

**Forest Service Manual
National Headquarters - Washington Office
Washington, DC**

**Forest Service Manual 1000 – Organization and Management
Zero Code 1010 – Laws, Regulations and Orders**

Amendment: 1000-92-2

Effective date: May 06, 1992

Duration: This amendment is effective until superseded or removed.

Superseded Directive: Amendment 1000-92-1 to FSM 1013-1016 Zero Code

Approved by: F. Dale Robertson, Chief

Date approved:

Responsible Staff:

POSTING NOTICE. Amendments are numbered consecutively by title and calendar year. Post by document name. Remove entire document and replace with this amendment. Retain this transmittal as the first page of this document. The last amendment to this Title was Amendment 1000-92-1 to 1013-1016 Zero Code.

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

1013.01e: Exhibit 01 - This is a technical amendment to correct the date from February 17, 1961 to February 17, 1981.

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1013 - Regulations and Notices

This section provides guidance for issuing regulations and publishing notices in the Federal Register.

1013.01 - Authority

1013.01a - Authority to Issue Regulations

1. The general authority of the Secretary of Agriculture to prescribe regulations derives from 5 U.S.C. 301. The basic authority of the Secretary to issue regulations regarding occupancy and use of the National Forest System is the Organic Administration Act of June 4, 1897 (16 U.S.C. 551). Numerous statutes direct the Secretary to issue regulations for specific purposes, for example, the National Forest Management Act (16 U.S.C. 1600 et. seq.), the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1701 et. seq.), and the Wilderness Act (16 U.S.C. 1131 et. seq.).
2. The authority to issue final rules and regulations that govern and implement Forest Service activities is reserved to the Secretary of Agriculture (7 CFR 2.43(b)(1)). The only exceptions are that the Chief may issue technical corrections to final rules (7 CFR 2.42(p)) and the Chief and those Regional Foresters to whom the Chief has delegated such authority may issue regulations prohibiting certain acts or omissions related to protection of National Forest resources, property, and public health and safety (36 CFR Part 261).

1013.01b - Public Comment Requirements

1. The Administrative Procedures Act (APA) (5 U.S.C. 551 et. seq.) is the basic government-wide authority for rulemaking. It requires agencies to give the public notice of and the opportunity to comment on all proposed rules and statements having general applicability and legal effect; sets time requirements for public notice; and specifies procedures to be followed in the rulemaking process (5 U.S.C. 533).

The Act excludes from rulemaking interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.

2. Under the property management clause at 5 U.S.C. 553(a)(2), the Forest Service is exempt from the public notice and comment provisions of APA; however, the Secretary of Agriculture has voluntarily extended APA requirements for public notice and comment to all Department of Agriculture agencies (36 FR 13804). The Secretary's policy permits exceptions to public notice and comment where there is a substantial basis for issuing a rule without advance public notice. Office of Management and Budget procedures require the agency and Office of the General Counsel to certify a determination that public notice and comment is not required.

3. Forest Service regulations at 36 CFR Part 216 implement section 11 of the National Forest Management Act and require agency personnel to determine whether agency policies issued through the Forest Service Manual should be published for public comment. The rules provide criteria for making the determination, specify the time periods for such public comment, and state the media that maybe used to publish such notices.

1013.01c - Public Notice Requirements

The Administrative Procedure Act as amended by the Freedom of Information Act (5 U.S.C. 551, 552(a)(1)) requires each Federal agency to:

"(1) ...separately state and currently publish in the Federal Register for the guidance of the public—

(C) rules of procedure...

(D) substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated by the agency; and

(E) each amendment, revision, or repeal of the foregoing."

The Act further provides that except to the extent that a person has actual and timely notice of the terms of rules of procedures, substantive rules, and statements of general applicability (including amendments and revisions), "a person may not in any manner be required to resort to, or be adversely affected by, a matter required to published in the Federal Register and not so published."

