



4310-84P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

[Docket ID: BLM-2016-0002; LLWO210000.17X.L16100000.PN0000]

RIN: 1004-AE39

Effectuating Congressional Nullification of the Resource Management Planning Rule under the Congressional Review Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Rule; CRA Revocation.

SUMMARY: By operation of the Congressional Review Act (CRA), the Resource Management Planning Rule (Planning 2.0 Rule) shall be treated as if it had never taken effect. The BLM issues this document to effect the removal of any amendments, deletions or other modifications made by the nullified rule, and the reversion to the text of the regulations in effect immediately prior to the effective date of the Planning 2.0 Rule.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Previous documents related to the Resource Management Planning Rule (Planning 2.0 Rule), published at 81 FR 89580 (December 12, 2016), are available at www.regulations.gov in Docket No. BLM-2016-0002.

FOR FURTHER INFORMATION CONTACT: Leah Baker, Division Chief for Decision Support, Planning and NEPA, at 202-912-7282, for information relating to the

BLM's national planning program or the substance of this final rule. For information on procedural matters or the rulemaking process, you may contact Charles Yudson, Management Analyst for the Office of Regulatory Affairs, at 202-912-7437. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339, to contact these individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM published the Resource Management Planning Rule (Planning 2.0 Rule) on December 12, 2016 (81 FR 89580). The rule became effective on January 11, 2017. On February 7, 2017, the United States House of Representatives passed a resolution of disapproval (H.J. Res. 44) of the Planning 2.0 Rule under the CRA, 5 U.S.C. 801 *et seq.* The Senate then passed a resolution of disapproval (S.J. Res. 15) on March 7, 2017 (Cong. Rec. p. S1686-S1687). President Trump then signed the resolution into law as Public Law Number 115-12 on March 27, 2017. Therefore, under the terms of the CRA, the BLM Planning 2.0 Rule shall be "treated as though such rule had never taken effect." 5 U.S.C. 801(f).

However, because the CRA does not include direction regarding the removal, by the Office of the Federal Register or otherwise, of the voided language from the Code of Federal Regulations (CFR) the BLM must publish this document to effect the removal of the voided text. This document will enable the Office of the Federal Register to effectuate congressional intent to remove the voided text of the Planning 2.0 Rule as if it had never taken effect, and restore the previous language and prior state of the CFR.

This action is not an exercise of the Department's rulemaking authority under the Administrative Procedure Act, because the Department is not "formulating, amending, or

repealing a rule” under 5 U.S.C. 551(5). Rather, the Department is effectuating changes to the CFR to reflect what congressional action has already accomplished—namely, the nullification of any changes purported to have been made to the CFR by the Planning 2.0 Rule and the reversion to the regulatory text in effect immediately prior to January 11, 2017, the effective date of the Planning 2.0 Rule. Accordingly, the Department is not soliciting comments on this action. Moreover, this action is not a final agency action subject to judicial review.

List of Subjects in 43 CFR Part 1600

Administrative practice and procedure, Coal, Environmental impact statements, Environmental protection, Intergovernmental relations, Public lands, State and local governments.

43 CFR Chapter II

For the reasons set out in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 et seq.) and Public Law 115-12 (March 27, 2017), the Bureau of Land Management amends 43 CFR chapter II by revising part 1600 to read as follows:

PART 1600 -- PLANNING, PROGRAMMING, BUDGETING

Subpart 1601-Planning

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AUTHORITY: 43 U.S.C. 1711-1712.

Subpart 1601- Planning

§ 1601.0-1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management.

§ 1601.0-2 Objective.

The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.

§ 1601.0-3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 1601.0-4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.

(b) State Directors will provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and provide additional guidance, as necessary, for use by Field Managers. State Directors will file draft and final environmental impact statements associated with resource management plans and amendments.

(c) Field Managers will prepare resource management plans, amendments, revisions and related environmental impact statements. State Directors must approve these documents.

§ 1601.0-5 Definitions.

As used in this part, the term:

(a) *Areas of Critical Environmental Concern or ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(b) *Conformity or conformance* means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(c) *Consistent* means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title.

