

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Part 1600**[Docket ID: BLM–2016–0002;  
LLWO210000.17X.L16100000.PN0000]

RIN 1004–AE39

**Resource Management Planning****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Land Management (BLM) is amending its regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The final rule affirms the important role of other Federal agencies, State and local governments, Indian tribes, and the public during the planning process and enhances opportunities for public involvement and transparency during the preparation of resource management plans. The final rule will enable the BLM to more readily address resource issues at a variety of scales, such as wildfire, wildlife habitat, appropriate development, or the demand for renewable and non-renewable energy sources, and to respond more effectively to change. The final rule emphasizes the role of using high quality information, including the best available scientific information, in the planning process; and the importance of evaluating the resource, environmental, ecological, social, and economic conditions at the onset of planning. Finally, the final rule makes revisions to clarify existing text and to improve the readability of the planning regulations.

**DATES:** This final rule is effective on January 11, 2017.**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 proposed 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:****Executive Summary**

Land use planning forms the basis of, and is essential to, everything that the Bureau of Land Management does in caring for America’s public lands. Congress has directed that these lands be managed for multiple use and sustained yield, and has required the BLM to do that through land use planning with public involvement. It has been over thirty years since the BLM last issued regulations to implement this important mission.

Concerns have been raised for some time by State and local governments, resource users, and others, that the planning process has become too slow and too unresponsive to the public. This final rule is the result of a multi-year effort to address those concerns and to implement best practices developed over time. It ensures that the process going forward will maximize transparency and public involvement, honor the partnership with other governmental entities, be more efficient, based on best available information, and adaptable to changing conditions.

**Background**

The BLM manages ten percent of the land in the United States and 30 percent of the nation’s minerals. Under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1712, the BLM is required to develop land use plans in partnership with State, local, and tribal governments, as well as the public, to manage these diverse public lands and resources in accordance with the BLM’s multiple-use and sustained yield mission. BLM land use plans, called “resource management plans,” establish goals and objectives to guide future land and resource management actions implemented by the BLM.

Pressures are increasing on BLM-administered lands and land managers to better balance often competing and increasingly conflicting uses of the public lands. The BLM and its stakeholders, including State and local governments, are experiencing an increased number of practical challenges, including unexpected delays, higher expenses, and expanded legal challenges in managing these lands. Resource issues, such as invasive species, wildfire, energy production and transmission, and wildlife conservation, cross traditional administrative and jurisdictional boundaries, making current planning less efficient and more costly to implement.

State, local, and tribal government officials and representatives of diverse stakeholder groups have expressed concern about the current process,

stating that they often feel disconnected from the BLM’s resource management planning process. The process has been described as one characterized by long waiting periods punctuated by short periods in which stakeholders have to digest and respond to large volumes of information. This can be exacerbated by the need to supplement draft plans that have been in progress for years when new issues are identified or additional information is required late in the planning process. Delays in BLM planning efforts increasingly consume BLM staff capacity and resources that could otherwise be spent addressing critical resource management priorities. They also cause frustration among stakeholders and partners who depend on the BLM’s ability to develop and implement resource management plans and management decisions in a timely manner.

The BLM began work towards this rule in May 2014 through a range of outreach efforts seeking public input into how the land use planning process could be improved. At that time, the BLM developed a Web site for the initiative ([www.blm.gov/plan2](http://www.blm.gov/plan2)) and issued a national press release with information on how to provide input to the agency. The BLM held two facilitated public listening sessions that were available through a live broadcast of the event over the Internet (livestream) in the fall of 2014. The BLM also conducted external outreach to partners and internal inquiry to staff. The *Planning 2.0 Public Input Summary Report*, issued in 2015, summarizes written comments received through these processes from over 6,000 groups and individuals. The agency also conducted extensive outreach to State, local, and tribal governments, along with various Federal Advisory Committee Act-chartered Resource Advisory Councils (RACs). In developing the proposed rule, the BLM considered the information received during this initial outreach initiative and worked to find an appropriate balance between different needs and perspectives.

The proposed rule was published on February 25, 2016 (81 FR 9674) and was available for public comment for over 100 days, including a 90 day formal comment period, after requests for extensions were granted. During that time the BLM hosted a variety of public outreach events and briefings for a wide range of interested parties and conducted government-to-government consultation with all federally recognized Indian tribes with which the Bureau normally consults regarding land use planning.

The BLM received 3,354 public comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (<http://www.regulations.gov>) by entering Docket ID: BLM-2016-0002 in the "Search" bar.

#### *Overview of the Final Rule*

The final rule reflects this outreach effort, including careful consideration of the many comments and recommendations received since the publication of the proposed rule. The final rule does not radically change the existing process, but rather improves that process based on public input and knowledge gained from best practices developed over many years.

First, the final rule responds to concerns that, at times, the process can be cumbersome, slow to complete, and not adequately transparent or responsive to State, local, tribal or general public input. These concerns are addressed by increasing public access at earlier stages in the process, including public input on the scope of the resource management plan. The unique partnerships between States, local governments and Indian tribes are honored and enhanced. The new requirement for upfront information-gathering and public involvement should strengthen the planning process by better reflecting resource conditions, issues, and concerns within the planning area. Gathering this information up front should help reduce the need for supplementation later in the planning process, which is often the cause for long delays under the current rule, leading to added cost and concern that the resulting decisions are no longer relevant.

The final rule makes resource management plans better able to deal with modern pressures on the public lands and to adapt to changes to conditions on the land. This will be done in part by gathering high quality information, including the best available scientific information, from all relevant sources to inform land management, and by retaining flexibility to plan at the appropriate scale to deal with changing resource issues.

The final rule revises two subparts of the existing regulations, 43 CFR subparts 1601 (Planning) and 1610 (Resource Management Planning). Changes in subpart 1601 clarify certain aspects of the general purpose, objective, responsibilities, definitions, and principles sections. Subpart 1610 describes the general framework for resource management planning. In this subpart, the final rule creates new opportunities for public involvement

earlier in the planning process, including during a "planning assessment" to determine baseline conditions before initiating the preparation of a resource management plan. The final rule fully aligns with FLPMA and the National Environmental Policy Act (NEPA) and clarifies the provisions for the special relationship and involvement of cooperating agencies, coordination with other Federal agencies, State and local governments and Indian tribes, and consistency with other plans; establishes a requirement to initiate tribal consultation during the preparation and amendment of resource management plans; establishes a requirement for the use of "high quality information"; clarifies existing flexibility to determine the scope of the planning areas to reflect the realities of resource management on the ground; updates plan approval, protest, and implementation procedures; affirms the statutory requirements for designation and protection of areas of critical environmental concern (ACECs); and makes other clarifying edits. These revisions are described in detail in the section-by-section discussion of this preamble, and are briefly summarized below. In both subparts, the final rule also makes non-substantive changes to improve readability and understanding of the planning regulations.

#### *Public Involvement*

The final rule provides several new opportunities for public involvement early in the planning process. During the planning assessment interested participants will be able to submit data and other information, such as existing resource-related plans or strategies, and the BLM will work with governmental partners, stakeholders, and the public to better understand public views in relation to the resource management plan and the preliminary planning area. At a slightly later stage, the BLM will make preliminary resource management alternatives and their rationale, as well as the procedures, assumptions, and indicators for the effects analysis, available for public review. This will enable the public to raise any concerns before the BLM begins analyzing the effects of alternatives and preparing a draft resource management plan. We believe these new steps will improve the effectiveness and timeliness of land use plans, improve the ability of the BLM to work with other Federal agencies, State, local, and tribal governments and others concerned about issues in a given planning area to develop a resource management plan that is responsive to the issues, and

reduce the need for supplemental analyses and data gathering, as concerns and potential conflicts will be more likely to surface earlier in the planning process.

The final rule also restructures the public involvement provisions to clarify where in the land use planning process the BLM will provide for public notice, public review, or public comment, and establishes new requirements for notification and availability of documents. The final rule lengthens the public comment period on draft resource management plans from 90 to 100 days while reducing the comment period for draft EIS-level amendments from 90 to 60 days, to reflect the fact that draft resource management plans tend to be larger in scope than amendments. The final rule also changes the requirements for selecting a preferred alternative to align more closely with the requirements of the Department of the Interior (DOI) NEPA implementation regulations.

#### *Special Relationship With Indian Tribes and Other Governmental Entities*

The final rule reflects the importance of government-to-government consultation with Indian tribes during resource management planning by establishing a new regulatory requirement for the BLM to initiate consultation during the preparation and amendment of resource management plans. The final rule also clarifies and affirms existing provisions regarding the special partnership with cooperating agencies; the coordination of planning efforts with other Federal agencies, and State, tribal and local governments; and the efforts to maximize consistency with other governmental plans.

Specifically, the final rule retains current provisions regarding participation by eligible governmental entities in the special status of "cooperating agency" in the planning process. Cooperating agencies are provided the opportunity to work closely with the BLM throughout the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives, and review preliminary documents not otherwise publicly available. This unique partnership is available by statute only to governmental entities, and helps the BLM develop a land use plan that is responsive to the needs and concerns of local communities.

In addition, the final rule reiterates and confirms current practice that the BLM will coordinate with all governmental entities, consistent with FLPMA (43 U.S.C. 1712(c)(9)), to assure that the BLM considers their plans,

policies, and management programs that are germane in the development of resource management plans. It also confirms the existing important practice, as required by FLPMA, of working to minimize and resolve inconsistencies between Federal and non-Federal government plans.

#### *Planning Assessment*

The final rule establishes a new upfront planning assessment which will be prepared prior to initiating resource management plans, as well as generally for plan amendments for which an environmental impact statement (EIS) will be prepared (EIS-level amendments). This step will provide an opportunity for the BLM, State, tribal, and local governments, stakeholders, and the public to work together to better understand the existing conditions in the planning area, and is likely to surface issues and concerns that will help inform the types of data and information necessary to the planning process.

During this step, the BLM will invite eligible State, tribal, and local government entities to participate as cooperating agencies and will coordinate with them regarding inventory of the public lands and alignment with their resource-related plans, policies, and management programs. Gathering relevant data and information is an important part of the assessment and will improve understanding of key resource issues and conditions and other issues in the planning area. The results of the planning assessment will be summarized in a report made available to other Federal agencies, State, local and tribal governments, stakeholders, and the public, as well as much of the geospatial information as possible.

#### *Planning Framework*

The final rule will focus resource management plans on the achievement of desired outcomes and specific resource conditions. Under the final rule, the BLM will use high quality information of various types and sources, including the best available scientific information, to identify desired characteristics within the planning area (*i.e.*, the goals) and specific and measurable resource conditions which guide progress toward the achievement of goals (*i.e.*, the objectives). By identifying these clear targets for management, the BLM will more readily be able to apply adaptive management principles and respond to change over time.

In addition to the goals and objectives, the final rule identifies other

plan components which provide planning level management direction. These include designations, which highlight priority resource values and resource uses; resource use determinations, which identify allowances, exclusions, and restrictions to use; monitoring and evaluation standards, which provide a feedback mechanism during plan implementation; and, where appropriate, lands identified as available for disposal from BLM administration. These plan components may only be changed through a plan amendment, except to correct a typographical or mapping error, or to reflect minor changes in mapping or data.

#### *Plan Boundaries and Responsibilities*

The final rule reflects a flexible process for the BLM to collaborate with other Federal agencies, State, tribal, and local governments, stakeholders, and the public to identify the geographic area to be considered in the resource management plan, so as to best address all relevant resource issues. Under the final rule, the BLM will work with all interested parties to identify a preliminary planning area, taking into consideration any management concerns, including those identified through monitoring and evaluation; relevant landscapes based on these management concerns; resource-related plans of other Federal agencies, State and local governments, and Indian tribes; and any other relevant information. Other Federal agencies, State, tribal, and local governments, stakeholders, and the public will be provided an opportunity to review and provide input on the preliminary planning area, before it is formalized in a notice of intent (NOI).

