rule is no longer in effect. Others, however, have enforced its provisions. See, e.g., *Forest Watch v. United States Forest Service*, 322 F.Supp. 2d 522 (D. Vt. 2004) (“Applicable regulations require the Forest Service to “consider the best available science” when implementing the forest plan,” citing 36 CFR 219.35(a)); *Clinch Coalition v. Damon*, 316 F.Supp. 2d 364, 381 (W.D.Va. 2004) (suggesting that the 1982 planning rule could not be applied to a 2001 decision,

yet considering the decision under both 1982 planning rule and 2000 planning rule); *Chattooga Conservancy v. USFS and Georgia Transmission Corporation*, 2:03-CV-0101 (March 3, 2004) (1982 planning rule provision “eliminated when the National Forest System Land and Resource Management Planning rule was amended in November of 2000.”); *Shawnee Trail Conservancy v. Nicholas*, Case No. 02-cv-4065-JPG (S.D. Ill.) (June 30, 2004) (“On November 9, 2000, the Department of Agriculture made wholesale changes to the relevant regulations, making prior citations obsolete.”). This uncertainty has affected the ability of the Forest Service to utilize fully the provisions of § 219.35 paragraph (a) to consider the best science available in plan amendments and project decision making. For example, while population data have been held to be required for management indicator species under the 1982 rules, other tools often can be useful and more appropriate in predicting the effects of projects that implement a land management plan, such as examining the effect of proposed activities on the habitat of specific species; using information identified, obtained, or developed through a variety of methods, such as assessments, analysis, and monitoring results; or using information obtained from other sources such as State fish and wildlife agencies and organizations such as The Nature Conservancy. The purpose of this interpretative rule is to clarify that, both for projects implementing plans and plan amendments, paragraph (a)’s mandate to use the best available science applies.

The transition provisions as originally enacted, and now twice amended, explicitly refer to the 1982 planning rule as the rule “in effect prior to November 9, 2000.” At the same time, given the extension of the effective date of paragraph (d), within which site-specific decisions must comply with the 2000 planning rule (68 FR 53294), it is clear that site-specific decisions entered into during the transition period are not to comply with the substantive provisions of the 2000 planning rule. This interpretative rule clarifies that until a new final rule is promulgated, the transition provisions of the 2000 planning rule, as amended by the May 2002 interim final rule remain in effect, including the requirement of § 219.35 paragraph (a) of the transition provisions that responsible officials consider the best available science in implementing national forest land management plans and, as appropriate, plan amendments. Pursuant to

paragraph (b), the provisions of the 1982 planning rule may continue to be used only for plan amendments and revisions upon election of the responsible official. Appropriate plan amendments and projects proposed during the transition period should be developed considering the best available science in accordance with § 219.35 paragraph (a).

#### Conclusion

Misunderstandings have arisen concerning the law to be applied to site-specific projects and plan amendments decided during the transition period. To clarify the intent of § 219.35, the Department is adopting this interpretative rule.

This rulemaking consists of an interpretative rule and is issued by the Department to advise the public of the Department’s preexisting construction of one of the rules it administers—that is, 36 CFR 219.35, in the context of National Forest System land and resource management planning. See, e.g., *Shalala, Secretary of Health and Human Services v. Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

#### Regulatory Certifications

##### *Regulatory Impact*

It has been determined that this is not an economically significant rule. This interpretative rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rulemaking will not interfere with an action taken or planned by another agency. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this rulemaking has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It is therefore certified that this rule will not have a significant economic impact on a substantial number of small entities as defined by

the Act. This rule will not impose record keeping requirements; will not affect small entities’ competitive position in relation to large entities; and will not affect small entities’ cash flow, liquidity, or ability to remain in the market.

##### *Environmental Impact*

This rulemaking has no direct, indirect, or cumulative effect on the environment, but merely clarifies the intent of the Department concerning the consideration of the best available science to inform decision making that implements land management plans. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction.” Based on the nature and scope of this rulemaking, the Department has determined that the interpretative rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

##### *No Takings Implications*

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the rule will not pose the risk of a taking of private property, as the interpretative rule is limited clarification of the intent of the transition procedures in the November 9, 2000, planning rule.

##### *Energy Effects*

This rule has been analyzed under Executive Order 13211, 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.