(d) *Eligible cooperating agency* means:

(1) A Federal agency other than a lead agency that is qualified to participate in the development of environmental impact statements as provided in 40 CFR 1501.6 and 1508.5 or, as necessary, other environmental documents that BLM prepares, by virtue of its jurisdiction by law as defined in 40 CFR 1508.15, or special expertise as defined in 40 CFR 1508.26; or

(2) A federally recognized Indian tribe, a state agency, or a local government agency with similar qualifications.

(e) *Cooperating agency* means an eligible governmental entity that has entered into a written agreement with the BLM establishing cooperating agency status in the planning and NEPA processes. BLM and the cooperating agency will work together under the terms of the agreement. Cooperating agencies will participate in the various steps of BLM's planning process as feasible, given the constraints of their resources and expertise.

(f) *Field Manager* means a BLM employee with the title "Field Manager" or "District Manager."

(g) *Guidance* means any type of written communication or instruction that transmits objectives, goals, constraints, or any other direction that helps the Field Managers and staff know how to prepare a specific resource management plan.

(h) *Local government* means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(i) *Multiple use* means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(j) *Officially approved and adopted resource related plans* means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.

(k) *Public* means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental

organizations and other special interest groups and officials of State, local, and Indian tribal governments.

(l) *Public lands* means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(m) *Resource area or field office* means a geographic portion of a Bureau of Land Management district. It is the administrative subdivision whose manager has primary responsibility for day-to-day resource management activities and resource use allocations and is, in most instances, the area for which resource management plans are prepared and maintained.

(n) *Resource management plan* means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document:

(1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for an area to be covered by more detailed and specific plans;

- (6) Support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above;
- (7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and
- (8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

It is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

§ 1601.0-6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.

§ 1601.0-7 Scope.

- (a) These regulations apply to all public lands.
- (b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0-8 Principles.

The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the principles described in section 202 of the Federal Land Policy and Management Act of 1976. Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered.

Subpart 1610- Resource Management Planning

§ 1610.1 Resource management planning guidance.

(a) Guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed, to help the Field Manager and staff prepare a specific plan. Such guidance may include the following:

(1) National level policy which has been established through legislation, regulations, executive orders or other Presidential, Secretarial or Director approved documents. This policy may include appropriately developed resource management commitments, such as a right-of-way corridor crossing several resource or field office areas, which are not required to be reexamined as part of the planning process.

(2) Analysis requirements, planning procedures and other written information and instructions required to be considered in the planning process.

(3) Guidance developed at the State Director level, with necessary and appropriate governmental coordination as prescribed by § 1610.3 of this title. Such guidance shall be

reconsidered by the State Director at any time during the planning process that the State Director level guidance is found, through public involvement or other means, to be inappropriate when applied to a specific area being planned.

(b) A resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.

(c) An interdisciplinary approach shall be used in the preparation, amendment and revision of resource management plans as provided in 40 CFR 1502.6. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The Field Manager may use any necessary combination of Bureau of Land Management staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

§ 1610.2 Public participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new

planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.

(c) When BLM starts to prepare, amend, or revise resource management plans, we will begin the process by publishing a notice in the Federal Register and appropriate local media, including newspapers of general circulation in the state and field office area. The Field Manager may also decide if it is appropriate to publish a notice in media in adjoining States. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7). This notice shall include the following:

- (1) Description of the proposed planning action;
- (2) Identification of the geographic area for which the plan is to be prepared;
- (3) The general types of issues anticipated;
- (4) The disciplines to be represented and used to prepare the plan;
- (5) The kind and extent of public participation opportunities to be provided;
- (6) The times, dates and locations scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at the time;
- (7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information; and
- (8) The location and availability of documents relevant to the planning process.

(d) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the Field Manager and those on the list shall be notified of public participation activities. Individuals or groups may ask to be placed on

this list. Public participation activities conducted by the Bureau of Land Management shall be documented by a record or summary of the principal issues discussed and comments made.

The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.

(e) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement. The 90-day period shall begin when the Environmental Protection Agency publishes a notice of the filing of the draft environmental impact statement in the Federal Register.