When a preliminary planning area does not cross State boundaries, which is likely to be the more common situation, the State Director will typically be the deciding official in finalizing the plan. If a planning area does cross State boundaries, the BLM Director will select the appropriate deciding official, usually from among the State Directors involved, and determine the final planning area. In all situations, the deciding official will select the appropriate responsible official for preparing the resource management plan or plan amendment.

#### *Protests*

The final rule revises the protest procedures to provide more detailed information on what constitutes a valid protest issue. In addition, the rule provides an opportunity for the public

to submit protests electronically through methods specified for each resource management plan or plan amendment, and clarifies that proposed resource management plans (including plan revisions) and plan amendments are subject to protest.

As a general matter, the final rule clarifies that the focus of a protest is to identify and remedy inconsistency with Federal laws and regulations or the purposes, policies, and programs implementing such laws and regulations. It provides that a party that previously participated in the preparation of a plan or plan amendment may file a protest to identify why a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations before the final decision to approve the plan.

#### *Transition From the Existing Planning Process*

The final rule addresses the transition from the existing planning regulations to those that result from this final rule. For any ongoing resource management planning efforts that were formally initiated prior to the effective date of this final rule, the planners may choose to complete the planning process using either the existing regulations or these final regulations. This ensures that the ongoing resources already invested in the planning process by other Federal agencies, State, tribal and local governments, stakeholders, the public, and the BLM will be maintained and respected. The final rule is effective on January 11, 2017.

## **I. Background**

The BLM manages more than 245 million acres of land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's mission is to manage and conserve the public lands for the use and enjoyment of present and future generations under the mandate of multiple-use and sustained yield. In Fiscal Year 2015, \$88 billion in economic output was generated from activities associated with BLM-managed lands.<sup>1</sup>

<sup>1</sup> U.S. Department of the Interior Economic Report FY 2015. [https://www.doi.gov/ppa/economic\\_analysis](https://www.doi.gov/ppa/economic_analysis).

### *Statutory and Regulatory Authority*

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, is the BLM “organic act” that establishes the agency’s mission to manage the public lands on the basis of multiple-use and sustained yield, unless otherwise specified by law. Through FLPMA, the BLM is directed to manage the public lands in a manner which recognizes the nation’s need for natural resources from the public lands, provides for outdoor recreation and other human uses, provides habitat for fish and wildlife, preserves and protects certain public lands in their natural condition, and protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values. The BLM develops goals and objectives to guide management through the land use planning process under section 202 of FLPMA.

Section 202(a) of FLPMA requires the Secretary of the Interior, with public involvement, to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” Section 202(c) of FLPMA provides that the Secretary, in developing and revising land use plans, shall: Use and observe the principles of multiple use and sustained yield; use an interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences; give priority to the designation and protection of ACECs; use the inventory of public lands, resources and other values, to the extent it is available; consider both present and potential uses of public lands; consider the relative scarcity of values; weigh long-term benefits against short term benefits; provide for compliance with applicable pollution control laws; and coordinate with other Federal departments and agencies, Indian tribes, and States and local governments.

Section 202(f) of FLPMA provides that the Secretary shall provide for public involvement and establish procedures by regulation “to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.” Under FLPMA, the Secretary administers the public lands through the BLM.

The BLM issued regulations establishing a land use planning system for BLM-managed public lands, as prescribed in FLPMA, in 1979 (44 FR

46386). These regulations established the term “resource management plan” (RMP) for the land use plans mandated by FLPMA, to replace the then-existing “management framework plans.” The BLM revised these regulations in 1983 to clarify the planning process and “eliminate burdensome, outdated, and unneeded provisions” (48 FR 20364). These regulations were amended again in 2005 (70 FR 14561) to make clear the role of cooperating agencies in the land use planning process and to emphasize the importance of working with Federal and State agencies and local and tribal governments through cooperating agency relationships in developing, amending, and revising the BLM’s resource management plans.

### *The BLM’s Existing Land Use Planning Process*

The BLM planning process is a collaborative process, which involves Federal agencies, Indian tribes, State and local governments, and the public at various steps, while retaining decision-making authority within the BLM. Throughout the planning process, the BLM coordinates with other Federal agencies, Indian tribes, and State and local governments to ensure that BLM considers non-BLM government plans that are germane in the development of resource management plans and assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal government plans. In addition, government entities that have either relevant jurisdiction by law or special expertise are invited to participate as cooperating agencies. Cooperating agencies work with the BLM during the planning process to identify issues that should be addressed, to collect and analyze data, develop and evaluate alternatives, and review preliminary documents.

Traditionally, resource management plans are generally established based on a BLM field office or district office boundary and prepared by an interdisciplinary team under the direction of a BLM field or district manager. Generally, the BLM State Directors provide oversight and guidance to the field or district managers and the BLM State Directors approve the resource management plan. The BLM Director provides high-level guidance and renders a decision on any public protests of the proposed plan, and, when necessary, inconsistencies with State and local plans that are raised by a Governor through a consistency review process. The Secretary of the Interior, the Assistant Secretary for Land and Minerals Management, the BLM Director, or other

BLM officials may provide oversight and approval for resource management plans of national importance.

As outlined in 43 CFR subparts 1601 and 1610, the steps of the planning process are fully integrated with the requirements of NEPA.<sup>2</sup> The planning process begins with public notice and formal invitation for the public to assist the BLM in the identification of planning issues, concurrent and integrated with the NEPA scoping process. Planning issues are defined in the current BLM Land Use Planning Handbook (H-1601-1) as “disputes or controversies about existing and potential land and resource allocations, levels of resource use, production, and related management practices.”

Next, the BLM develops criteria to guide the development of the resource management plan. The planning criteria are intended to ensure that the resource management plan is tailored to the planning issues and that the BLM avoids unnecessary data collection and analyses. The BLM summarizes the planning issues and planning criteria in a scoping report, which is made available to the public. The BLM continues to refine the planning issues and the planning criteria throughout the development of the draft resource management plan.

To aid in the planning process, the BLM arranges for the collection or assembly of data and information, which are then analyzed to determine the ability of the resources to respond to the planning issues as well as any management opportunities. The resulting “analysis of the management situation” provides the basis for the BLM’s development of a range of reasonable alternatives and analysis of the environmental impacts of these alternatives, as required by NEPA. The BLM presents the range of alternatives in a single integrated draft resource management plan and draft EIS and identifies its preferred alternative. The BLM then makes the draft resource management plan and draft EIS available to the public for a minimum 90-day comment period. At the close of this period, the BLM evaluates the comments received and prepares a proposed resource management plan and final EIS, including responses to any substantive public comments

<sup>2</sup> Council on Environmental Quality (CEQ) NEPA implementing regulations require Federal agencies, “to the fullest extent possible,” to “[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively” 40 CFR 1500.2(c).

received on the draft resource management plan and draft EIS.

The BLM provides the proposed resource management plan and final EIS to the Governor(s) of any State(s) the plan falls within for a 60-day consistency review period and identifies any known inconsistencies between State and local plans and the proposed resource management plan. During this period, the Governor may identify any additional inconsistencies and recommendations to remedy inconsistencies. This step, in addition to the ongoing coordination with State and local governments, supports implementation of the FLPMA requirement that the BLM keep apprised of State, local, and tribal land use plans and assist in resolving, to the extent practical and consistent with Federal law, inconsistencies between Federal and non-Federal government plans (see 43 U.S.C. 1712(c)(9)). Concurrent with the Governor's consistency review, the BLM provides a 30-day period during which members of the public who have an interest that may be adversely affected by the approval of the proposed resource management plan and who participated in the planning process may protest approval of the proposed resource management plan. The BLM Director renders a decision on any protest, which serves as the final decision of the DOI and is not subject to an administrative appeal.

Following approval of the resource management plan, the BLM conducts monitoring and evaluation at intervals established in the plan to assess the need for maintenance, revision, or amendment of the plan. Maintenance is provided as needed to reflect minor changes in data. An amendment or plan revision is initiated in response to monitoring and evaluation findings, new data, new or revised policy, a change in circumstances, or a proposed action that would not be in conformance with the approved resource management plan. The BLM undertakes a resource management plan revision when monitoring and evaluation findings, new data, new or revised policy, or changes in circumstances affect the entire plan or major portions of the plan.

The final rule includes this general process for developing, revising, amending, and maintaining a resource management plan, as described, while making specific changes to improve the process in a number of ways.

#### *Why the BLM Is Revising the Land Use Planning Process*

The final rule responds to needs identified by the BLM, State, local and

tribal governments, the public, and related Presidential and Secretarial direction. In 2011, the BLM released a strategic plan titled "Winning the Challenges of the Future: A Roadmap for Success in 2016" (the Roadmap). This document highlighted the increasing challenges the BLM faces in managing for multiple-use and sustained yield on the public lands. Population growth and urbanization in the West, a diversifying portfolio of use activities, demand for renewable and non-renewable energy sources, and the proliferation of landscape-scale environmental change agents such as climate change, wildfire, and invasive species create challenges that require the BLM to develop new strategies and approaches to effectively manage the public lands. Simultaneously, the rapid acceleration in technologies such as the Internet, telecommunications, and analytical tools, including geospatial tools, have brought new opportunities to improve the land use planning process. Given the foundational nature of land use planning, a process that establishes direction for future management activities on the public lands, the Roadmap recognized the need for the BLM's resource management plans to address these challenges and respond to emerging opportunities. The Roadmap also recognized the importance of an efficient planning process, one that can effectively integrate new information and new technologies as they become available in order to keep resource management attuned to changing conditions on the ground and newly available information.

Specifically, the Roadmap set the following goal for the BLM to accomplish by the year 2016: "Adopt a proactive and nimble approach to planning that allows us to work collaboratively with partners at different scales to produce highly useful decisions that adapt to the rapidly changing environment and conditions" (page 10). Following the publication of the Roadmap, the BLM chartered a team of BLM managers and planning staff to assess the current status of the BLM's resource management plans and develop recommendations to improve the process for developing resource management plans. The final rule, in part, implements the recommendations for achieving the goals set forth in the Roadmap.

#### *Related Executive and Secretarial Direction*

In addition, the final rule responds to and advances direction set forth in several Executive or Secretarial Orders and related policies and strategies. This

direction demonstrates an increasing emphasis within the DOI, and the Federal Government, on the use of landscape-scale, science-based, collaborative approaches to natural resource management. Recent Presidential and Secretarial direction provided to DOI bureaus and agencies emphasize the importance of this approach for resource management planning.

Effective collaboration is a central theme in recent Presidential and Secretarial directives, beginning with the President's 2009 Open Government Directive (M-10-06). This directive describes the three principles of transparency, participation, and collaboration as the cornerstone of an open government by promoting accountability to the public, sharing of information, and partnerships and cooperation within the Federal Government, across all levels of government, and between the government and private institutions. In 2012, the Office of Management and Budget (OMB) and the CEQ issued the "Memorandum on Environmental Collaboration and Conflict Resolution." This memorandum directs Federal departments and agencies to ensure they effectively explore opportunities for up-front collaboration in their planning and decision-making processes to address different perspectives and potential conflicts and thereby promote improved outcomes, including fewer appeals and less litigation.