1013.01d - Federal Register Document Requirements

The Federal Register Act (43 U.S.C. Chapter 15) and implementing regulations at 1 CFR Chapters I and II specify format, content, and filing requirements for notice and rule documents. Many of these requirements are illustrated and interpreted in the Federal Register Document Drafting Handbook, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1013.01e - Regulatory Review and Coordination

1. Executive Order 12291 (ex. 01) seeks to remove regulatory burdens on the public; establishes criteria for classifying rules as major or nonmajor in terms of their regulatory and economic impact; establishes uniform decision criteria that agency heads must use in selecting regulatory approaches; mandates Office of Management and Budget (OMB) review of all rules; and requires agencies to give notice of rulemaking activities through the Uniform Semi-annual Regulatory Agenda. For purposes of regulatory review, E.O. 12291 defines a rule more broadly than the Administrative Procedure Act and thus

makes interpretative rules, general statements of policy, and agency practice and procedure subject to OMB review.

2. Departmental Regulation (DR) 1512-1 provides direction to USDA agencies for implementing E.O. 12291. It requires advance notice to the Secretary (or Assistant Secretary) of plans to issue rules, establishes the approvals needed on rules prepared in USDA, and requires review of existing regulations on a 5-year cycle.
3. Executive Order 12498 requires each Department to prepare annually a Regulatory Program listing significant rulemaking and pre-rulemaking actions. The order requires Departments to submit their draft Regulatory Programs to the Office of Management and Budget (OMB) for review and coordination with other Departments and for consideration for inclusion in the President's Annual Regulatory Program. Under this executive order, OMB can prohibit an agency from issuing any regulation that is deemed significant and that has not been identified in advance as part of the Department's Regulatory Program. OMB may not prohibit an agency from issuing a regulation in response to court order, statutory requirement, or an emergency.
4. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.) requires agencies to determine if a rule would have a significant regulatory impact on small entities (businesses, organizations, or governmental entities) and if so to solicit and consider flexible regulatory approaches, or compliance standards for small entities. The intent is to ensure that requirements, particularly paperwork burdens, are tailored to the size and capabilities of small entities and do not impose an unfair disadvantage on small businesses, governments, or organizations. Rule documents must address the impact on small entities. The act further requires agencies to review their regulations on a 10-year cycle to minimize any significant economic impact on small entities.
5. Executive Order No. 12630 (March 15, 1988; 53 FR 8659) requires agencies to review their proposed policies and rules to prevent unnecessary takings of private property and to identify potential takings implications in proposed policies and rules. The Executive Order establishes general principles to guide Executive agencies in formulating or implementing policies and rules with takings implications. The order requires agencies to identify and address significant takings implications in proposed rules. Agency implementation of the order is governed by the "Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" (June 30, 1988) and by such guidelines as the USDA Office of General Counsel may issue.

6. Executive Order 12778 (October 25, 1991; 56 FR 55195) contains provisions designed to reduce litigation caused by poorly drafted Federal regulations and requires agencies to certify compliance with these provisions to the Office of Management and Budget. In promulgating new regulations and reviewing existing regulations, agencies must certify that they are:
 - a. Eliminating ambiguity and are writing to minimize needless litigation;
 - b. Providing clear and certain legal standards;
 - c. Specifying preemptive effects on the powers of State government, if any, in clear language;
 - d. Specifying retroactive effects, if any;
 - e. Specifying whether administrative proceedings are to be required before parties may file suit in court, and, if so, describing those proceedings and requirements for exhaustion of administrative remedies.

These requirements must be addressed in the preamble of the regulation and separately certified for compliance by the Office of the General Counsel staff attorney. If it is unreasonable to require the regulation to meet one or more of these standards, E.O. 12778 provides that the certification must include an explanation of the reasons for the departure from the standards.

1013.01e - Exhibit 01

Executive Order 12291 of February 17, 1981

Federal Regulations

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. Definitions. For the purposes of this Order:

- (a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:
 - (1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;
 - (2) Regulations issued with respect to a military or foreign affairs function of the United States; or
 - (3) Regulations related to agency organization, management, or personnel.
- (b) "Major rule" means any regulation that is likely to result in:
 - (1) An annual effect on the economy of \$100 million or more;
 - (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
 - (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.
- (c) "Director" means the Director of the Office of Management and Budget.
- (d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).
- (e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Section 2. General Requirements. In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

- (a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
- (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;
- (c) Regulatory objectives shall be chosen to maximize the net benefits to society;
- (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and
- (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. Regulatory Impact Analysis and Review.

