

Defenders of Wildlife  
Center for Biological Diversity • Environmental Protection Information Center  
Friends of the Bitterroot • Friends of the Inyo • Grand Canyon Trust  
High Country Conservation Advocates • Idaho Conservation League • Klamath Forest Alliance  
Ohio Environmental Council • Rocky Mountain Wild • San Luis Valley Ecosystem Council  
The Wilderness Society • Western Environmental Law Center • WildEarth Guardians  
Yellowstone to Uintas Connection

---

Office of Regulatory and Management Services  
c/o Michael Migliori  
USDA Forest Service  
2014 14<sup>th</sup> Street SW  
Washington, DC 20024

Submitted electronically to <http://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2016>

March 16, 2020

Dear Mr. Migliori:

Please accept the following comments from Defenders of Wildlife, Center for Biological Diversity, Environmental Protection Information Center, Friends of the Bitterroot, Friends of the Inyo, Grand Canyon Trust, High Country Conservation Advocates, Idaho Conservation League, Klamath Forest Alliance, Ohio Environmental Council, Rocky Mountain Wild, San Luis Valley Ecosystem Council, The Wilderness Society, Western Environmental Law Center, WildEarth Guardians, Yellowstone to Uintas Connection on the Forest Service's proposed directive FSH 1109.12 Chapter 30 – Providing Notice and Opportunity Comment on Directives. Our organizations regularly engage with the agency on the development and implementation of directives, and therefore welcome the opportunity to engage in this process. We were generally supportive of the final rule governing the Forest Service directives system (36 CFR 216) and appreciate the agency's efforts to encourage transparency and accessibility in the formulation of agency directives.

**Directives that do not require public notice and comment**

Section 31.12 provides examples of directives that do not formulate standards, criteria, or guidelines and thus do not require public notice and comment. We think the usefulness of this guidance may be improved by providing examples under several of the categories. For instance, an example of a statute/regulation/executive order that the agency lacks discretion to interpret would be instructive, as would an example of a directive that reinforces the agency's preexisting interpretation of an existing rule or directive. It may also be effective to see an example of a directive applicable to activities undertaken by the Forest Service on behalf of other federal agencies. In this latter case, the proposed directive simply repeats the language from the regulation, and therefore does not add explanatory value for decisionmakers or the public.

### **Interim directives, “good cause” and “unfairness to the public”**

Section 31.4 outlines guidance for interim directives. The section states that there will be a “showing of good cause.” This language should probably be changed to a “determination of good cause” to reflect the language in Section 31.5 (a determination made by the Deputy Chief with authority over the program). We appreciate the effort to establish criteria for interpreting the “good cause” language found in the regulation. While it seems reasonable to issue an interim directive in those cases where delayed implementation would “create unfairness to the public,” we believe that this broad criterion could be challenging to apply and thus complicate decisions. We suggest that the agency provide several examples of how this factor would be applied.

### **Public outreach methods and confusion over the “Public Engagement Plan”**

Section 32.1 describes the quarterly Directive Publication Notice. Included in the notice will be 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.” This is a good idea: as noted in Section 33, “directives that are complex or novel, or are of specific interest to the public” may warrant “more robust public engagement.”

However, the directives could be clearer about how feedback on outreach methods will be processed. For instance, will the agency formally respond to those public recommendations? Might it be possible for the agency to show the comments that the public has submitted regarding feedback on outreach methods? This would help illustrate cases where there may be “strong public response on a particular issue”, as described in Section 33.2. In addition, we would suggest that the Forest Service synthesize the feedback it receives on outreach methods and provide “lessons learned” or best practices to agency personnel system-wide, so that future public engagement will be as meaningful as possible.

There will likely be high public interest in the development of public outreach methods, including possible changes to the outreach plans for any given issue. Section 33.2 notes that the “description of public outreach methods does not impose requirements on the Agency, and the Agency may make changes to the planned public method at any time,” including canceling planned public meetings. How will the public learn about changes to the public outreach methods? We caution the agency against abrupt changes to announced public engagement plans, which serves to undermine confidence in the Forest Service and its ability to set and meet public expectations.

In the table of contents for the proposed directive, Section 33 is entitled “Public Engagement Plan,” 33.1 is listed as “Contents of a Public Engagement Plan,” and 33.2 is listed as “Changes to the Public Engagement Plan.” But in the content of the proposed directive, Section 33 is entitled “Public Notice Methods,” 33.1 is entitled “Description of Public Notice Methods,” and 33.2 is entitled “Changes to the Public Outreach Methods.” The inconsistency between the table of contents and the content of the sections is confusing and needs to be remedied.

Furthering confusion, the proposed directive references a “Public Engagement Plan” on several occasions. Section 32.1 states that the Directive Publication Notice will include the contact information of the Forest Service employee responsible for the “Public Engagement Plan.” Section 33.3 states that

“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.” The idea of a Public Engagement Plan makes sense considering the importance and public interest in outreach and participation in decisionmaking, but it is not clear if the directives require its development. The agency should clarify this issue before finalizing the directive.

Section 32.3, addressing “the consideration of public comments,” would be improved with additional specificity and certainty. We request adding “to incorporate improvements and factual corrections” to the sentence, “The authoring staff should revise the proposed interim directives as needed.” We ask that the last two sentences of Section 32.3 be modified to read, “Written agency response to comments must be publicly available, there is no requirement to adopt any recommendation received.”

Thank you for your consideration of these recommendations. If you have any questions, please do not hesitate to contact Peter Nelson, listed below.

Sincerely,

Peter Nelson  
Defenders of Wildlife  
215 S. Wallace Avenue  
Bozeman MT, 59715  
406-556-2816  
pnelson@defenders.org

Susan Jane Brown  
Western Environmental Law Center  
brown@westernlaw.org

Alison Flint  
The Wilderness Society  
Alison\_flint@twes.org

Judi Brawer  
WildEarth Guardians  
jbrawer@wildearthguardians.org

Nathan Johnson  
Ohio Environmental Council  
njohnson@theoec.org

Alison Gallensky  
Rocky Mountain Wild  
alison@rockymountainwild.org

John Robison  
Idaho Conservation League  
jrobison@idahoconservation.org

Christine Canaly, Director  
San Luis Valley Ecosystem Council  
info@slvec.org

Matt Reed  
High Country Conservation Advocates  
matt@hccacb.org

Larry Campbell  
Friends of the Bitterroot  
news@friendsofthebitterroot.net

Logan Glasenapp  
New Mexico Wilderness Alliance  
Logan@NMWild.org

Mary O'Brien  
Grand Canyon Trust  
maryobrien10@gmail.com

Kimberly Baker  
Klamath Forest Alliance  
Orleans, CA 95556

Thomas Wheeler  
Environmental Protection Information Center  
(EPIC)  
tom@wildcalifornia.org

Jason Christensen  
Yellowstone to Uintas Connection  
Jason@yellowstoneuintas.org

Jora Fogg  
Friends of the Inyo  
jora@friendsoftheinyo.org

Justin Augustine  
Center for Biological Diversity  
jaugustine@biologicaldiversity.org