Multiple directives related to climate change also emphasize the importance of collaboration, science, adaptive management, and the need for landscape-scale approaches to resource management. "Secretarial Order 3289—Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources," issued on September 14, 2009, and amended on February 22, 2010, directs DOI bureaus and agencies to work together, with other Federal, State, tribal and local governments, and with private landowners, to develop landscape-level strategies for understanding and responding to climate change impacts. The Departmental Manual chapter on climate change policy (523 DM 1), issued on December 20, 2012, similarly directs DOI bureaus and agencies to "promote landscape-scale, ecosystem-based management approaches to enhance the resilience and sustainability of linked human and natural systems." "The Department of the Interior Climate Change Adaptation Plan for 2014" (Climate Change Adaptation Plan), provides guidance for implementing 523 DM 1 and "Executive

Order No. 13653—Preparing the United States for the Impacts of Climate Change” (78 FR 66819). The Climate Change Adaptation Plan directs the DOI bureaus and agencies to strengthen existing landscape level planning efforts; use well-defined and established approaches for managing through uncertainty, such as adaptive management; and maintain key ecosystem services, among other important directives. This plan also identifies several guiding principles, including the use of the best available social, physical, and natural science to increase understanding of climate change impacts and active coordination and collaboration with stakeholders.

Likewise, recent directives associated with renewable energy development and mitigation practices emphasize the importance of a collaborative, landscape-scale approach. “Secretarial Order 3285—Renewable Energy Development by the Department of the Interior,” issued on March 11, 2009, and amended on February 22, 2010, identified renewable energy production, development, and delivery as one of the Department’s highest priorities and called on bureaus and agencies to carry out this priority by collaborating with one another and with governmental and tribal partners, local communities, and private landowners. In particular, this Order highlighted the need to identify and prioritize specific locations that are well-suited to large-scale renewable energy production as well as the electric transmission infrastructure and transmission corridors needed to deliver the energy produced.

A landscape-scale approach to planning is integral to effectively managing the public lands consistent with the BLM’s multiple use and sustained yield mission. “Secretarial Order 3330—Improving Mitigation Policies and Practices of the Department of the Interior,” issued on October 31, 2013, called for the development of a DOI-wide mitigation strategy, which will use a landscape-scale approach to identify and facilitate investments in key conservation priorities in a region. The April 2014 report, “A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior,” provides direction to implement such an approach. The Departmental Manual was revised in October 2015, to include direction to all bureaus and agencies for implementation of this approach to resource management (600 DM 6).

The Presidential Memorandum “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private

Investment,” issued in November 2015, affirmed the importance of applying a landscape-scale approach by directing agencies that “[l]arge-scale plans and analysis should inform the identification of areas where development may be most appropriate, where high natural resource values result in the best locations for protection and restoration, or where natural resource values are irreplaceable” (80 FR 68743).

Finally, “Secretarial Order 3336—Rangeland Fire Prevention, Management and Restoration,” issued on January 5, 2015, directs DOI bureaus and agencies to use landscape-scale approaches to address fire prevention, management, and restoration in the Great Basin; and to establish protocols for monitoring the effectiveness of fuels management, post-fire activities, and long-term restoration treatments and a strategy for adaptive management to modify management practices or improve land treatments when necessary.

Collectively, these directives emphasize the importance of landscape-scale, science-based management, including active coordination and collaboration with partners and stakeholders. The BLM believes that changes to the resource management planning process included in this rule will assist in effectively implementing these directives.

#### *The Planning 2.0 Initiative*

Together, the Roadmap and the recent policy and strategic direction described in this preamble informed the BLM’s decision to revise its resource management planning process. The BLM’s Planning 2.0 initiative responds to this opportunity. Through Planning 2.0, the BLM seeks to improve the resource management planning process, including the development, amendment, and maintenance of resource management plans. The BLM has developed three targeted goals to guide the Planning 2.0 initiative:

*Goal 1: Improve the BLM’s ability to respond to change in a timely manner.* This goal addresses the need for land use plans that support effective management when faced with environmental uncertainty, incomplete information, or changing resource, environmental, ecological, social, or economic conditions. It is imperative that resource management plans provide clear management direction to guide future management activities on the public lands, while facilitating the use of adaptive, science-based approaches to respond to change when necessary and appropriate. Encompassed in this goal is the need for an efficient planning

process so that changes to a resource management plan, when needed, are timely and responsive to the relevant issues.<sup>3</sup>

*Goal 2: Provide meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans.* This goal highlights the importance of meaningful public involvement in the planning process to reduce conflict and disputes over public lands management and develop durable resource management plans. Through the Planning 2.0 initiative, the BLM seeks to establish earlier and more frequent opportunities for public involvement in the planning process and to provide for effective coordination with other Federal agencies, State and local governments, and Indian tribes. At the same time, Planning 2.0 affirms the BLM’s commitments to collaborating with cooperating agencies and working with RACs throughout the planning process (see existing § 1610.3–1(g)).

*Goal 3: Improve the BLM’s ability to apply landscape-scale approaches to resource management.* This goal addresses the need for landscape-scale approaches to resource management in order to effectively manage public lands on the basis of multiple use and sustained yield and to address resource issues which occur at a range of geographic scales. A landscape-scale approach is a structured and analytical process that guides resource management decisions at multiple geographic scales in order to consider multiple overlapping landscapes and to achieve multiple social, environmental, and economic goals. The BLM manages a diverse range of natural resources, which occur at an equally diverse range of geographic scales, and collaborates with a diversity of partners, stakeholders and communities, who work at different scales. For these reasons, the BLM planning process must be able to consider issues and opportunities at multiple scales and across traditional management boundaries.

To achieve these three goals, the BLM is amending specific provisions of the land use planning regulations (43 CFR

<sup>3</sup> An efficient land use planning process under FLPMA advances direction in CEQ NEPA regulations and guidance for seeking efficiencies in the NEPA process. See, e.g., 40 CFR 1500.2(b) and (c) and 1500.5; Memorandum for Heads of Federal Departments and Agencies from Nancy H. Sutley, Chair, Council on Environmental Quality, “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act” (Mar. 6, 2012), [https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving\\_nepa\\_efficiencies\\_06mar2012.pdf](https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving_nepa_efficiencies_06mar2012.pdf).

part 1600). These regulatory revisions are the subject of this final rule. Separately, the BLM also is revising the Land Use Planning Handbook to provide detailed guidance to implement these regulations. We have taken a coordinated approach to ensure that these two efforts mutually support achieving Planning 2.0 goals and providing consistent requirements and guidance for developing and amending resource management plans.

#### *Related BLM Initiatives*

In recent years, the BLM has taken several steps toward the goals identified in the “Related Executive and Secretarial Direction” section of this preamble, including tools to aid science-based decision-making; landscape-scale approaches to resource management; the use of adaptive management techniques to manage for uncertainty; and active coordination and collaboration with partners and stakeholders. These steps include crafting new policies and strategies and introducing innovative data and information technology tools. The Planning 2.0 initiative supports the implementation of these other important BLM efforts and is mutually supported by these other efforts. Here we describe several other BLM efforts and how they relate to the goals of Planning 2.0, even though they are beyond the scope of this rulemaking.

In partnership with the Landscape Conservation Cooperatives (LCCs) and other Federal agencies, the BLM has worked to develop Rapid Ecoregional Assessments (REAs) in the western United States.<sup>4</sup> Each REA synthesizes the best available information about resource conditions and trends within an ecoregion and highlights areas of high ecological value, as well as areas that have high energy development potential and relatively low ecological value, which could be well-suited for siting future energy development. In addition, REAs establish landscape-scale baseline ecological data to help gauge the effect and effectiveness of future management activities. The REAs are an important step in support of adaptive, landscape-scale management approaches,<sup>5</sup> and they provide

<sup>4</sup> The LCCs are a network of 22 public-private partnerships launched under Secretarial Order 3289 to improve the integration of science and management to address climate change and other landscape-scale issues. See <http://lccnetwork.org/about>. Information about the REAs is available at: [http://www.blm.gov/wo/st/en/prog/more/Landscape\\_Approach/reas.html](http://www.blm.gov/wo/st/en/prog/more/Landscape_Approach/reas.html).

<sup>5</sup> See BLM Information Bulletin No. 2012–058, “The Bureau of Land Management’s Landscape Approach for Managing the Public Lands” (Apr. 3, 2012), <http://www.blm.gov/wo/st/en/info/>

necessary data and information to support the Planning 2.0 goal to apply landscape-scale approaches to resource management.

In 2013, the BLM issued the “Draft—Regional Mitigation Manual Section (MS)—1794” as interim guidance, which promotes consideration of mitigation within a broader regional context and development of mitigation strategies. Mitigation strategies identify, evaluate, and communicate potential mitigation needs and mitigation measures in a geographic area. Under this draft guidance, the BLM has worked collaboratively with partners to develop regional mitigation strategies in several key areas while also developing guidance consistent with Secretarial Order 3330. This guidance, which provides for a landscape-scale approach to mitigation, is consistent with the Planning 2.0 goal to apply landscape-scale approaches to resource management. The Planning 2.0 initiative will support effective implementation of the regional mitigation policy by ensuring that resource management plans, like mitigation, are grounded in sound science, applied at a broader regional context, and that the mitigation hierarchy process is applied in the development and implementation of a resource management plan.

The BLM is implementing its “Assessment, Inventory, and Monitoring (AIM) Strategy” (2011), which was developed to standardize data collection and retrieval so information is comparable over time and can be readily accessed and shared. The AIM Strategy provides a process for the BLM to collect quantitative information on the status, condition, trend, amount, location, and spatial pattern of renewable resources on the nation’s public lands. The BLM strategy, “Advancing Science in the BLM: An Implementation Strategy” (2015), outlines goals and an action plan for integrating science into multiple-use land management decisions in a consistent manner. Both strategies improve the BLM’s ability to employ science-based decision-making and apply adaptive management techniques using standardized monitoring data that can be analyzed and applied at multiple geographic scales. These steps are important to achieving the Planning 2.0 goals.

In addition, the BLM is implementing its “Geospatial Services Strategic Plan” (GSSP) (2008), which is providing the high-quality mapping products needed to develop and support adaptive,

*regulations/Instruction Memos and Bulletins/national\_information/2012/IB\_2012-058.html.*

landscape-scale approaches to resource management. The GSSP establishes a governance model for the management of BLM’s geospatial information and institutes a structure to coordinate the use of geospatial technology within the BLM. The GSSP also addresses data management, data acquisitions, data standards, and the establishment of corporate data themes. Geospatial transformation is important for achieving all three Planning 2.0 goals. In addition to supporting science-based, landscape-scale, adaptive approaches to resource management, advances in geospatial technology support the use of new and innovative methods for public involvement. For example, the development and deployment of BLM’s ePlanning platform, an online national register for land use planning and NEPA documents, provides a dynamic and interactive link between text, such as land use plans, and the supporting geospatial data. The ePlanning platform enables the BLM to make documents and maps available to the public via the Internet for review and comment and provides a searchable register for NEPA and land use planning projects.<sup>6</sup> The BLM is transitioning to the ePlanning platform for all land use planning and NEPA documents and expects that ePlanning will be deployed for all resource management plans throughout the BLM by 2017.

Finally, the BLM is strengthening its commitment to partnerships and cooperating agencies. The BLM’s “National Strategy and Implementation Plan to Support and Enhance Partnerships, 2014–2018” (2014), highlights the importance of partnerships to achieving the BLM’s mission, and creates a national framework for improved coordination in support of partnerships across the BLM. The updated BLM publication, *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (2012), reaffirmed the BLM’s commitment to working with Federal, State, local, and tribal government partners. The Planning 2.0 goal of providing meaningful opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to be involved in the development of BLM resource management plans will build on these foundational efforts.

<sup>6</sup> See [https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do).