- (a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.
- (b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, provided that, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.
- (c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:
 - (1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

- (2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to publication of the major rule as a final rule;
 - (3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.
- (d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:
- (1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;
 - (2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;
 - (3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;
 - (4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and
 - (5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.
- (e)
- (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f)

(1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

- (i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. Regulatory Review. Before approving any final major rule, each agency shall:

- (a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the Federal Register at the time of promulgation a memorandum of law supporting that determination.
- (b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. Regulatory Agendas.

- (a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:
 - (1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;
 - (2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and
 - (3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.
- (b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law
 - (1) Require agencies to provide additional information in an agenda; and
 - (2) Require publication of the agenda in any form.

Sec. 6. The Task Force and Office of Management and Budget.

- (a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to;
- (1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;
 - (2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;
 - (3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;
 - (4) Waive the requirements of Section 3, 4, or 7 of this Order with respect to any proposed or existing major rule;
 - (5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;
 - (6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;
 - (7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and
 - (8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.
- (b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Sec. 7. Pending Regulations.

- (a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:
 - (1) Major rules that cannot legally be postponed or suspended;
 - (2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.
- (b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:
 - (1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or
 - (2) That the rule is not a major rule.
- (c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:
 - (1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and
 - (2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.
- (d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, provided that, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

- (e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.
- (f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has been considered under the terms of this Order:
 - (1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or
 - (2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.
- (g) The Director, subject to the direction of the Task Force, is authorized to the extent permitted by law, to:
 - (1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and
 - (2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.
- (h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:
 - (1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or
 - (2) Within 30 days of its report, in the case of any report under subsection (f).
- (i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.
- (j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. Exemptions.

(a) The procedures prescribed by this Order shall not apply to:

- (1) Any regulation that responds to an emergency situation, provided that, any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and
- (2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, provided that, any such regulation shall be reported to the Director together, with a brief explanation of the conflict, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

Sec. 9. Judicial Review. This order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies Under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. Revocations. Executive Orders No. 12044, as amended, and No. 12174 are revoked.

/s/ Ronald Reagan

THE WHITE HOUSE,
February 17, 1981.

1013.01f - Information Collection Requirements in Rules

Regulations at 5 CFR Part 1320 require additional clearances for any regulation that contains an information collection requirement that would require the public to provide more than name, address, and Social Security number to obtain a benefit or right under a government program. These regulations implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). If an agency does not have OMB approval of an information collection requirement in a rule, the agency cannot "treat a person's failure to comply, in and of itself, as grounds for withholding

USDA Forest Service

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Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

the benefit [associated with providing the information] or for imposing a penalty." Instead, the agency must "permit respondents to prove or satisfy the legal conditions in any other reasonable manner."

1013.01g - Rulemaking Files

Departmental Regulation (DR) 1512-1 requires the Forest Service to maintain a distinct and separate file on each proposed and final regulation. The file must contain copies of all Federal Register notices regarding the regulation, background data on which the proposed regulation is based, analyses conducted on the rule, comments received from the public, transcripts of any meetings or hearings on the rule, and any other data which will be (or was) considered in the promulgation of the final rule. (FSH 6209.12, Records Management Handbook).

1013.02 - Objectives

The objectives to be met in developing and promulgating rules and policies through Federal Register publication are to:

1. Comply fully and in good faith with statutory requirements for timely public notice and comment;
2. Maintain currency of Forest Service rules and policies.
3. Fully disclose the impacts of rules and policies on the public and forest resources.
4. Give full consideration to public comments received.
5. Develop a full and adequate record on which to base adoption of rules and policies.
6. Devise rules, policies, and procedures that impose the minimum burden on the public and employees necessary to carry out the requirements of law and policy.