(f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

(1) General notice at the outset of the process inviting participation in the identification of issues (See §§ 1610.2(c) and 1610.4-1);

(2) Review of the proposed planning criteria (§§ 1610.4-2);

(3) Publication of the draft resource management plan and draft environmental impact statement (See § 1610.4-7);

(4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See §§ 1610.4-8 and 1610.5-1(b)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See § 1610.5-1(b)).

(g) BLM will make copies of an approved resource management plan and amendments reasonably available for public review. Upon request, we will make single copies available to the public during the public participation process. After BLM approves a plan, amendment, or revision we may charge a fee for additional copies. We will also have copies available for public review at the:

(1) State Office that has jurisdiction over the lands,

(2) Field Office that prepared the plan; and

(3) District Office, if any, having jurisdiction over the Field Office that prepared the plan.

(h) Supporting documents to a resource management plan shall be available for public review at the office where the plan was prepared.

(i) Fees for reproducing requested documents beyond those used as part of the public participation activities and other than single copies of the printed plan amendment or revision may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

(j) When resource management plans involve areas of potential mining for coal by means other than underground mining, and the surface is privately owned, the Bureau of Land Management shall consult with all surface owners who meet the criteria in § 3400.0-5 of this title. Contact shall be made in accordance with subpart 3427 of this title and shall provide time to fully consider surface owner views. This contact may be made by mail or in person by the Field Manager or his/her appropriate representative. A period of at least

30 days from the time of contact shall be provided for surface owners to convey their preference to the Field Manager.

(k) If the plan involves potential for coal leasing, a public hearing shall be provided prior to the approval of the plan, if requested by any person having an interest which is, or may be, adversely affected by implementation of such plan. The hearing shall be conducted as prescribed in

§ 3420.1-5 of this title and may be combined with a regularly scheduled public meeting.

The authorized officer conducting the hearing shall:

- (1) Publish a notice of the hearing in a newspaper of general circulation in the affected geographical area at least once a week for 2 consecutive weeks;
- (2) Provide an opportunity for testimony by anyone who so desires; and
- (3) Prepare a record of the proceedings of the hearing.

§ 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3-1 Coordination of planning efforts.

(a) In addition to the public involvement prescribed by § 1610.2, the following coordination is to be accomplished with other Federal agencies, state and local governments, and federally recognized Indian tribes. The objectives of the coordination are for the State Directors and Field Managers to:

- (1) Keep apprised of non-Bureau of Land Management plans;

- (2) Assure that BLM considers those plans that are germane in the development of resource management plans for public lands;
- (3) Assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans;
- (4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and federally recognized Indian tribes, in the development of resource management plans, including early public notice of final decisions that may have a significant impact on non-Federal lands; and
- (5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

(b) When developing or revising resource management plans, BLM State Directors and Field Managers will invite eligible Federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies. The same requirement applies when BLM amends resource management plans through an environmental impact statement. State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field Managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate.

(c) State Directors and Field Managers shall provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. To facilitate coordination with State governments, State Directors should seek

the policy advice of the Governor(s) on the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use opportunities and constraints on public lands. State Directors may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the State Director shall provide opportunity for Governor and State agency review, advice and suggestions on issues and topics that the State Director has reason to believe could affect or influence State government programs.

(d) In developing guidance to Field Manager, in compliance with section 1611 of this title, the State Director shall:

(1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by § 1610.3-2 of this title;

(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.

(e) A notice of intent to prepare, amend, or revise a resource management plan shall be submitted, consistent with State procedures for coordination of Federal activities, for circulation among State agencies. This notice shall also be submitted to Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment. These notices shall be issued simultaneously with the public notices required under § 1610.2(b) of this title.

(f) Federal agencies, State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals. Should they notify the Field Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

(g) When an advisory council has been formed under section 309 of the Federal Land Policy and Management Act of 1976 for the area addressed in a resource management plan or plan amendment, BLM will inform that council, seek its views, and consider them throughout the planning process.

§ 1610.3-2 Consistency requirements.

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(c) State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall provide the public with an opportunity to comment on the recommendation(s). If the State Director does not accept the recommendations of the Governor(s), the State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

§ 1610.4 Resource management planning process.

§ 1610.4-1 Identification of issues.