### *Initial Public Involvement in Planning 2.0*

The BLM conducted initial public outreach and engagement activities as a part of the Planning 2.0 initiative. This outreach is consistent with section 2(c) of “Executive Order 13563—Improving Regulation and Regulatory Review” (76 FR 3822, January 21, 2011), which encourages agencies to seek the views of those who are likely to be affected by a rulemaking before issuing a proposed rule. The initial outreach for the overall Planning 2.0 initiative included outreach to inform the development of the proposed rule as well as a forthcoming revision of the Land Use Planning Handbook. The BLM launched the Planning 2.0 initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a Web site for the initiative ([www.blm.gov/plan2](http://www.blm.gov/plan2)) and issued a national press release with information on how to provide input to the agency. The BLM held public listening sessions in Denver, Colorado (October 1, 2014) and in Sacramento, California (October 7, 2014). Both meetings were led by a third-party facilitator and were available to remote participants through a live broadcast of the event over the Internet (livestream). The goals of these meetings were to share information about the Planning 2.0 initiative with interested members of the public, to provide a forum for dialogue about the initiative, and to receive input from the public on how best to achieve the goals of the initiative. Summary notes from these meetings and recorded livestream video are available on the BLM Web site.

The BLM conducted external outreach to BLM partners and internal outreach to BLM staff in State, district, and field offices. External outreach included multiple briefings provided to the Federal Advisory Committee Act chartered RACs; a briefing for State Governor representatives coordinated through the Western Governors Association; a briefing for State Fish and Wildlife Agency representatives coordinated through the Association of Fish and Wildlife Agencies; multiple briefings for other Federal agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

### *Public Response to Planning 2.0 During Early Engagement*

Between May 2014 and February 2015, over 6,000 groups and individuals submitted written comments for BLM’s

consideration. This information was summarized into a written report and made available on the Planning 2.0 Web site on February 3, 2015. The input received through written submissions and the public listening sessions covered a broad range of topics and opinions, which are summarized in this preamble and described in more detail in the “Planning 2.0 Public Input Summary Report” (2015). The summary report is available on the BLM Web site. The BLM worked to consider this information and to find an appropriate balance between different needs and perspectives in the development of the proposed and final rule.

A large number of comments focused on how to integrate adaptive management into resource management plans. While nearly all comments supported the initial goal of “a more dynamic and efficient planning process,” many commenters were concerned that resource management plans could become so “dynamic” that they become meaningless. Many comments suggested that the BLM establish achievable and measurable objectives to guide future decisions, as well as indicators and thresholds for resource conditions in resource management plans. While some commenters believed that the BLM should have the ability to increase or reduce resource protections established in the resource management plan if site-specific conditions warrant, many commenters were concerned that such an adaptive management approach might allow activities that otherwise conflict with the other resource management plan goals and objectives.

Some commenters suggested that efficiencies could be gained by developing standardized decision language, prohibiting overlapping designations, and working with partners to avoid duplication of efforts. Commenters requested that the BLM improve data collection and management by including non-BLM data sources in resource management plans; providing better public access to BLM data; establishing standards for monitoring in resource management plans; designating timeframes to modify management based on monitoring results; and identifying enforceable actions if monitoring does not occur.

Public comments affirmed the value of public participation as essential to the success of any land use plan. Several commenters expressed the need for broad, comprehensive stakeholder participation and requested that the BLM conduct strategic and targeted outreach at the onset of all planning efforts to reach stakeholders.

Commenters also encouraged the BLM to collaborate with other Federal agencies, which often manage adjacent lands, and to conduct outreach to Indian tribes.

Numerous commenters suggested two new opportunities for public involvement in the planning process. Outreach before initiating the NEPA scoping process could be used to identify preliminary stakeholders and management issues, solicit input about resource data needed for resource management plan development, and encourage stakeholders to contribute inventory information. Additionally, a public review of preliminary management alternatives could occur between the identification of planning issues and the publication of the draft resource management plan and draft EIS to help BLM refine the range of alternatives to address public concerns.

The BLM also received comments on different ways to effectively engage the public. Several commenters requested that the BLM leverage web-, tele-, and video-conference technology to reach a larger audience while also providing meaningful involvement opportunities for members of the public without technological access. Commenters also described a broad range of best practices for public participation and encouraged the BLM to implement these practices in the planning process.

Several commenters proposed instituting a landscape level planning process in which the BLM would evaluate public lands, establish priority areas for conservation and priority areas for development, set desired conditions at the ecoregional level, and then allocate allowable uses and make special designations at the field office level. Conversely, some commenters questioned the utility of landscape level planning. It is important to many stakeholders that resource management plans provide specific, local context, and clearly articulate for local users how the BLM will manage public lands close to them. Some commenters were concerned that it would be shortsighted for the BLM to limit development only to those priority areas identified in an ecoregional plan, as future technological advances could make new unforeseeable areas appropriate for development.

Many comments urged the BLM to integrate the DOI mitigation policy, “Improving Mitigation Policies and Practices of the Department of the Interior” (Secretarial Order 3330), into the land use planning process. Public comments also stated that effective landscape planning should be fully integrated with the NEPA process and provide clear direction for considering

State and private lands. At the same time, commenters cautioned that the BLM should ensure that landscape level planning does not result in time-consuming analysis that overlaps the NEPA analysis that already occurs during a resource management plan revision.

In addition to input on how to meet Planning 2.0 goals, many public comments contained recommendations on how the BLM should address specific resources, uses, and special designations in resource management plans. These comments are summarized in the “Planning 2.0 Public Input Summary Report” (2015), available on the BLM Web site.

#### *Public Involvement on the Proposed Rule*

The BLM published the proposed rule in the **Federal Register** on February 25, 2016 (81 FR 9674) for a 60-day comment period ending on April 25, 2016. In response to public requests for an extension, the BLM extended the comment period for an additional 30 days on April 22, 2016 (81 FR 23666). The extended comment period closed on May 25, 2016.

During the comment period, the BLM hosted a variety of public outreach activities. The BLM held a public webinar (March 21, 2016) as well as a public meeting in Denver, CO (March 25, 2016) to provide an overview of the proposed rule and answer questions from the public. The public meeting was available to remote participants through livestream. In response to public interest in additional outreach activities, the BLM held a second public webinar (April 13, 2016) focused on frequently asked questions related to the proposed rule. All webinars and meetings were led by a third-party facilitator. Summary notes and recordings of all three events are available on the BLM Web site. In addition, the BLM provided an email address ([blm\\_wo\\_plan2@blm.gov](mailto:blm_wo_plan2@blm.gov)) at the close of each event for members of the public to send follow-up questions.

The BLM also conducted external outreach to several stakeholder organizations or committees regarding the proposed rule. External outreach included briefings provided to the BLM’s Federal Advisory Committee Act chartered RACs; a briefing for the Association of Fish and Wildlife Agencies; a webinar for interested local government representatives coordinated through the National Association of Counties; and meetings with other interested parties upon request.

The BLM received 3,354 comment letters, which are available for viewing on the [regulations.gov](http://regulations.gov) Web site by

entering Docket ID: BLM–2016–0002 in the “Search” bar.

#### *Tribal Consultation on the Proposed Rule*

The BLM initiated government-to-government consultation with federally recognized Indian tribes with which the Bureau normally consults regarding land use planning. Each BLM State Office sent a letter notifying Indian tribes located within the jurisdictional boundary of the BLM State Office and with which the BLM State Office normally consults on proposed rules and requesting government-to-government consultation. Additionally, each BLM State Office sent a follow-up notification and request for consultation, however, the format for follow-up requests varied across BLM State Offices. Formats included telephone calls, letters, or in-person conversations at previously scheduled meetings.

To facilitate understanding of the proposed rule, the BLM held a webinar for interested Indian tribes on May 4, 2016. The webinar provided an overview of the proposed changes, discussion on topics of interest to tribal participants, and an opportunity for questions. In addition, in person meetings were held with all tribes that accepted the BLM’s request for government-to-government consultation and requested a meeting with the BLM. This final rule is informed by input received from tribes during government-to-government consultation. Responses to tribal comments are addressed in the “section-by-section discussion” and “response to public comments” sections of this final rule.

#### *How the Final Rule Achieves the Goals of Planning 2.0*

As part of the Planning 2.0 initiative, the final rule amends specific provisions of the land use planning regulations (43 CFR part 1600). In the following paragraphs we explain how the changes to the land use planning regulations will serve the overall goals of the Planning 2.0 initiative.

The final rule identifies and defines the components of a resource management plan. These “plan components” provide the planning-level management direction that guides all future management decisions without specifically prescribing future decisions. Such an approach is important for implementing adaptive resource management as it establishes firm goals and objectives and provides for the use of public lands, while also providing flexibility to incorporate site-specific information, where appropriate, and

respond to changing circumstances and new information.

The final rule requires that, when preparing or amending resource management plans, the BLM must use high quality information, including the best available scientific information. The final rule also emphasizes the importance of assessing resource, environmental, ecological, social, and economic conditions at relevant spatial scales and before initiating the preparation of a resource management plan, in order to apply science-based decision-making and inform management decisions at multiple scales.

The final rule will add new opportunities for meaningful public involvement in the land use planning process and emphasize the importance of early public involvement in order to engage different perspectives and ensure planning is responsive to public needs and values. Final changes will promote increased communication with and transparency to the public by providing for the use of electronic communications and information technology, in addition to traditional methods of communication. The BLM believes that enhanced public involvement will promote a more efficient planning process and improved outcomes by ensuring that diverse viewpoints are considered early and often. In particular, the BLM anticipates that considering diverse viewpoints early in the planning process, when they can help inform the development of the resource management plan and supporting NEPA analysis, will help the BLM avoid or minimize the need to restart the planning process or supplement the NEPA analysis based on issues raised later in the process after considerable work has been completed. At the same time, the final rule expands the minimum requirement for the length of public comment periods for draft resource management plans to reflect the value placed on this step by members of the public, as indicated through public comment, and shortens the minimum requirement for the length of public comment periods for draft EIS-level amendments to reflect the fact that targeted amendments may be narrow in scope and scale and allow for a more efficient process in these situations.

In revisions to both subpart 1601 and 1610, the BLM updates some existing text to reflect current style guidelines and to use plain language, consistent with the “Presidential Memorandum on Plain Language in Government Writing” (63 FR 31885, June 10, 1998), which directs Federal Agencies to consider rewriting existing regulations in plain

language if the opportunity is available. These changes will facilitate improved readability and understanding of the planning regulations, which will support effective collaboration during the planning process.

#### *Summary of Changes*

The BLM received 3,354 comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (<http://www.regulations.gov>) (search Docket ID: BLM–2016–0002). The BLM has reviewed all public comments, and has made changes, as appropriate, to the final rule based on those comments and internal review. Those changes are described in detail in the “section-by-section discussion” of this final rule. In addition, the “response to public comments” in this final rule provides a summary of issues raised most frequently in public comments and the BLM’s response. A table comparing the proposed rule to the final rule and a more comprehensive account of public comments and detailed responses to these comments are available to the public on the BLM Web site ([www.blm.gov/plan2](http://www.blm.gov/plan2)) and are included as a supporting document in the docket for this rulemaking on [regulations.gov](http://www.regulations.gov).

## **II. Section-by-Section Discussion of Changes to the Existing Planning Rule and Revisions From the Proposed Planning Rule**

The following discussion describes the final rule provisions, substantial changes from the existing rule and revisions from the proposed rule, and the rationale for these changes. The final rule revises part 1600, including subparts 1601 (Planning) and 1610 (Resource Management Planning). Revisions in subpart 1601 update and introduce new definitions and revise the purpose, objective, responsibilities, environmental impact statement policy, and principles sections.

Subpart 1610 is reorganized to improve readability. Revisions describe guidance and general requirements, and resource management plan components; update the public involvement provisions; update the provisions regarding coordination with other Federal agencies, State and local governments and Indian tribes; establish a requirement in these regulations for government-to-government consultation with Indian tribes; establish an assessment of baseline conditions in the planning area before the BLM initiates the preparation of a resource management plan and most EIS-level amendments; revise the steps in the planning process to increase

transparency and add new opportunities for public involvement; clarify resource management plan approval and protest procedures; modify the monitoring and evaluation, amendment, and maintenance provisions; update the provisions for designating ACECs; and make clarifying edits.

#### *Subpart 1601—Planning*

The final rule adopts several style changes throughout both subparts, consistent with the proposed rule, such as replacing the Bureau of Land Management with the acronym “BLM” and the Federal Land Policy and Management Act with the acronym “FLPMA,” for improved readability. The rule replaces the word “title” with “part” throughout both subparts for consistency with current style guidelines. We replace “plan” with “resource management plan,” where appropriate, and “amendment” with “plan amendment” throughout both subparts to improve consistency and precision in use of terminology.

One proposed style change is not adopted in the final rule. The proposed rule would have replaced the word “shall” with “will” throughout both subparts for improved readability; in response to public comment this proposed change is not adopted in the final rule. Rather, the final rule retains the word “shall,” throughout the rule unless specifically noted in the discussion for a particular section. In some instances the word “will” occurs in existing regulations or was included in proposed new provisions, and in these instances the final rule replaces “will” with “shall,” throughout unless specifically noted in the discussion for a particular section, for consistent use of terminology throughout both subparts. There is no change in meaning from these revisions.

Finally, the final rule removes most references to resource management plan “revisions” throughout both subparts, consistent with the proposed rule. Revisions are included in the definition of a resource management plan (see final § 1601.0–5) and must comply with all of the requirements of these regulations for preparing and approving a resource management plan (see final § 1610.6–7). Differentiating between the preparation of a new resource management plan and the revision of a resource management plan is unnecessary and confusing. For example, if the BLM revises portions of more than one existing resource management plan, it is unclear whether the resulting resource management plan would be considered a new resource management plan or a revised resource

management plan. Under the existing, proposed and final regulations, there is no substantive difference between a resource management plan and the revision of a resource management plan, therefore both will be considered a “resource management plan.”

#### Section 1601.0–1 Purpose

The final rule adopts the proposed changes to this section to introduce the acronym “BLM,” which is used throughout the part, and to remove the words “and revision” for the reasons previously described. There is no change from current practice or policy resulting from these revisions.

In addition, the final rule adds new language specifying that the process established by the regulations be “consistent with the principles of multiple use and sustained yield, unless otherwise specified by law.” This addition responds to a public comment requesting the BLM to include “multiple use and sustained yield” in this section, as well as general public comments asserting that the proposed rule would not adequately promote the principles of multiple use and sustained yield. The final rule reflects the requirements of FLPMA (see 43 U.S.C. 1701 (a)(7)), which states that “management be on the basis of multiple use and sustained yield unless otherwise specified by law” and that “in the development and revision of land use plans, the Secretary shall . . . use and observe the principles of multiple use and sustained yield set forth in this and other applicable law.” (See 43 U.S.C. 1712(c)(1).)

The BLM added the phrase “unless otherwise specified by law” in the final rule to be consistent with the language in FLPMA which makes it clear that in some situations certain BLM lands must be managed in compliance with other legal authorities which in some instances supersede the management direction in FLPMA to manage on the basis of multiple use and sustained yield (see 43 U.S.C. 1732(a)). For instance, national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must be managed for the care and management of the monument objects in accordance with the terms in the proclamation establishing the specific national monument. This new language in the final rule is not a change in practice or policy, as the BLM currently manages on the basis of multiple use and sustained yield unless otherwise specified by law.

## Section 1601.0–2 Objective

The final rule revises the stated objectives of resource management planning to reflect the requirements of FLPMA and remove vague or inaccurate language. In the first sentence of this section, the final rule adopts the proposal to remove the phrase “maximize resource values for the public through a rational, consistently applied set of regulations and procedures.”

The term “maximize resource values” is vague and therefore inappropriate in regulations. Further, FLPMA directs the BLM to manage the public lands on the basis of multiple use and sustained yield, rather than to “maximize resource values.” FLPMA defines multiple use, in part, as “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” as well as “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land 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.” (See 43 U.S.C. 1702(c).) This language provides a more precise explanation of how the BLM should consider resource values during the planning process and reaffirms statutory direction to manage on the basis of multiple use and sustained yield, unless otherwise specified by law. The second half of the removed language describes a “rational, consistently applied set of regulations and procedures,” which describes the purpose of developing planning regulations, but not an objective of resource management planning.

In the first sentence of this section, the proposed rule would have replaced the phrase “promote the concept of multiple use management” with the phrase “promote the principles of multiple use and sustained yield on public lands, unless otherwise provided by law.” The final rule revises this phrase to read “manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law.” This change is consistent with FLPMA, which, as discussed above, directs the BLM to “use and observe the principles of multiple use and sustained yield” in the development and revision of land use plans (see 43 U.S.C. 1712(c)(1)) and requires that “management be on the basis of

multiple use and sustained yield unless otherwise specified by law.” (See 43 U.S.C. 1701(a)(7) and 43 U.S.C. 1732(a).) The final rule responds to public comments that the proposed language to “promote” the principles of multiple use and sustained yield may be perceived as a weaker requirement than “managing on the basis” of multiple use and sustained yield, as stated in FLPMA. This was not the intent of the proposed language, thus this change was made in the final rule.

The final rule replaces existing and proposed language which states that an objective of resource management planning is to “ensure participation by the public” with “provide for meaningful public involvement by the public.” This change responds to public comment that the BLM proposed to replace “public participation” with “public involvement” in other sections for consistency with FLPMA and should use the same terminology in this section. The change also responds to a public comment that FLPMA does not require the BLM to ensure or guarantee public participation; rather, FLPMA requires the BLM to provide “opportunity for participation by affected citizens.” (See 43 U.S.C. 1702(d).) The final rule provides opportunities for meaningful public involvement, but does not require that the public participate in these opportunities.

This section of the proposed rule would also have specified that such participation occurs “in the development of resource management plans.” The final rule revises this language to read “in the preparation and amendment” of resource management plans to clarify that it applies in both situations. There will be no change in existing practice or policy from these final changes.

Finally, the word “appropriate” is removed from before “Federal agencies” in the first sentence of this section. This word is unnecessary, as any interested Federal agency may participate in public involvement opportunities during the BLM’s planning process; the BLM does not make a determination on which agencies may or may not be appropriate.

The BLM proposed to add additional language to this section, stating that the BLM would “ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide for outdoor

recreation and human use, and which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands.” This revision incorporates language from FLPMA (see 43 U.S.C. 1701(a)(8) and (a)(12)) to identify in the planning regulations the general management objectives that apply to the public lands and therefore apply to all resource management plans. While this is a change in the regulations, it would simply affirm statutory direction and not change existing practice or policy.

The final rule adopts the proposed additional language with revisions in response to public comment. The final rule is revised to read “which recognizes the Nation’s need for renewable and non-renewable resources, including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands.” The final rule includes the phrase “renewable and non-renewable resources” to clarify that a wide-range of renewable and non-renewable resources are considered during resource management planning, including, but not limited to, those specifically identified in FLPMA.

Several public comments requested additional resources be identified in this section, such as “electric energy and production.” Although the objectives section cannot reasonably list all resources, the BLM affirms through this added language that a wide-range of renewable and non-renewable resources need to be considered in order to manage the public lands on the basis of multiple use and sustained yield, including renewable and non-renewable energy sources, among others.

The final rule adopts the proposed change to remove the final sentence in this section, “resource management plans are designed to guide and control future management actions and development of subsequent, more detailed and limited scope plans for resources and uses.” This sentence does not accurately describe the objectives of resource management planning; rather it describes the function of a resource management plan. Under the final rule, consistent with the proposed rule, elements of the removed sentence are revised and incorporated into the definition for “plan components” (for more information on “plan components,” see the preamble discussion of § 1601.0–5).

## Section 1601.0–3 Authority

The final rule adopts this section, which is identical to that in the existing and proposed regulations.

#### Section 1601.0–4 Responsibilities

The final rule revises paragraph (a) of this section to use active voice, stating “[t]he Secretary and the Director provide national level policy and procedure guidance for planning,” consistent with the proposed rule. There is no change in the meaning of this sentence or in the associated responsibilities from existing regulations.

In the second sentence of § 1601.0–4(a), the BLM proposed to establish a new responsibility for the BLM Director to determine the deciding official (a new term defined in § 1601.0–5) and the planning area for resource management plans and for plan amendments that cross State boundaries. This proposed change would have represented a change from existing regulations, where the deciding official is the State Director and the default planning area is a field office area, unless otherwise authorized by the State Director (see existing § 1610.1(b)). In response to public comment, the final rule revises this paragraph to state that the BLM Director will determine the deciding official and the planning area when a resource management plan crosses State boundaries and when a plan amendment crosses State boundaries. When resource management plans or plan amendments do not cross State boundaries, the deciding official will be the BLM State Director with jurisdiction over the planning area, unless otherwise determined by the BLM Director.

Several public comments expressed the belief that the proposed rule was vague by not indicating which BLM official would normally be selected as the deciding official and such vagueness would place a burden on the public and other governmental entities because they would not know with whom to communicate or coordinate regarding the resource management plan. Further, public comments expressed concern that the deciding official might not have familiarity with the planning area. In response to these comments, revisions from the proposed to final rule specify that the default deciding official will be the BLM State Director when a resource management plan or plan amendment does not cross State boundaries, unless otherwise determined by the Director. In the situation that a resource management plan or plan amendment crosses State boundaries, the BLM Director will select a deciding official for the planning effort, as is currently the case.

The final rule also adds “unless otherwise determined by the Director” to the second sentence of § 1601.0–4(a),

to reiterate that the BLM Director may exercise the authority to determine the deciding official. The Secretary of the Interior, as the administrator of the public lands, has the discretion to delegate the authority to approve resource management plans and plan amendments as he or she finds appropriate, thus this change is not a change in practice or policy from the existing rule. FLPMA provides the Secretary of the Interior the authority and responsibility to develop resource management plans; the planning regulations may not remove or restrict this statutory authority. (See 43 U.S.C. 1701(a)(5).) Under existing regulations there are several examples where the Secretary has approved a resource management plan or plan amendment of national importance, or where a plan or plan amendment has been approved by a BLM official other than a BLM State Director. For example, in 2012 under existing regulations, the Resource Management Plan Amendments and Record of Decision for Solar Energy Development in Six Southwestern States was approved by former Secretary of the Interior Ken Salazar. In 2016, the Northwestern and Coastal Oregon Resource Management Plan and Record of Decision and the Southwestern Oregon Resource Management Plan and Record of Decision were both approved by the BLM’s Deputy Director. In these situations, the relevant BLM State Directors were actively involved in the preparation of the resource management plan or plan amendment, but were not the deciding official that approved the resource management plan or plan amendment. The final rule affirms this existing authority.

Section 1601.0–4 also addresses the determination of the planning area. Section 1601.0–4(a) of the final rule specifies that when a resource management plan or plan amendment crosses State boundaries the BLM Director will determine the planning area. Section 1601.0–4(b) specifies that when the resource management plan or plan amendment does not cross State boundaries, the deciding official will determine the planning area.

The BLM received several comments that raised concerns about the BLM Director determining future planning areas. Several comments stated that the BLM Director would be too far removed to be adequately aware of resources, issues, and management concerns important to local stakeholders and that the BLM Director would not have time to make planning area determinations, which would result in delays.