1013.03 - Policy

1. In developing new or revised policies and procedures for issuance in the Forest Service directive system, responsible staff and line officers shall:
 - a. Take care early in the process to determine whether the proposal would affect how the public obtains a benefit or otherwise conducts business with the Forest Service and evaluate the extent of the impact on the public.
 - b. Ensure that the public will receive timely notice of major new or revised policies.
 - c. Determine if the public should have an opportunity to comment on the proposal.

- d. Consult with, and give substantial weight to the advice from, the Forest Service Regulatory Officer and the Office of the General Counsel in determining whether a proposed action or policy should be issued as a codified regulation or as an internal directive (FSM 1013.31a).
2. Notice of Service-wide policy and procedure found to require notice and/or comment shall be published in the Federal Register. Examples of Service-wide policy and procedure that are published in the Federal Register include policy specifying information the public is required to provide the agency to obtain authorization for occupancy and use of NF System lands, forest planning policy, policy and procedure for implementing the National Environmental Policy Act, and procedures or indexes for calculating and charging fees or selling forest products.
3. Rules and policy notices issued by Regional Foresters, Stations Directors, and the Area Director do not require OMB review prior to publication. Field issued notices and rules shall make no reference to E.O. 12291 review procedures.
4. Orders issued by Regional Foresters and Station Directors under the authority provided in 36 CFR 261.50 (a) and (b) may not prohibit more than what is specified in the regulation. However, the prohibitions which are issued may be less restrictive than authorized in Subpart B. Regional Foresters shall consult the Office of General Counsel in drafting and issuing such orders and shall document supportive justification for issuing each order.
5. Units developing and drafting proposed rules or proposed policies and procedures that require Federal Register publication shall obtain appropriate review and input from other Forest Service units during development of the proposal, as well as during development of the final rule or policy. Comments from Forest Service employees on such proposals, whether made by informal interoffice message or Forest Service letterhead, and whether made before or after publication of the proposal, shall be considered as internal working documents. As such, these documents shall not be placed in the file to be made available for public inspection prior to adoption of the final rule, policy, or procedure.

1013.04 - Responsibility

1013.04a - Chief

The Chief reserves the authority to:

1. Sign all Service-wide policy and related procedure notices prepared in the Washington Office for publication in the Federal Register. Notices reserved for approval by the Chief include notices of proposed and final policy and procedure, requests for public

comments on emerging issues, advance notices of proposed rulemaking, extensions of public comment periods on rules, records of decision where the Chief is the deciding official, and completion of reviews of existing regulations.

2. Sign all proposed rule documents, all technical corrections to final rules, and sign off on all Forest Service prepared final rule documents prior to submission to the General Counsel and Secretary.
3. Sign as "Program Official" any formal request for Office of Management and Budget Review (OMB) of a rule (form SF-83) and to determine if OMB review is necessary on policy notices.
4. Approve the agency's proposed regulatory program prepared pursuant to E.O. 12498.
5. Approve any work plan, Form AD-763, notifying the Secretary of intent to prepare a regulation.
6. Approve agency submissions for publication in the Semi-annual Regulatory Agenda.
7. Unless the Chief has delegated authority to Regional Foresters, issue regulations as provided in 36 CFR 261.70, Prohibitions in Regions, and issue orders as provided in 36 CFR 261.50, Prohibitions in Areas Designated by Order.

In accordance with the Chief's delegations of general authority (FSM 1230), the Associate Chief or Acting Chief may carry out the preceding responsibilities in the absence of the Chief or at the Chief's direction.

1013.04b - Deputy Chiefs

Deputy Chiefs shall review and grant or deny concurrence on all rules and notices prepared by staffs under their jurisdiction.

Deputy Chiefs have the authority to sign the following Federal Register notice documents prepared by staffs under their respective jurisdiction:

1. Notice of meetings.
2. Extensions of public comment periods on proposed as well as interim final policies.
3. Notices of availability of publications or data, but not notices of new or revised policies.
4. Technical corrections to notice documents, including those signed by the Chief.

5. Notice of redelegation of authority, including those made by the Chief, if the Chief has signed the delegation prior to preparation of the notice.

The Deputy Chief for Programs and Legislation may sign any notice of intent to prepare an environmental impact statement or notice of availability of environmental impact statements to be issued at the Washington Office level.