At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The Field Manager, in collaboration with any cooperating agencies, will analyze those suggestions and other available data, such as records of resource conditions, trends, needs, and problems, and select topics and determine the issues to be addressed during the planning process. Issues may be modified during the planning process to incorporate new information. The identification of issues shall also comply with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

§ 1610.4-2 Development of planning criteria.

(a) The Field Manager will prepare criteria to guide development of the resource management plan or revision, to ensure:

- (1) It is tailored to the issues previously identified; and
- (2) That BLM avoids unnecessary data collection and analyses.

(b) Planning criteria will generally be based upon applicable law, Director and State Director guidance, the results of public participation, and coordination with any cooperating agencies and other Federal agencies, State and local governments, and federally recognized Indian tribes.

(c) BLM will make proposed planning criteria, including any significant changes, available for public comment prior to being approved by the Field Manager for use in the planning process.

(d) BLM may change planning criteria as planning proceeds if we determine that public suggestions or study and assessment findings make such changes desirable.

§ 1610.4-3 Inventory data and information collection.

The Field Manager, in collaboration with any cooperating agencies, will arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.

§ 1610.4-4 Analysis of the management situation.

The Field Manager, in collaboration with any cooperating agencies, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating

reasonable alternatives, including the types of resources for development or protection.

Factors to be considered may include, but are not limited to:

- (a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;
- (b) Opportunities to meet goals and objectives defined in national and State Director guidance;
- (c) Resource demand forecasts and analyses relevant to the resource area;
- (d) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;
- (e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;
- (f) Opportunities to resolve public issues and management concerns;
- (g) Degree of local dependence on resources from public lands;
- (h) The extent of coal lands which may be further considered under provisions of § 3420.2-3(a) of this title; and
- (i) Critical threshold levels which should be considered in the formulation of planned alternatives.

§ 1610.4-5 Formulation of alternatives.

At the direction of the Field Manager, in collaboration with any cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses. In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as sub-alternatives. One alternative shall be for no action, which means continuation of present level or systems of resource use. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

§ 1610.4-6 Estimation of effects of alternatives.

The Field Manager, in collaboration with any cooperating agencies, will estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.4-7 Selection of preferred alternatives.

The Field Manager, in collaboration with any cooperating agencies, will evaluate the alternatives, estimate their effects according to the planning criteria, and identify a preferred alternative that best meets Director and State Director guidance. Nonetheless, the decision to select a preferred alternative remains the exclusive responsibility of the BLM. The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the State Director for approval, publication, and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided for comment to the Governor of the State involved, and to officials of other Federal agencies, State and local governments and Indian tribes that the State Director has reason to believe would be concerned. This action shall constitute compliance with the requirements of § 3420.1-7 of this title.

§ 1610.4-8 Selection of resource management plan.

After publication of the draft resource management plan and draft environmental impact statement, the Field Manager shall evaluate the comments received and select and recommend to the State Director, for supervisory review and publication, a proposed resource management plan and final environmental impact statement. After supervisory review of the proposed resource management plan, the State Director shall publish the plan and file the related environmental impact statement.

§ 1610.4-9 Monitoring and evaluation.

The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.

§ 1610.5 Resource management plan approval, use and modification.

§ 1610.5-1 Resource management plan approval and administrative review.

(a) The proposed resource management plan or revision shall be submitted by the Field Manager to the State Director for supervisory review and approval. When the review is completed the State Director shall either publish the proposed plan and file the related environmental impact statement or return the plan to the Field Manager with a written statement of the problems to be resolved before the proposed plan can be published.

(b) No earlier than 30 days after the Environmental Protection Agency publishes a notice of the filing of the final environmental impact statement in the Federal Register, and pending final action on any protest that may be filed, the State Director shall approve the plan. Approval shall be withheld on any portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act of 1969 (40 CFR 1505.2).

§ 1610.5-2 Protest procedures.

(a) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the Federal Register. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

- (i) The name, mailing address, telephone number and interest of the person filing the protest;
 - (ii) A statement of the issue or issues being protested;
 - (iii) A statement of the part or parts of the plan or amendment being protested;
 - (iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and
 - (v) A concise statement explaining why the State Director's decision is believed to be wrong.
- (3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.
- (b) The decision of the Director shall be the final decision of the Department of the Interior.