Comments also raised concerns that the BLM Director would determine

planning areas without public involvement. In response to public comments, the final rule establishes an intermediate approach between the existing and proposed regulations by providing that the BLM Director will determine the planning area when it crosses State boundaries, and the deciding official (by default a BLM State Director) will determine the planning area when the planning area does not cross State boundaries. Also, in response to these comments, the final rule includes new language in the provisions for the planning assessment (see final § 1610.4). This new language describes how the BLM will identify the need to cross State boundaries, and therefore identify the appropriate BLM official to determine the planning area. Section 1610.4(a) describes the process for selecting a preliminary planning area boundary, including an opportunity for public review (see the preamble to § 1610.4(a) for more information on this process). In situations where, through the process described in § 1610.4(a), the need is identified for resource management plans to cross State boundaries in order to address relevant management concerns, the BLM Director determines the final planning area and selects the appropriate deciding official.

Although under current regulations the BLM is able to establish a different planning area than the default field office boundary, the final rule affirms that the BLM no longer intends to rely on the field office area as the default resource management plan boundary. The BLM acknowledges that in some situations the relevant management concerns may require planning area boundaries that cross traditional BLM administrative boundaries.

The final rule adopts the proposed changes to § 1601.0–4(b) by stating “deciding officials provide quality control” instead of existing language which states that “State Directors will provide quality control.” Under the final rule, the deciding official will have the responsibilities that the State Director has under the existing rule. Deciding officials will be responsible for “quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related [EISs] or [EAs].” Changes clarify that deciding officials are responsible for quality control and supervisory review of plan amendments and resource management plans, which is consistent with current practice and policy.

Paragraph (b) of this section includes a new responsibility for the deciding official to determine the responsible

official for each resource management plan or plan amendment. The proposed rule did not specify how a responsible official would be selected and this revision clarifies this process. For the reasons previously described, paragraph (b) of this section also specifies that deciding officials determine the planning area for resource management plans and plan amendments that do not cross State boundaries. Although this represents a change in the regulations, the deciding official will generally be a BLM State Director when a resource management plan or plan amendment does not cross State boundaries (see paragraph (a) of this section); therefore, this change is generally consistent with current practice and policy.

The final rule adopts the proposed change to remove the requirement that deciding officials “provide additional guidance, as necessary, for use by Field Managers.” Deciding officials may provide guidance, as described in proposed § 1610.1–1, but this is only one of their many responsibilities during the planning process that are all encompassed by “supervisory review.” It is unnecessary and inappropriate to identify the provision of guidance as a unique responsibility in these regulations. The BLM intends no change in practice or policy by removing “guidance” from the responsibilities section.

The final rule also adopts the proposed change to remove the requirement that deciding officials “file draft and final [EISs].” This language is unnecessary and redundant with the requirement that deciding officials provide supervisory review for “related [EISs]” which will include supervisory review of filing the documents. Current BLM practice is for the State Director to delegate the responsibility of filing EISs or EAs, thus this change is consistent with current practice.

In paragraph (c) of this section, the final rule adopts the proposed changes to replace references to “Field Managers” with “responsible officials” (a proposed new term defined in § 1601.0–5) and provide that responsible officials will prepare resource management plans and plan amendments, and related EISs and EAs. As discussed in the preamble to the definitions in § 1601.0–5, the term “responsible official” is adapted from the term used in the DOI NEPA regulations (see 43 CFR 46.30). There is no change in the responsibilities associated with this role in the planning process, but the new term makes it clear to the public that the BLM has the flexibility under its regulations to

prepare or amend resource management plans at levels other than a field office.

Changes to this section are intended to facilitate planning across traditional BLM administrative boundaries. For instance, if the planning area for a resource management plan or plan amendment is larger than the BLM field office administrative boundary in order to address a management concern that crosses administrative boundaries, the BLM Field Manager may not be the most appropriate BLM employee to prepare the resource management plan or plan amendment. These revisions are consistent with current practice permitted by the existing regulations. For example, the BLM District Manager is the responsible official for the preparation of the Carson City, Nevada resource management plan, which is currently under development and includes more than one BLM field office.

The final rule adopts the proposed change to include the preparation of related “EAs” (in addition to EISs) as a responsibility of responsible officials. This change fixes an existing inconsistency in the regulations. Responsible officials prepare plan amendments and either an EIS or an EA could be prepared to inform the plan amendment. The BLM intends no change in practice or policy from this addition.

The final rule removes the last sentence of paragraph (c) of this section, consistent with the proposed rule, which required that “State Directors must approve these documents.” Under the final rule, deciding officials will approve these documents, as discussed in paragraph (b) of this section.

#### Section 1601.0–5 Definitions

The final rule adds several new terms and definitions to this section. The final rule adopts, without revision, the proposed definitions of eight of these new terms: High quality information, Indian tribe, mitigation, plan revision, planning area, planning issue, responsible official, and sustained yield. The final rule revises the proposed definitions of five of these new terms: Deciding official, plan amendment, plan components, plan maintenance, and planning assessment. The final rule does not adopt the proposal to add the term implementation strategies.

Additionally, the BLM proposed to revise several existing definitions. The final rule adopts the proposed definition for the term areas of critical environmental concern or ACEC. The final rule further revises the other existing definitions that were proposed for revisions: Conformity or

conformance, cooperating agency, local government, officially approved and adopted (land use) plans, and resource management plan.

The final rule, consistent with the proposed rule, removes the definitions of: Eligible cooperating agency, Field Manager, guidance, and resource area or field office. The final rule does not adopt, however, the proposal to remove the definition for “consistent” and instead revises the existing definition and rephrases the term as “consistent with officially approved and adopted plans.” The following paragraphs describe the changes to these definitions and the rationale for each. This discussion does not discuss the definitions of terms that are included in the final rule without amendment from existing regulations.

*Areas of Critical Environmental Concern or ACEC.* The final rule moves the last sentence of this definition (“[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.”) to the ACEC provisions in § 1610.8–2(b), consistent with the proposed rule. This change makes the definition of an ACEC in this section more consistent with FLPMA. This sentence is not part of the definition of an ACEC provided in FLPMA; rather, it describes the effect of the identification of such an area. The sentence is therefore most appropriately placed following the description of the criteria for identifying a potential ACEC (see § 1610.8–2(b)). This change is not a change in practice or policy.

*Conformity or conformance.* The final rule adopts the proposals to remove language that an action “shall be specifically provided for in the plan” and replace the phrase “terms, conditions, and decisions” with “plan components” of the approved resource management plan in the definition of conformity or conformance. These changes are consistent with changes to § 1610.1–2, which refer to plan components instead of “terms, conditions, and decisions.” The changes reflect that plan components provide the planning-level management direction that guides all future management actions and with which those future actions must be consistent.

The final rule provides a more precise definition of conformance, which will assist the BLM and the public in identifying whether a proposed action is in conformance with an approved resource management plan. The final rule also removes the words “plan amendment” from the end of the definition, as proposed. These words are not necessary; an approved plan

amendment is encompassed by an approved resource management plan (*i.e.*, following approval the plan amendment amends the resource management plan).

Finally, the final rule adds a reference to “see § 1610.6–3,” which is the corresponding policy provision related to conformance. This change between the proposed and final rule improves readability of the planning regulations by directing readers to related sections and does not represent a change in the meaning of the definition.

*Consistent with officially approved and adopted plans.* The BLM proposed to remove the definition of the term “consistent” because this is commonly used terminology. Several comments expressed concern over the proposed removal of the definition of consistency. In response to public comment, the final rule includes a revised term and definition.

The term “consistent” is replaced with “consistent with officially approved and adopted plans.” This change is necessary because the word “consistent” is used in the regulations in multiple contexts. For example, in final § 1610.3–3 the term “consistent” is used in the context of consistency with the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The definition of conformance, however, uses the word “consistent” in a different context that does not align with the definition for consistent in the existing regulations. The final rule uses a more precise term to avoid confusion regarding when this definition applies.

The definition of “consistent with officially approved and adopted plans” also varies from the existing definition of “consistent” in several ways. The final rule replaces “adhere to” with “are compatible with” in regards to the terms, conditions, and decisions of officially approved and adopted plans. This is an important distinction because the phrase “adhere to” could be misinterpreted to mean that BLM plans must use the exact terms, conditions, and decisions described in the plans of other governmental entities as plan components. These terms, conditions, and decisions, however, may not use the same terminology as resource management plans or reflect the requirements of plan components (see § 1610.1–2), may be smaller in scope or scale than a resource management plan, or may not provide integrated consideration of resources, for example. In these situations, a plan component might vary from the terms, conditions, and decisions of the officially approved and adopted plans of other Federal

agencies, State and local governments, and Indian tribes while still maintaining compatibility with these terms, conditions, and decisions. The final rule affirms that such variance is acceptable, so long as the plan components are compatible with the terms, conditions, and decisions in the officially approved and adopted plan, subject to the qualifications of § 1610.3.

The final rule also replaces “officially approved and adopted resource-related plans” with “officially approved and adopted plans” for consistent use in terminology throughout. Please see the preamble to the definition for “officially approved and adopted plans” in this section for a more detailed explanation of this change.

The final rule includes the phrase “to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations” for consistency with final § 1610.3–3(a).

Finally, the final rule removes the existing phrase “or in their absence, with policies and programs” from this definition. This change is consistent with the removal of existing § 1610.3–2(b) and helps to distinguish between FLPMA requirements for coordination and for consistency.

FLPMA requires that the BLM “coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located . . . by, among other things, considering the policies of approved State and tribal land resource management programs.” (See 43 U.S.C. 1712(c)(9).) Coordination is addressed in final § 1610.3–2, which the final rule revises to address coordination on policies and programs (see §§ 1610.3–2(a)(1) and (2)). FLPMA also requires that resource management plans “shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.” (See 43 U.S.C. 1712(c)(9).) This FLPMA requirement does not include “policies and programs,” rather it limits consistency to “State and local plans” while the broader coordination requirements include the consideration of policies and programs. The final rule aligns the BLM regulations with FLPMA by requiring that the BLM coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, management

programs, and inventory that are germane to the development of resource management plans, in order to assure that consideration is given to all of these documents and information during the planning process. The consistency requirements, however, only apply to “officially approved and adopted plans,” as provided by FLPMA. The final rule represents a change from the existing regulations, but more closely aligns the BLM regulations with the requirements of FLPMA.

*Eligible cooperating agency.* The final rule adopts the proposal to remove this definition and revise the definition of “cooperating agency” to cite the definition of “eligible governmental entity” in the DOI NEPA regulations (43 CFR 46.225(a)). The DOI definition was promulgated after the BLM Planning regulations were last amended in 2005. No change in meaning or practice is intended; the BLM merely seeks to make the planning regulations consistent with the DOI NEPA regulations.

*Cooperating agency.* In defining “cooperating agency” for resource management planning purposes, the BLM proposed to modify the existing definition in the planning regulations for improved consistency with the DOI NEPA regulations (43 CFR 46.225(a)) and to clarify existing language. Proposed changes were intended to make clear that while cooperating agencies are defined under the CEQ NEPA regulations, cooperating agencies have unique roles in the BLM land use planning and NEPA processes and that the BLM defines cooperating agencies in the same way for both processes. The final rule adopts the first two sentences of this definition, but does not adopt the third and final sentence of the proposed definition.

The final rule includes a reference to the definition of “eligible governmental entity” from the DOI NEPA regulations (43 CFR 46.225(a)) and clarifies that a cooperating agency agrees to participate in the development of an “environmental impact statement or environmental assessment” under NEPA and in the planning process. The final rule removes “written” from the first sentence of this definition, because a Federal cooperating agency—unlike State, local, or tribal governments—need not enter into a memorandum of understanding (MOU) or other written agreement to confirm its status under DOI NEPA regulations (see proposed § 1610.3–1(b)(2)), although this is typically recommended for other Federal agencies.