The Deputy Chief for the National Forest System has authority to sign and issue notices of land exchanges, interchanges, boundary extensions, and other land transactions upon approval of the appropriate official.

Pursuant to FSM 1235, an Associate Deputy Chief may sign such notices unless otherwise directed by the Deputy Chief or Chief.

The Deputy Chief for Administration oversees the Federal Register review and clearance process and provides general advice to the Chief on regulatory matters.

1013.04c - Staff Directors, Washington Office

Staff Directors in the Washington Office are responsible for planning, developing, drafting, and preparing proposed regulations and notices pertinent to their assigned responsibilities. Staff Directors are also responsible for evaluating the need for public notice and/or comment on proposed policies pursuant to 36 CFR Part 216 and 5 U.S.C. 552, 553; for coordinating proposed regulations and notices with other interested staffs, the Office of the General Counsel, and the Federal Register and Regulatory Officer; for reviewing regulations at regular intervals; for preparing work plans (form AD-763); and for providing timely information on the status of rulemaking for inclusion in the Semi-annual Regulatory Agenda and Regulatory Program.

Where rules and policies to be issued by the Chief relate to a specific field unit or area, such as a National Recreation Area or wilderness, Staff Directors may, by agreement with the Regional Forester, ask field units to prepare a draft, but must retain the primary responsibility for preparation and clearance of the document.

The Director of Environmental Coordination is responsible for preparing, reviewing, and coordinating clearance of notices of intent to prepare environmental impact statements and notices of availability of environmental impact statements in the Washington Office.

The Director of Information Systems is responsible for designating the Federal Register Authorizing, Certifying, and Liaison Officer and alternates and the Regulatory Officer and for advising the Deputy Chief for Administration on regulatory issues and activities.

1013.04d - Regional Foresters

Regional Foresters have authority to:

1. Issue regulations in accordance with the provisions of 36 CFR 261.70. This authority may not be redelegated.

The Regional Law Enforcement Staff shall review such proposed regulations and consult with the originating unit, affected staff, the Office of the General Counsel (OGC) and, to ensure proper formatting and coding, the Federal Register and Regulatory Officer, Information Systems Staff, WO.

2. Issue orders as provided in 36 CFR 261.50(a) and (b) and section 1013.03 of this chapter.
3. Issue notices for publication in the Federal Register, such as notices of meetings, notices of intent to prepare environmental impact statements or other documents, records of decision, Regional policies, and notices of delegations of authority.

In addition, each Regional Forester shall designate a unit and/or an employee to serve as the primary source of advice on preparation of Federal Register documents within the Region and to be the primary contact with the Federal Register Liaison Officer (WO) on problems with documents submitted to the Office of the Federal Register.

Pursuant to the authority granted in FSM 1230, a Deputy Regional Forester or Acting Regional Forester may sign Federal Register notices in the absence or unavailability of the Regional Forester. This authority may not be redelegated.

1013.04e - Experiment Station Directors, Area Director and Forest Supervisors

Station Directors, Area Director, and Forest Supervisors may issue orders as provided in 36 CFR 261.50(a) and (b).

In addition, Station Directors, the Area Director, and Forest Supervisors may issue notices for publication in the Federal Register, such as notices of meetings, notices of intent to prepare environmental statements, and records of decision on matters within their jurisdiction.

Pursuant to authority granted at FSM 1230, a Deputy, Assistant, or Acting Station or Area Director or Deputy or Acting Forest Supervisor may sign in the absence of the Director and Supervisor respectively.

1013.04f - Federal Register and Regulatory Officer

The Federal Register and Regulatory Officer (FRO) serves as the agency's principle source of advice and expertise on rulemaking and Federal Register matters. The FRO has the authority and responsibility to:

1. Assist in the planning and development of rules and policies, including recommending rulemaking strategies and advising the Chief and Staff Directors on whether actions should be issued as rules or agency directives, on whether public notice and/or comment is required, whether OMB review is required, and on the clearances necessary.
2. Review, and revise as necessary, drafts and finals of proposed and final rules and policies and other notices for technical adequacy and compliance with legal drafting and Federal Register publication standards, for reasonableness and consistency with law, regulation, and policy, and for consistency with emerging policy under simultaneous development.
3. Provide substantive drafting service on rules, policies, and notices, in whole or in part, and to draft all technical corrections and amendments to final rules.
4. Serve as the Federal Register Authorizing, Certifying, and Liaison Officer pursuant to 1 CFR Chapter 1, which includes: providing liaison between the Office of the Federal Register (OFR) and field units on documents submitted by the field, signing requests to the Director, OFR, to withdraw a document or to expedite publication, requesting OFR corrections to documents, and obtaining advice of OFR counsel on rulemaking requirements and approaches.
5. Serve as the agency liaison with the Office of General Counsel, Office of Budget and Policy Analysis, and the Office of Management and Budget on regulatory matters in general and on issues associated with specific regulatory and policy actions and to sign and submit requests for OMB clearance of rules and policies.
6. Assign codes and maintain the integrity of the structure and coding of Title 36, Chapter II, of the Code of Federal Regulations (CFR).
7. Devise and recommend the Agency response to new statutory requirements for Administration initiatives that bear on rulemaking and regulatory matters.
8. Assemble and transmit, with concurrence of the Chief, the Agency's entries to the Annual Regulatory Program and Semi-Annual Regulatory Agenda. Monitor and track progress on Federal Register documents and prepare reports on agency rulemaking and policy issuance accomplishment and status.

In the absence or unavailability of the Federal Register and Regulatory Officer, the designated alternate(s) may sign and act for the FRO.

1013.1 - Federal Register and Code of Federal Regulations

The Code of Federal Regulations (CFR) and Federal Register (FR) are published by the Office of the Federal Register, a unit of the National Archives and Records Administration. Washington Office procedures for processing documents are set forth in FSH 6209.21, section 102.

1013.11 - Federal Register

The Federal Register is available by subscription from the Superintendent of Documents, Government Printing Office. Copies for official use by employees are available without charge. Submit requests through channels to the Federal Register and Regulatory Officer, Washington Office Information Systems Staff.

1013.12 - Code of Federal Regulations

The Code of Federal Regulations (CFR) contains the rules and regulations of all Federal agencies. Forest Service rules and regulations appear in Title 36, Chapter II, Parts 200-299. Regulations of other Federal agencies that pertain to Forest Service activities are quoted or referred to in the relevant titles, chapters, and sections of the Forest Service Manual or in Forest Service Handbooks.

1. **Publication.** Forest Service employees must take care to ensure that they are referring to and using current regulations. Revisions and other changes in the CFR are first published in the Federal Register. Annually the Office of the Federal Register publishes accumulated revisions in the Code of Federal Regulations.
2. **Availability.** Units may purchase single CFR titles from the Superintendent of Documents at any time. Units may obtain free of charge those titles needed on a continuing basis if ordered from the Washington Office by October 31 each year. Submit regional consolidated requests to the Washington Office Information Systems Staff. Limit requests to those actually needed for official use.

Advise other agencies, private companies, or individuals who want entire titles of the CFR to purchase them from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1013.2 - Departmental Regulations

Departmental regulations are the principal component of the Department-wide directive system. Denoted by the letters "DR," these regulations replace the former Secretary of Agriculture Administrative Regulations (known as "AR's"), which no longer have force and

effect. Consult the Office of the General Counsel if there are questions about the status of old "AR's" and new Departmental Regulations.

The Forest Service Manual and handbooks incorporate pertinent Departmental Regulations as needed. Submit requests to be placed on the distribution list for Departmental Regulations to the Washington Office Information Systems Staff. Specify the titles, subject areas, and quantity desired.