##### *Civil Justice Reform*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

##### *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 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.

#### *Federalism*

The Department has considered this rule under the requirements of Executive Order 13132, Federalism. The Department has determined that the rule conforms with the federalism principles set out in this Executive order; will not impose any significant compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### *Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with Tribes is not required.

#### *Controlling Paperwork Burdens on the Public*

This rule does not contain any recordkeeping or reporting requirements or other information collection requirement as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320, Controlling Paperwork Burden on the Public, do not apply.

#### *Government Paperwork Elimination Act Compliance*

The Department is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C. 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### **List of Subjects in 36 CFR Part 219**

Administrative practice and procedure, Environmental impact statements, Forest and forest products, Indians, Intergovernmental relations, National Forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is amended as follows:

#### **PART 219—PLANNING**

##### **Subpart A—National Forest System Land and Resource Management Planning**

■ 1. The authority citation for subpart A continues to read as follows:

**Authority:** 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

■ 2. Add an appendix at the end of § 219.35 to read as follows:

\* \* \* \* \*

#### **Appendix B to § 219.35**

##### **Interpretative Rule Related to Paragraphs 219.35(a) and (b)**

The Department is clarifying the intent of the transition provisions of paragraphs (a) and (b) of this section with regard to the consideration and use of the best available science to inform project decisionmaking that implements a land management plan as follows:

1. Under the transition provisions of paragraph (a), the responsible official must consider the best available science in implementing and, if appropriate, in amending existing plans. Paragraph (b) allows the responsible official to elect to prepare plan amendments and revisions using the provisions of the 1982 planning regulation until a new final planning rule is adopted. A proposed rule to revise the November 9, 2000, planning regulations was published in the **Federal Register** on December 6, 2002 (67 FR 72770). A new final rule has not been promulgated.

2. Until a new final rule is promulgated, the transition provisions of § 219.35 remain in effect. The 1982 rule is not in effect. During the transition period, responsible officials may use the provisions of the 1982 rule to prepare plan amendments and revisions. Projects implementing land management plans must comply with the transition provisions of § 219.35, but not any other provisions of the 2000 planning rule. Projects implementing land management plans and plan amendments, as appropriate, must be developed considering the best available science in accordance with § 219.35(a). Projects implementing land management plans must be consistent with the provisions of the governing plan.

Dated: September 24, 2004.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

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**BILLING CODE 3410–11–P**

#### **POSTAL SERVICE**

##### **39 CFR Parts 3, 4, and 6**

##### **Bylaws of the Board of Governors**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** On September 14, 2004, the Board of Governors of the United States Postal Service adopted a number of amendments to its Bylaws. These amendments changed the quorum of Governors required to vote on a recommended decision of the Postal Rate Commission, reserved the election of the Board's Vice Chairman to the Governors, and altered the rules for scheduling meetings. Consequently, the Postal Service hereby publishes this final rule.

**EFFECTIVE DATE:** September 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000; (202) 268–4800.

**SUPPLEMENTARY INFORMATION:** This document publishes amendments to parts 3, 4, and 6 of 39 CFR, amending the Bylaws of the Board of Governors of the United States Postal Service. The Board amended parts 3 and 4 to reserve the election of the Board's Vice Chairman to a vote of the Governors, rather than a vote of the entire Board. In part 6, the Board changed the procedure for establishing an annual schedule of meetings to conform to current practice. The Board also amended part 6 to change from 5 to 4 the number of Governors required for a quorum to vote on a recommended decision of the Postal Rate Commission.

#### **List of Subjects in 39 CFR Parts 3, 4, 6**

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

■ Accordingly, parts 3, 4, and 6 of 39 CFR are amended as follows:

#### **PART 3—[AMENDED]**

■ 1. The authority citation for part 3 continues to read as follows:

**Authority:** 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 414, 416, 1003, 2802–2804, 3013; 5 U.S.C. 552b(g), (j); Inspector General Act, 5 U.S.C. app.; Pub. L. 107–67, 115 Stat. 514 (2001).

#### **§ 3.3 [Amended]**

■ 2. Amend § 3.3 by removing and reserving paragraph (a).

■ 2.a. Amend § 3.4 by revising paragraph (c) to read as follows: