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CHAPTER 30 – PROVIDING NOTICE AND OPPORTUNITY TO COMMENT ON
DIRECTIVES

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This chapter specifies when public notice and an opportunity to comment are required for Forest Service directives and the procedures for meeting those requirements.

31 – FOREST SERVICE PUBLIC NOTICE AND COMMENT SYSTEM

The Agency provides opportunities for public input on directives that are subject to notice and comment requirements. The Agency utilizes the Forest Service’s Regulations and Policies webpage for public notice and comment. In addition, a Notice of Availability is published in the *Federal Register* to notify the public that a directive is available for public comment. The Agency uses notices of proposed and interim directives and an e-mail subscription service to share information regarding public comment opportunities.

The Forest Service public notice and comment system is consistent with the Office of Management and Budget’s (OMB) direction, including the Final Bulletin for Agency Good Guidance Practices (GGP), on Agency guidance. The purpose of the GGP is to ensure that guidance documents, such as the Forest Service Directive System, are developed with appropriate public participation, are accessible and transparent to the public, and are of high quality.

31.1 – Directives Subject to Public Notice and Comment Requirements

A Forest Service directive is subject to public notice and comment if it:

1. Has been designated by OMB as a “significant guidance document,” as defined in Section I.4 of the GGP (72 Fed. Reg. 3439 (Jan. 25, 2007)); or
2. Formulates standards, criteria, or guidelines applicable to Forest Service programs (16 U.S.C. 1612(a); 36 CFR Part 216).

Directives may be published for public comment even when it is not required.

31.11 – Significant Directives

The GGP requires that directives designated as significant by OMB’s Office of Information and Regulatory Affairs (OIRA) be published for public comment. Directives designated as significant are also subject to review by OIRA. Significant guidance documents include agency statements of general applicability and future effect, other than regulations, that set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue, and that have the effects described in Section I(4)(i)-(iv) of the Bulletin and section 31.11, paragraphs 1a through 1d, of this Chapter. To obtain a significance determination from OIRA, USDA will periodically provide to OIRA a list of draft directives that are subject to public notice and comment requirements per section 31.12, including USDA’s recommendation as to which of those draft directives should be designated as significant by OMB. If OIRA determines a draft directive is significant, it will be submitted to OMB for review.

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1. A directive is considered to be significant if it may reasonably be anticipated to:
 - a. Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - c. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended.
2. Directives that do not meet any of these criteria are considered non-significant. Per the GGP, directives purely focused on internal agency policies are excluded from review for significance.

31.12 – Directives that Formulate Standards, Criteria, or Guidelines Applicable to Forest Service Programs

Public notice and opportunity to comment are required for directives that formulate standards, criteria, or guidelines applicable to Forest Service programs (16 U.S.C. 1612(a); 36 CFR Part 216). "Formulate" refers to development of new directives or modification or removal of existing directives.

1. Public notice and opportunity to comment are not required for directives that do not formulate standards, criteria, or guidelines (16 U.S.C. 1612(a); 36 CFR Part 216). Examples of directives that do not formulate standards, criteria, or guidelines and therefore do not require public notice and opportunity to comment include directives that:
 - a. Implement a court order, statute, regulation, executive order, or memorandum of understanding that the Forest Service lacks discretion to interpret;
 - b. Correct typographical, grammatical, or legal errors; update statutory or regulatory authorities; or reformat or reorganize existing content;
 - c. Make a purely technical change to be consistent with applicable law;
 - d. Reinforce the agency's preexisting interpretation of an existing rule or directive;
or

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- e. Have no or negligible effect on a Forest Service program.
2. Public notice and opportunity to comment are not required for directives that do not apply to Forest Service programs (16 U.S.C. 1612(a); 36 CFR Part 216). The following are not Forest Service programs, and therefore directives applicable to them do not require public notice and comment:
 - a. Law enforcement and investigations;
 - b. Personnel matters;
 - c. Procurement;
 - d. Administrative support activities such as budget and finance; and
 - e. Activities undertaken by the Forest Service on behalf of other federal agencies (36 CFR Part 216.1(b)).

31.2 – When Part of a Directive is Subject to Public Notice and Comment Requirements

An entire directive does not require public notice and opportunity to comment if only a part or parts of it formulate standards, criteria, or guidelines applicable to Forest Service programs. Only the part or parts of that directive that formulate standards, criteria, or guidelines applicable to Forest Service programs require public notice and opportunity to comment.

31.3 – Directive Supplements

Forest Service units have the authority to issue supplements to Service-wide directives to address region- or forest-specific circumstances, consistent with corresponding Service-wide directives (36 CFR 200.4). Directive supplements that have been designated by OIRA as significant guidance documents, or that formulate standards, criteria, or guidelines applicable to Forest Service programs, require public notice and opportunity to comment.

31.4 – Interim Directives

Upon a showing of good cause, the Agency may issue a directive that is subject to public notice and comment as an interim directive, which goes into effect immediately upon publication. Interim directives are still subject to review by OIRA for a determination of significance before publication. The Agency will seek public comment, consistent with this chapter, upon issuance of an interim directive. The interim directive will serve as the public notice for the final directive, and timely comments received on the interim directive will be considered in developing the final directive. The Agency will complete the public notice and comment process for the interim directive before issuing the final directive. The final directive will be published

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no later than 36 months after the interim directive is published, unless an extension is granted by the appropriate Deputy Chief. See FSM 1100 for additional direction on interim directives.

Good cause for purposes of issuance of an interim directive includes but is not limited to situations where delaying implementation until after completion of the public notice and comment process would:

1. Violate applicable law, such as when delay in implementation would result in noncompliance with a statute or court order;
2. Result in inability to implement a statute or regulation which requires directives to set out details for implementation; or
3. Create unfairness to the public.

31.5 – Determining Whether a Directive Must be Made Available for Public Comment

The Deputy Chief with authority over the program to which a directive or directive supplement applies will determine whether that directive or directive supplement must be made available for public comment pursuant to 36 CFR Part 216 (sec. 31.12 of this chapter) and whether there is good cause that an exigency exists to support publication of an interim directive (sec. 31.3).

32 – PROCEDURES FOR PROVIDING NOTICE AND OPPORTUNITY FOR THE PUBLIC TO COMMENT ON PROPOSED AND INTERIM DIRECTIVES

The Agency’s procedure for providing notice and opportunity to comment is to provide notice of directives that will be published in the next 3 months, inform the public when a proposed or interim directive is available for comment, consider timely public comments in developing a final directive, and publish a final directive. Table 1 identifies the stages of the public notice and comment process discussed in this section. The Washington Office manages notice and comment procedures, when required, for directives and directive supplements.

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Table 1: Summary of Public Notice and Comment Procedures for Directives
<p><u>Step 1. Publish Advance Notice.</u> The intent to propose a directive, or to issue an interim directive, with a brief description, will be set out in the Forest Service Directive Publication Notice, published quarterly in the <i>Federal Register</i>, and posted on the Forest Service’s Directives and Policies webpage (sec. 32.1).</p>
<p><u>Step 2. Notify the Public When a Proposed or Interim Directive is Available for Comment.</u> A proposed or interim directive will be posted on the Forest Service’s Regulations and Policies webpage, and a Notice of Availability will be published in the <i>Federal Register</i> (sec. 32.2).</p>
<p><u>Step 3. Consideration of Comments.</u> At the close of the comment period, the Agency will consider timely comments on the proposed or interim directive and revise it as needed (sec. 32.3).</p>
<p><u>Step 4. Finalize Directive.</u> The final directive will be published in the Directive System and on the Forest Service’s Regulations and Policies webpage and will be listed in the quarterly Directive Publication Notice, which will be published in the <i>Federal Register</i>. The Agency’s response to comments received on the proposed or interim directive will also be posted on the Agency’s Regulations and Policies webpage (sec 32.4).</p>

32.1 – Directive Publication Notice

After a proposed or interim directive is cleared for publication for public comment, the Servicewide Directive Manager will include it in a Directive Publication Notice published quarterly in the *Federal Register* and posted on the Forest Service’s Regulations and Policies webpage, to provide advance notice that the directive will be published for public comment.

The Forest Service Directive Publication Notice includes:

1. A list of proposed and interim directives that the Agency plans to publish for public comment during the next 3 months, along with a brief description of each
2. A link to the description of public outreach methods planned for each proposed or interim directive to let the public know what to expect regarding the public notice and comment process, and so that members of the public may recommend changes that could improve the effectiveness of planned communication strategies.
3. A list of every proposed and interim directive that has been published for public comment and that has not yet been issued as a final directive, along with the status of its review and approval.

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4. A list of proposed and interim directives that were finalized in the prior quarter.
5. Any additional information that may be helpful to the public in understanding the status of the Directive System.
6. The name, e-mail address, and telephone number of a Forest Service employee to contact for more information or to whom to provide feedback on the Public Engagement Plan.

32.2 – Notifying the Public of the Availability of a Proposed or Interim Directive for Public Comment

1. Notice of Proposed Directive. Once a proposed directive is cleared for publication, the Agency shall post the directive on the Forest Service’s Regulations and Policies webpage and shall publish a notice of availability (NOA) of the directive in the *Federal Register*. The NOA will include a link to the directive on the Forest Service’s Regulations and Policies webpage. The posting of the proposed directive on the Forest Service’s Regulations and Policies webpage and publication of the NOA will be at least 15 days after advance notice of the directive was published in the Directive Publication Notice.

2. Notice of Interim Directive. The Agency may issue an interim directive prior to inclusion in a Directive Publication Notice, but must include the interim directive in the next Directive Publication Notice.

32.21 – Comment Period

The comment period starts on the date the NOA is published in the *Federal Register*. The Agency has discretion to determine the comment period that is appropriate for each proposed or interim directive, subject to the following requirements and guidance:

1. The comment period for significant directives, including economically significant directives, is at least 60 days.
2. The comment period for interim directives that were published prior to inclusion in a quarterly Directive Publication Notice must extend at least 30 days after the publication of the quarterly Directive Publication Notice published after an interim directive.
3. The comment period for all other directives subject to public notice and comment is at least 30 days. The Agency may provide a longer comment period, if needed.

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32.22 – Required Information to be Provided in a Notice of Availability and on the Forest Service’s Regulations and Policies Webpage

The Forest Service must provide the information listed below for each proposed or interim directive in a Notice of Availability (NOA) and on the Forest Service’s Regulations and Policies webpage:

1. For the NOA only, a link to the proposed directive on the Forest Service’s Regulations and Policies webpage. For significant directives, the NOA must state that the directive is considered significant by OIRA.
2. The comment period (see sec. 31.21).
3. Directions for submitting comments, with a link to an electronic comment form on the Comment and Analysis Response Application (CARA) platform, including digital submission via facsimile, e-mail or via a telecommunications device for the deaf.
4. A summary of the proposed or interim directive.
5. Identification of any issues on which the Agency particularly seeks public comment.
6. For interim directives, the basis for the determination that good cause exists for the interim directive to go into effect upon publication, rather than upon completion of the public notice and comment process (36 CFR 216.3, 216.4; sec. 30.3).
7. For the Forest Service webpage only,
 - a. any additional information that the responsible program staff believes may be helpful to the public.
 - b. Information on how to track the public notice and comment process for the directive, including how to register for e-mail notification of publication of the final directive.
 - c. A description of all public notice methods.
8. The name, e-mail address, and telephone number of a Forest Service employee to contact for more information.

32.23 – Other Public Information Materials

All other mechanisms that the Agency may choose to use in addition to the NOA and posting on the Forest Service’s Regulations and Policies webpage to notify the public of the availability of a proposed or interim directive for public comment should include a link to the directive on the

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Agency’s Regulations and Policies webpage, along with directions for submitting comments electronically or via a telecommunications device for the deaf.

32.3 – Consideration of Public Comments and Finalizing the Directive

After the public comment period closes, the authoring staff must consider all timely and relevant comments on the proposed or interim directive in developing a final directive. The authoring staff should revise the proposed or interim directive as needed. There is no requirement to adopt any recommendation received. Written response to comments must be provided, including when appropriate an explanation of the Agency’s reasoning. The Agency has discretion to determine the most effective approach to responding to comments.

32.4 – Compliance with the Congressional Review Act

Prior to issuance, final directives that have been designated as significant must be submitted to OIRA for a determination of whether they should be designated as a major rule under the Congressional Review Act. Non-significant directives are presumptively non-major and do not have to be provided to OIRA for designation under the Congressional Review Act.

32.5 – Notifying the Public of Issuance of a Final Directive

Notice of all final directives must be posted on the Forest Service’s Regulations and Policies webpage, included in the quarterly Directive Publication Notice, and sent to those who registered for e-mail notification of publication of the final directives. A notice of a final directive posted on the Forest Service’s Regulations and Policies webpage should include:

1. Identification of changes that were made to the proposed or interim directive and the reasons for those changes.
2. A response to timely comments on the proposed or interim directive.
3. A link to the final directive.