1013.21 - Departmental Directives Prepared by the Forest Service

When the Forest Service is assigned responsibility to prepare Departmental Regulations, Manual, or Notices, the responsible Washington Office Staff shall:

1. Prepare the directive in accordance with the instructions and specifications in Departmental Regulation 0100-1 (DR 0100-1).
2. Ensure that the content of any such draft directive does not effectively amend, revise, or supercede regulations issued by the Secretary in the Code of Federal Regulations. Where the proposed direction would require rulemaking, consult the Regulatory Officer for guidance (FSM 1013.04).
3. Review the draft for consistency with other Departmental directives.
4. As part of the formal clearance process and prior to concurrence of the Chief, submit the draft directive to the Washington Office Directive Manager, Information Systems Staff, and to the Office of the General Counsel for review.
5. Coordinate and track the formal clearance of the directive, including review by the USDA Office of Information Resource Management (DR 0100-1, Appendix B).

1013.3 - Preparing Regulations and Notices

1013.31 - Determining If a Document Is a Regulation

1013.31a - Criteria

To meet the criteria of a "rule" or "regulation," a document must have "general applicability and legal effect." In deciding if a proposed action or policy is a rule, Forest Service employees should determine if the proposal possesses one or more of the following characteristics:

1. Prescribes a course of conduct;
2. Prescribes a penalty;

3. Confers a right, privilege, authority, or immunity;
4. Imposes an obligation;
5. Applies to the general public, as distinguished from named individuals or organizations;
6. Applies to members of a class, as distinguished from named individuals or organizations;
7. Applies to persons in a locality, as distinguished from named individuals; or

Any unit that proposes to develop a rule or regulation should first seek the advice of the Federal Register and Regulatory Officer and Office of the General Counsel in applying these criteria.

1013.31b - Notices That Require Publication

If a proposed document is judged not to be a regulation, it may still require publication in the Federal Register as a "notice." For example, pursuant to the National Forest Management Act, the Forest Service makes significant policy, criteria, standards, and guidelines that will be published in the Forest Service Manual (FSM 1013.01b; FSM 1626) available for public comment. Refer to sections 1013.01b and 1013.01c for statutory requirements governing notice.

Examples of notices issued by the Forest Service for publication in the Federal Register include:

1. Notices of Availability of Environmental Statements or other documents, such as significant standards, criteria, and guidelines and agency publications;
2. Notices of Meetings and Hearings, such as Advisory Committee meetings or public participation sessions; and
3. Advance Notices of Proposed Rulemaking or Notices of Intent. These are notices issued to give interested persons advance notice that rulemaking or some other action will be initiated and information about the scope and purpose of the action. Generally advance notices invite public comment and suggestions.
4. Delegations of authority;
5. Records of decision.
6. Significant new or revised policy or procedure to be issued as a directive.

1013.32 - Content and Format Requirements

Limit content of regulations and notices to that information needed to meet legal requirements and adequately inform the affected public. On proposed rules and policies, present the material in a manner that will facilitate and enhance the quality and usefulness of public comments received.

The "Federal Register Document Drafting Handbook" (FSM 1013.01c) provides detailed content and format standards and instructions for preparing regulations and notices. Washington Office authors should seek early assistance from the Federal Register and Regulatory Officer, Information Systems Staff. Field authors should consult with the unit assigned primary responsibility for Federal Register documents.

In addition to the Document Drafting Handbook, Chapter 60 of FSH 1909.15, Environmental Policy and Procedures Handbook, gives detailed instructions for preparing notices related to environmental analysis for Federal Register publication.

1013.33 - Revision of Forest Service Regulations

Existing regulations, or segments thereof, may be revised, amended, revoked, removed, or redesignated in response to changing law, regulations, orders, or other circumstances. In addition, Departmental Regulation 1512-1 requires each existing regulation to be reviewed every five years. The Regulatory Officer, Washington Office Information Systems Staff, monitors the progress of reviews, and, in consultation with responsible staff, prepares necessary timetables and progress reports for submission by the Chief to appropriate Department level officials.

1015 - General Accounting Office

The General Accounting Office (GAO) is an independent agency in the legislative branch of the Federal Government. The General Accounting Office:

1. Audits and evaluates the programs, activities, and financial transactions of the Federal Government.
2. Prescribes principles and standards for accounting in the Federal Government.
3. Settles claims and collect debts of the Federal Government.
4. Detects and prevents fraud, waste, and abuse in Federal programs.
5. Issues legal decisions binding on the executive branch of the Federal Government.