§ 1610.5-3 Conformity and implementation.

- (a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.
- (b) After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the Field Manager shall take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements or

other instruments for occupancy and use, conform to the approved plan or amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation.

(c) If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment in accordance with the provisions of § 1610.5-5 of this title.

(d) More detailed and site specific plans for coal, oil shale and tar sand resources shall be prepared in accordance with specific regulations for those resources: Group 3400 of this title for coal; Group 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans shall be in conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.5-4 Maintenance.

Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation

of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records.

§ 1610.5-5 Amendment.

A resource management plan may be changed through amendment. An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan. An amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary, public involvement as prescribed in § 1610.2 of this title, interagency coordination and consistency determination as prescribed in § 1610.3 of this title and any other data or analysis that may be appropriate. In all cases, the effect of the amendment on the plan shall be evaluated. If the amendment is being considered in response to a specific proposal, the analysis required for the proposal and for the amendment may occur simultaneously.

(a) If the environmental assessment does not disclose significant impact, a finding of no significant impact may be made by the Field Manager. The Field Manager shall then make a recommendation on the amendment to the State Director for approval, and upon approval, the Field Manager shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(b) If a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of the plan, but consideration shall be limited to that portion of the plan being considered for amendment. If several plans are being amended simultaneously, a single environmental impact statement may be prepared to cover all amendments.

§ 1610.5-6 Revision.

A resource management plan shall be revised as necessary, based on monitoring and evaluation findings (§ 1610.4-9), new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1610.5-7 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area. There are situations of mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the Bureau of Land Management with another Federal agency. The Field Manager may use the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, State, or local) may be used as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public participation.

(b) After evaluation and review, the Bureau of Land Management may adopt another agency's plan for continued use as a resource management plan if an agreement is reached between the Bureau of Land Management and the other agency to provide for maintenance and amendment of the plan, as necessary, to comply with law and policy applicable to public lands.

(c) A land use analysis may be used to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public participation as required by § 1610.2 of this title, the consultation and consistency determinations required by § 1610.3 of this title, the protest procedure prescribed by § 1610.5-2 of this title and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of the Federal Land Policy and Management Act. The decision to approve the land use analysis and to lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.

§ 1610.6 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1610.7 Designation of areas.

§ 1610.7-1 Designation of areas unsuitable for surface mining.

(a)(1) The planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the Bureau of Land Management for comment, the resource management plan, or plan amendment if available, shall be the basis for review.

(3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the Field Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

(b)(1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the Bureau of Land Management, the resource management plan, if available, shall be the basis for determinations for designation.

(3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the Field Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

§ 1610.7-2 Designation of areas of critical environmental concern.

Areas having potential for Areas of Critical Environmental Concern (ACEC) designation and protection management shall be identified and considered throughout the resource management planning process (see §§ 1610.4-1 through 1610.4-9).

(a) The inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for

designation as an ACEC. In order to be a potential ACEC, both of the following criteria shall be met:

(1) Relevance. There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

(2) Importance. The above described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(b) The State Director, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the Federal Register listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation. The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of any ACEC involved. The approved plan shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC.

§ 1610.8 Transition period.

(a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

(1) The management framework plan shall be in compliance with the principle of multiple use and sustained yield and shall have been developed with public participation

and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this title.

(2) No sooner than 30 days after the Environmental Protection Agency publishes a notice of the filing of a final court-ordered environmental impact statement--which is based on a management framework plan--proposed actions may be initiated without any further analysis or processes included in this subpart.

(3) For proposed actions other than those described in paragraph (a)(2) of this section, determination shall be made by the Field Manager whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance, it may be further considered for decision under procedures applicable to that type of action, including requirements of regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR parts 1500-1508.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further favorable consideration before a resource management plan is scheduled for preparation, such consideration shall be through a management framework plan amendment using the provisions of § 1610.5-5 of this title.

(b)(1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment and an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision, shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

(2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.5-5 of this title for amending a plan.

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Exercising the Authority of the Assistant Secretary – Lands and Minerals Management

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