A notice of a final directive sent to those who registered for e-mail notification of publication of a final directive should include a link to the notice of the final directive posted on the Forest Service’s Regulations and Policies webpage.

33 – PUBLIC NOTICE METHODS

The Regulations and Policies webpage and Directive Publication Notice should provide a concise description of how the Agency will engage the public and, as appropriate, other governmental entities during the public notice and comment process for a proposed or interim directive, to provide a framework for consistent, effective, appropriate and transparent engagement (sec. 32.1(2)).

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Public outreach methods should reflect the anticipated degree of interest in the proposed or interim directive. For many proposed or interim directives, the required public notice and 30-day comment period are appropriate, but for directives that are complex or novel, or are of specific interest to the public, more robust public engagement may be appropriate.

Including a description of public outreach methods in the quarterly Directive Publication provides an opportunity for the Agency to obtain feedback on outreach methods and to understand which proposed and interim directives are of particular interest to the public, states, local governments, and tribes, and facilitate effective public and intergovernmental communication.

33.1 – Description of Public Notice Methods

It is important to describe how the Agency intends to communicate with the public and, as appropriate, other governmental entities based on the directive's complexity, and novelty, and the anticipated degree of public interest in the directive. The description of public notice methods in the quarterly Directive Publication Notice must:

1. In addition to the Forest Service's Regulations and Policies webpage, the NOA in the *Federal Register*, and the e-mail subscription service, which will always be used, identify any other mechanisms, if any, the Forest Service intends to use for providing public notice.
2. Describe any additional public engagement opportunities, such as public meetings and public informational webinars that may be provided, including directions for participation.
4. Indicate how the public may request services, such as translation or interpretation services, in advance of a public event.
5. Describe any anticipated intergovernmental engagement, including tribal consultation, as appropriate (see sec. 34 for additional guidance on intergovernmental engagement).
6. Describe how the public can track the public notice and comment process.

33.2 – Changes to Planned Public Outreach Methods

The description of public outreach methods does not impose requirements on the Agency, and the Agency may make changes to planned public outreach methods at any time. For example, if there is strong public response on a particular issue, the Agency may elect to add public informational webinars that were not initially anticipated and included in a Directive Publication Notice. Alternatively, resource constraints or unanticipated conditions may preclude planned public meetings.

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33.3 – Federal Advisory Committee Act Compliance

Generally, the goal of public notice and comment on proposed and interim directives is not to obtain consensus advice. A carefully developed Public Engagement Plan is a good resource for ensuring that public engagement is designed so that consensus advice is not sought and Federal Advisory Committee Act (FACA) requirements are not triggered.

Consultation with the Directives and Regulations Branch and the Office of the General Counsel is recommended when additional mechanisms for public engagement besides public meetings and public informational webinars will be used (sec. 33.1, para. 2), to ensure those mechanisms are consistent with FACA.

34 – INTERAGENCY AND INTERGOVERNMENTAL COMMUNICATION

It is the policy of the Forest Service to ensure appropriate interagency and intergovernmental communication when developing or amending directives that are subject to public notice and comment.

34.1 – Engagement with States and Local Governments

The Agency may engage with elected officials of state, local, and tribal governments or their designees to exchange views, information, or advice on proposed or interim directives without being required to charter a FACA committee. Examples of elected officials of state and local governments in this context may include the Governor or Mayor. Any designations of authority by elected officials must be made in writing and must be provided to the Agency.

34.2 – Forest Service Tribal Consultation

See FSH 1509.13 for guidance on working with the Forest Service Office of Tribal Relations (OTR) to determine when formal tribal consultation is required for proposed and interim directives. When required, formal tribal consultation should be initiated early in the process of developing proposed and interim directives and must last for at least 120 days.

OTR is responsible for ensuring dissemination of proposed and interim directives to tribes. OTR will facilitate communications among tribes, the Directives and Regulations Branch, and the responsible program staff (FSM 1563).

34.3 – Interagency Communication

Coordinate with any other federal agency about a proposed or interim directive if there is reason to believe that there may be a conflict with that federal agency's existing or proposed policies, or if that agency would have an interest in the proposed or interim directive.

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Proposed Directive

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A directive may be designated as significant if it creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency (sec. 30.11). In this case, interagency review will be facilitated by OIRA.