1015.04 - Responsibilities

Each Regional Forester and Station Director shall maintain the minimum GAO material identified in FSM 1015.11.

The Director, Fiscal and Public Safety Staff, Washington Office shall maintain a master library of GAO manuals, decisions, and publications and shall provide assistance in locating or researching relevant GAO findings or direction upon request.

1015.08 - Sources

General Accounting Office materials and information are available from:

Commercial publications and electronic data bases, and directly from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Units may also make direct requests to the General Accounting Office, Legal Information and Reference Service (LIRS). Anyone can obtain a free copy of a specific decision by calling LIRS at (202) 275-6241. Persons calling must provide the file number, date of the decision, and complete mailing address. It takes approximately 2 weeks to receive the copy after placing the request.

Legal Information and Reference Service will not do legal research and analysis, but will provide:

- a. Information on whether an issue has been considered by GAO;
- b. Citations to decisions on a particular issue;
- c. Information whether a specific decision has been modified, overruled, or cited in a subsequent decision.

This service may be reached at (202) 275-5028.

1015.1 - Minimum Requirements for Unit Libraries

Each Region, Station, and Area office must maintain the following GAO materials:

1. Manuals.
 - a. Civilian Personnel Law Manual.
 - b. Contract Law Manual.
 - c. Policy and Procedures Manual for Guidance of Federal Agencies.

- d. Principles of Federal Appropriations Law.
 - e. Transportation Law Manual.
2. Published Decisions of Comptroller General.
- a. Annual hardback volumes.
 - b. Consolidated index.
 - c. Monthly pamphlets.
 - d. Quarterly digests.
 - e. Selected letter decisions.

Units should also maintain materials related to unpublished decisions of the Comptroller General especially:

- 1. Quarterly digests.
- 2. Selected letter decisions.
- 3. Forest Service specific decisions.

1015.2 - Requesting Forest Service Decisions From the Comptroller General

Except as directed in sections 1015.21 through 1015.24, all correspondence to the Comptroller General raising questions of law requires the signature of the Secretary of Agriculture or a designated Assistant Secretary.

Forward all such requests to the Forest Service Deputy Chief for Administration for referral to the Secretary's office.

1015.21 - Requests by Forest Service Contracting Officers

To minimize delays on making awards of government contracts, Contracting Officers shall submit requests for advance decisions that involve the award of a contract to the appropriate Washington Office Staff Director (P&P, TM) via electronic mail. This policy covers awards of procurement and timber sale contracts.

1015.22 - Requests by Bidders of Government Contracts

Any bidder may file a protest directly with the Comptroller General against any proposed or actual contract award.

1015.23 - Requests by Certifying and Disbursing Officers

Under 31 U.S.C. 3529, the Comptroller General is required to issue a decision on a question directly submitted by certifying and disbursing officials. These requests cover only questions on payments of a specific claim or voucher. Send all requests to the Washington Office Director of Fiscal and Public Safety (F&PS) for transmittal to the Comptroller General.

1015.24 - Other Requests

Any other questions for the General Accounting Office shall be sent to the Deputy Chief for Administration for transmittal.

1. Grants. Except on rare occasions, the Comptroller General will not issue decisions regarding grants or other financial assistance awards. However, payments, collections, claims, and procurements under an executed grant may be properly submitted by either the grantee or the agency under the same methods as described in FSM 1015.22 through 1015.24.
2. Congressional Requests. At the request of Congress (Committees or individuals), the Comptroller General will perform the requested action and issue a report or opinion.
3. Other Parties. The State and private sector may only request reconsideration of prior decisions directly to the Comptroller General, except those dealing with contract matters specified in FSM 1015.22 - .23.

1016 - Executive Orders

Executive Orders are directives issued by the President. They have the force and effect of law. Users of the Forest Service directive system will find Executive Orders cited as authorities in the relevant titles and chapters of the Forest Service Manual. The full text of Executive Orders governing management of Forest Service programs may be set out as exhibits in the Manual or handbooks. Employees who need the full text of Executive Orders that are not printed in the directive system can obtain the text from large public and university libraries as well as law libraries.