In response to public comment, the final rule removes the final sentence of the existing and proposed definitions.

The BLM proposed to add the words “appropriate” and “scope of their expertise” to the last sentence to indicate that cooperating agencies will participate in the planning process as feasible and “appropriate,” given the “scope of their expertise” and constraints of their resources. This sentence is not necessary or appropriate in the definition for a cooperating agency as it does not describe the meaning of the term, nor does it address eligibility to participate as a cooperating agency, as defined in 43 CFR 46.225(a).

*Deciding official.* The final rule adopts the proposed new definition of deciding official, with only minor edits. This new definition refers to the BLM official who is delegated the authority to approve a resource management plan or plan amendment. As discussed throughout this preamble, it replaces the term “State Director” throughout the planning regulations in order to facilitate planning across traditional BLM administrative boundaries, when appropriate.

The final rule adds a reference to “see § 1601.0–4,” which is the corresponding policy provision related to conformance. This change between the proposed and final rule improves readability of the planning regulations by directing readers to related sections and does not represent a change in the meaning of the definition.

*Field Manager.* The final rule adopts the proposal to remove this definition. The final rule replaces references to the Field Manager with “responsible official” or “the BLM” throughout, as proposed. This change is intended to facilitate planning across traditional BLM administrative boundaries, when appropriate.

*Guidance.* The final rule adopts the proposal to remove the definition of guidance. Internal BLM guidance must be in compliance with all applicable laws and regulations, so the term is not necessary in the regulations and further restrictions in the definitions section of these regulations is not necessary or appropriate. The removal of this unnecessary definition also improves readability of the regulations. This change is not a change in practice or policy.

*High quality information.* The final rule adopts the proposal to add this new definition to describe new terminology introduced into proposed §§ 1610.1–1(c) and 1610.4(b). High quality information is defined as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and

is useful to its intended users.” For more information, please see the preamble to § 1610.1–1(c).

*Implementation strategies.* The final rule does not adopt the proposal to add this new definition. This definition is no longer necessary as the term “implementation strategy” is not included in the final rule in response to public comment. For more information, please see the preamble to § 1610.1–3.

*Indian tribe.* The final rule adopts the proposal to add a new definition of Indian tribe for consistency with the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). The existing planning regulations were promulgated prior to this Act and this new definition clarifies the use of this term. Consistent with the proposed rule, the term Indian tribe refers to federally recognized Indian tribes in the final rule. This change is not a change in practice or policy.

In connection with this change, the final rule removes the words “federally recognized” from five locations where the existing regulations refer to “federally recognized Indian tribes,” as proposed. These references were added under the 2005 revision to the regulations (70 FR 14561), but other existing references to Indian tribes were not amended at that time. Consequently, the existing regulations are inconsistent in their use of terminology. The references to “federally recognized” Indian tribes are no longer necessary as a result of the revised definition, which includes only federally recognized Indian tribes. The five references are identified and clarified in the corresponding sections of this preamble.

Several public comments recommended including Tribal Historic Preservation Officers in sections referencing cooperation and coordination with Indian tribes. We have not adopted this recommendation since Tribal Historic Preservation Officers are part of tribal governments and therefore already encompassed by this definition.

It is important to note that the final rule does not affect government-to-government consultation with federally recognized Indian tribes during the preparation or amendment of a resource management plan and the final rule includes a statement of this requirement in section 1610.2–1(a). The final rule also does not affect implementation of the “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). The BLM will continue to conduct government-to-government consultation with federally recognized Indian tribes and will also

continue to consult with ANCSA corporations during the preparation and amendment of resource management plans, consistent with DOI policy.

*Landscape.* In response to public comment, the final rule includes a definition for the term “landscape.” This term is not found in the existing or proposed regulations, but was used throughout the preamble to the proposed rule, including in the discussion of the overarching goals of the Planning 2.0 initiative. The term “landscape” is added to § 1610.4(a)(1)(ii) of the final rule, which requires that the BLM consider “relevant landscapes” when identifying a preliminary planning area, and therefore a definition is warranted. The final rule defines a landscape as “an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context.” This definition aligns with the definition of a landscape adopted by DOI in the Departmental Manual on implementing mitigation at the landscape-scale (600 DM 6 6.4(D)). Please see the preamble discussion of § 1610.4(a)(1)(ii) for information about the BLM’s use of this term.

*Mitigation.* The final rule adopts the proposal to add this new definition of mitigation to explain that mitigation includes the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. This sequence is commonly referred to as the “mitigation hierarchy.” By including this definition in the planning regulations, the BLM acknowledges that this sequence also applies to the planning process. For example, during the preparation of resource management plans, the BLM first and foremost applies the principle of avoidance through the identification of planning issues and the formulation of alternatives that are guided by the planning issues (*i.e.*, identifying potential impacts and developing alternatives that avoid those potential impacts). During the preparation of a resource management plan, the BLM also identifies mitigation standards, which help to guide the future application of the principles of minimization and then compensation (for more information, see the discussion on mitigation standards at the preamble for § 1610.1–2(a)(2)). The definition is consistent with the Departmental Manual chapter on

“Implementing Mitigation at the Landscape-scale” (600 DM 6).

*Multiple use.* The final rule includes the definition of multiple use with no changes from the existing and proposed rule. This definition is a direct quote of the definition in FLPMA.

*Officially approved and adopted plans.* The BLM proposed to replace the phrase “resource related plans” with “land use plans” in this definition and throughout both subparts. Several public comments stated that requiring consistency with “land use plans” would limit the scope of plans that the BLM would consider during the revision or amendment of resource management plans, and may leave out relevant plans that are specific to resources and uses such as water, weeds, dust control, and travel management. In response to public comments, the final rule instead replaces “resource related plans” with “plans,” and defines an “officially approved and adopted plan” as a “resource-related plan.”

The final rule adopts the proposal to remove the words “policies, programs, and processes” from the definition of officially approved and adopted plans. The existing definition is inconsistent with existing § 1610.3–2 (final § 1610.3–3), which distinguishes between “officially approved or adopted resource related plans” in existing § 1610.3–2(a) and “officially approved or adopted resource related policies and programs” in existing § 1610.3–2(b), rather than combining them, such as in the existing definition.

These changes mean that the consistency requirements of final § 1610.3–3(a) applies to the “resource-related plans” of other Federal agencies, State and local governments, and Indian tribes, but is not required for their “policies, programs, and processes.” This change is consistent with FLPMA (see 43 U.S.C. 1712(c)(9)). For more information, please see the discussion on the definition for “consistent with officially approved and adopted plans” at the preamble for this section and the discussion on consistency requirements at the preamble for § 1610.3–3.

The final rule includes two revisions to this definition that were not included in the proposed rule. This definition includes the word “tribal” to clarify that the plans of Indian tribes are prepared pursuant to and in accordance with authorization provided by “tribal” constitutions, legislation, or charters. The final rule also removes the word “State” from the phrase “which have the force and effect of [State] law.” This change is intended to clarify that tribal constitutions, legislation, and charters

have the force and effect of tribal law, not State law. These revisions were not addressed in the proposed rule, however, they do not result in a change to the meaning of this definition; rather, they fix an internal inconsistency in the definition.

*Plan amendment.* The final rule adopts the proposed new term “plan amendment,” with minor edits to the definition. The final definition clarifies that a plan amendment could either be an amendment to an approved resource management plan or a management framework plan. A management framework plan is a land use plan that was prepared and approved prior to FLPMA. In either case, the BLM will be required to follow the same amendment procedures, as described in this part.

In response to public comment, the final rule specifies that a plan amendment means an amendment to an approved resource management plan or management framework plan “to change one or more plan components.” This added language does not change the meaning of the proposed definition; rather it provides a more precise description that amendments are required to change one or more plan components.

*Plan components.* The final rule adopts the proposed new term “plan component,” with minor edits to the definition. This new definition identifies plan components as the elements of a resource management plan with which future management actions shall be consistent. Although other items could be prepared in conjunction with a resource management plan, such as a travel management plan, they are not considered a component of the resource management plan (for more information, see the discussions on plan components in the preamble for § 1610.1–2).

For improved clarity, the final rule identifies the six different types of plan components and adds a reference to § 1610.1–2, where plan components are described in more detail. These changes between the proposed and final rule provide clarity, but do not represent a change in the meaning of the definition.

*Plan maintenance.* The final rule adopts the proposed new term “plan maintenance,” with minor edits to the definition. Some comments expressed that the term “minor changes” was ambiguous and requested the BLM define this term. In response to public comment, we remove the word “minor” from the phrase “minor change(s) to an approved resource management plan.” The phrase “minor changes” is unnecessary here. The final definition more clearly describes plan

maintenance as changes to an approved resource management plan to correct typographical or mapping errors or reflect minor changes in mapping or data. For example, the BLM might maintain a plan by fixing a misspelled word or by updating maps in the plan to correct a mistake in the location of a fence line. The BLM also might update maps in the plan to reflect minor changes in data, such as the location of a river that has migrated over time. The final rule retains the term “minor changes” when referring to changes in mapping or data because this term is necessary here, as not all changes in mapping or data would be considered plan maintenance. The BLM interprets this term, consistent with its use in existing § 1610.5–4, to mean a change that is small in both scope and scale, and will not alter or modify a plan component. The final language regarding “minor changes in mapping or data” is consistent with the maintenance section of the existing regulations (§ 1610.5–4), proposed rule (§ 1610.6–5), and final rule (§ 1610.6–5).

Changes between the proposed and final rule are intended to clarify that any corrections of typographical or mapping errors or changes reflecting minor changes in mapping or data are considered plan maintenance. For the purposes of this rule, a minor change in mapping or data is one that does not result in a substantial change to the scope of one or more plan components and must be considered within the context of any given resource management plan. For example, if a plan component designates a river corridor as a riparian protection area, and the riparian zone moves slightly from year-to-year based on normal hydrological processes, the movement of the riparian protection area would not be considered a substantial change in the scope of the planning designation.

*Plan revision.* The final rule adopts the proposed definition for plan revisions, as a revision of an approved resource management plan or major portions of the resource management plan. The final rule clarifies in this definition that the phrase “preparation or development of a resource management plan,” which is used throughout the proposed planning regulations, includes plan revisions. The added language improves understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see final § 1610.6–7).

*Planning area.* The final rule adopts the new definition “planning area,” as

proposed. This definition describes the geographic area for the preparation or amendment of a resource management plan and replaces the existing definition for “resource area or field office.” The final rule replaces the terms “resource area” or “field office” with “planning area” throughout the proposed rule. This change is consistent with the terminology the BLM currently uses to describe the geographic area for which resource management plans are prepared (see page 14 of BLM Handbook H-1601-1). The final rule provides revised direction for determination of planning area boundaries in §§ 1601.0-4 and 1610.4(a). This change is not a change in practice or policy.

*Planning assessment.* The final rule adopts the proposed new term “planning assessment,” with minor edits to the definition. This new definition describes an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area, which is developed to describe the current status of lands and resources in the planning area, project demand for those resources, and to assess how these demands can be met consistent with the BLM’s multiple use and sustained yield mandate. The assessment will inform the preparation and, as appropriate, the implementation of a resource management plan or revision. Section 1610.4 of this preamble describes the proposed planning assessment step in the planning process, including opportunities for collaboration and public involvement. The planning assessment may also be used during the implementation of a resource management plan. For example, the BLM could use information from a planning assessment to evaluate whether a future proposed action conforms with an objective in the approved resource management plan related to the protection of a sensitive resource and could supplement that information with down-scaled information specific to the project area being considered. The BLM could also use information from a planning assessment to inform the preparation of a travel management plan.

Changes to this definition between the proposed and final rule add a reference to the planning assessment section of the final rule (§ 1610.4) for improved readability of the regulations. The BLM intends no change in the meaning of this definition from this change.

*Planning issue.* The final rule adopts the proposed new definition for “planning issue” without amendment. This new definition identifies planning issues as disputes, controversies, or

opportunities related to resource management. For example, a planning issue might identify a potential dispute over resource management, such as a popular recreation area that coincides with important cultural sites, habitat, or another multiple use. A planning issue might also identify a potential opportunity, such as an opportunity to control the spread of invasive species through resource management. The new definition is consistent with current practice and policy.

*Public.* We proposed to retain the existing definition for “public.” In response to public comment, the final rule revises the existing definition to clarify that the “public” also includes officials of other Federal agencies. For example, officials from the Environmental Protection Agency are welcome to participate in BLM’s planning process, including attending public meetings, submitting written comments, or any other opportunities for public involvement. This revision does not represent a change from existing practice or policy.

*Public involvement.* In response to public comment, the final rule includes a new definition for public involvement stating that public involvement means “the opportunity for participation by the public in decision making and planning with respect to the public lands.” This definition is based on the FLPMA definition of public involvement (see 43 U.S.C. 1702(d)). However, this definition is slightly broader than the FLPMA definition in that it includes all members of the “public,” as defined in these regulations, and not just affected citizens. The BLM believes that it is appropriate to provide opportunities for participation to any “affected or interested individuals” and not just affected citizens. For example, non-citizens that reside near public lands may be affected by a resource management plan, and therefore it is appropriate for these non-citizens to participate in opportunities for public involvement. By providing for opportunities for participation in public involvement activities by citizens, FLPMA does not preclude participation by non-citizens.

*Public lands.* The final rule adopts the proposal to replace Bureau of Land Management with BLM and to split the existing definition into two sentences for improved readability. These changes are not a change in practice or policy.

*Resource area or field office.* The final rule adopts the proposal to remove this definition, because the resource area or field office no longer will be the “default” planning area. The final rule replaces the terms “resource area” or

“field office” with “planning area” throughout the final rule, as proposed.

*Resource Management Plan.* The final rule adopts the proposal to simplify the existing definition of a resource management plan with minor revisions, providing that a resource management plan is “a land use plan as described under section 202 of the FLPMA, including plan revisions.” Much of the existing language, and a more in depth discussion of what constitutes a resource management plan, is moved to final § 1610.1-2. “Plan components” described in final § 1610.1-2 replace some of the elements generally established in a resource management plan under the existing definition in § 1601.0-5(n), and some of these elements will be removed. As discussed in the preamble for § 1610.1, these changes aim to clarify that a resource management plan is a planning-level document that guides future management activities. They also aim to distinguish the land use planning-level components of a resource management plan (*i.e.*, plan components) from future actions that are taken during the implementation of the resource management plans.

The final rule clarifies that the term “resource management plan” includes plan revisions, consistent with the proposed rule. This change improves understanding that the revision of a resource management plan follows the same procedures as the preparation of a new resource management plan (see proposed § 1610.6-7).

The final rule adopts the proposal to revise existing language at the end of this definition to read “approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.” The decision to approve a resource management plan is therefore not an approval of future actions within the planning area that require subsequent plans (such as a mining plan of operations), process steps (such as site-specific NEPA-analysis), or decisions (such as the decision to approve a future action based on the site-specific NEPA analysis).

*Responsible official.* The final rule adopts the proposed definition for “responsible official” without amendment. This new term replaces the term “Field Manager” throughout the planning regulations, acknowledging that the BLM employee authorized to prepare a resource management plan or plan amendment may not always be the Field Manager due to the need to plan across traditional BLM administrative

boundaries, when appropriate. The term is based on the definition of “Responsible official” in the DOI NEPA regulations, “the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA” (43 CFR 46.30). This term, as modified, is only applicable to the BLM land use planning process; no change to the DOI NEPA regulations is intended. However, note that in the DOI NEPA regulations, the responsible official has the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA. The final rule divides these responsibilities between the deciding official and the responsible official for purposes of this planning rule. Under the final rule, the responsible official prepares the resource management plan or plan amendment and related EISs and EAs, and the deciding official approves the resource management plan.

*State and local government.* The final rule replaces the proposed term “local government” with “State and local government,” and revises the definition to include the State. The revised definition describes “the State, any political subdivision of the State, and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulatory authority.” This change broadens the existing and proposed definitions of “local government” to include the State, but there is no change in the meaning of either the “State” or “local government.” This change improves readability of the regulations as the phrase “State and local government” is used throughout this part.

The final rule adopts the proposal to replace the existing language for “regulation authority” with “regulatory authority” for improved readability. No change in meaning is intended by this revision.

Several public comments recommended including State Historic Preservation Officers in sections referencing cooperation and coordination with State governments. We have not made this change since State Historic Preservation Officers are part of State governments, and therefore are already encompassed by this definition.

*Sustained yield.* The final rule adopts the proposed new definition of “sustained yield.” This new definition comes from the FLPMA definition (see 43 U.S.C. 1702(h)). This definition is added because the planning regulations already include the statutory definition

of multiple use and the principles of multiple use and sustained yield guide the BLM’s development and revision of land use plans under section 202(c)(1) of FLPMA, absent other applicable law. This definition is useful because this term is referenced throughout the existing, proposed, and final regulations.

#### Section 1601.0–6 Environmental Impact Statement Policy

The final rule replaces the existing word “plan” with “resource management plan” throughout this section and replaces the first sentence of this section, which states that the approval of a resource management plan is a major Federal action, with a requirement that the BLM will prepare an EIS when preparing a resource management plan. This change is intended to provide clarity on this existing requirement; the BLM intends no change in practice or policy.

The BLM did not receive public comments specific to this section.

#### Section 1601.0–7 Scope

The final rule adopts this section, which is identical to that in the existing and proposed regulations. The BLM did not receive public comments specific to this section.

#### Section 1601.0–8 Principles

The first sentence of this section requires that the “development, approval, maintenance, amendment, and revision of resource management plans shall provide for public involvement and shall be consistent with the principles described in section 202 of FLPMA.” Several public comments requested the final rule restate one or more of the principles described in this section of FLPMA (see 43 U.S.C. 1712). The final rule is not revised in response to these public comments because this provision requires the BLM to be consistent with all of the principles described in this section of FLPMA (see 43 U.S.C. 1712), although they are not individually listed. In this sentence, the final rule uses the word “shall” instead of “will” and replaces “the Federal Land Policy and Management Act of 1976” with “FLPMA,” for the reasons previously described. Existing regulations state that “. . . plans will provide . . .” and “. . . shall be consistent,” while the proposed rule used “will” in both places. Under this final rule, the BLM uses “shall” in both places in this sentence. The BLM intends no change in practice or policy from this change.

Under existing regulations, this section requires the BLM to consider

“. . . 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. . . .” The proposed rule rephrased this requirement for active voice and expanded it to include the consideration of “. . . resource, environmental, ecological, social, and economic conditions at appropriate scales.”

In response to public comment, the final rule replaces the word “appropriate” with “relevant” to clarify that the BLM will consider scales that the agency has reason to believe are relevant to the decision. This broader range of potential impacts includes the consideration of impacts to local economies, in addition to impacts at other scales and on other conditions. The final language more accurately describes current practice to consider impacts of resource management plans at relevant scales, which provides important information for the deciding official. For example, it is important that the deciding official is aware of the socioeconomic impacts of a resource of national significance found within the planning area, such as the Federal Helium Reserve, which the BLM administers near Amarillo, Texas. The revised language is also consistent with the Planning 2.0 goal of addressing landscape-scale resource issues, which may occur at a range of different geographic scales.

We wish to clarify that consideration of the impacts of a resource management plan on local conditions, including local economies, is a relevant scale. At this time, the BLM cannot contemplate a situation where a resource management plan would not impact local conditions within the planning area; therefore the BLM will continue to consider impacts on local economies under the final rule. The intent of these revisions is to assure that BLM considers other relevant scales, in addition to local scales.

The proposed and final regulations do not prescribe additional weight of consideration to any scale or condition when rendering a decision. Rather, the BLM believes it is appropriate for a deciding official to consider all relevant scales and information before rendering a decision.

The last sentence of this section contains the requirement that the BLM consider the impacts of resource management plans on adjacent or nearby Federal and non-Federal lands, as well as the uses of adjacent or nearby Federal and non-Federal lands. The final rule expands the requirement in existing regulations to include

consideration of impacts on adjacent or nearby Federal lands in addition to non-Federal lands. This language is consistent with the Planning 2.0 goal to improve the BLM's ability to apply landscape-scale management approaches and facilitates coordination and collaboration with adjacent Federal land managers and landowners, as appropriate. No substantive changes are made to this sentence from the proposed to final rule.

#### *Subpart 1610—Resource Management Planning*

##### Section 1610.1 Resource Management Planning Framework

The final rule revises the heading of § 1610.1 by replacing the word guidance with framework, consistent with the proposed rule. The broader heading will reflect the entire section as revised.

Many of the provisions of existing § 1610.1 are found in §§ 1610.1–1 and 1610.1–2 of the final rule. The final rule does not adopt proposed § 1610.1–3 in the final rule. Those sections are discussed in greater detail as follows.

##### Section 1610.1–1 Guidance and General Requirements

The final rule adopts proposed § 1610.1–1, with revisions. This section addresses the development of guidance for resource management planning and general requirements for the preparation and amendment of resource management plans.

Section 1610.1–1(a) of the final rule contains provisions of existing § 1610.1(a). This section still refers to planning guidance, but references to “State Director” are replaced with “deciding official” and references to “Field Manager” are replaced with “responsible official,” consistent with the proposed rule. These changes facilitate planning across traditional BLM administrative boundaries, when appropriate. The final rule specifies that the word “plan” refers to a “resource management plan,” consistent with the proposed rule.

Section 1610.1–1(a)(1) contains provisions of existing § 1610.1(a)(1), and explains that guidance may include “Policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands.” The final rule adopts the proposed change to remove existing language limiting this guidance to “National level policy” in order to also include policy developed at the deciding official level as another type of guidance that may be developed to help

the responsible official prepare a resource management plan. The final rule also adopts the proposed change to remove existing language that provides examples of policy, such as “appropriately developed resource management commitments.” These examples are unnecessary in the regulations and do not adequately cover the broad range of policy examples that could be included as guidance.

A public comment suggested that the phrase “is consistent with” Federal laws and regulations in paragraph (a)(1) of this section introduces potential for controversy and suggested replacing this language with “shall comply with.” In response to this comment, the final rule replaces the phrase “is consistent” in paragraph (a)(1) of this section with “complies,” to clarify that any policy must comply with Federal laws and regulations. The BLM intends no change in practice or policy from revisions to this section. Rather, these changes are intended to improve readability and reaffirm that the BLM may only develop or apply policy that complies with Federal laws and regulations.

The final rule adopts proposed § 1610.1–1(a)(2), which provides that guidance may include “[a]nalysis requirements, planning procedures, and other written information and instructions required to be considered in the planning process.” Section 1610.1–1(a)(2) of the final rule contains most of the provisions found in existing § 1610.1(a)(2), with some revisions from existing language, but remains unchanged from the proposed rule.

The final rule removes existing § 1610.1(a)(3), consistent with the proposed rule. This section is no longer necessary because guidance developed at the deciding official level is incorporated into § 1610.1–1(a)(1). The final rule also removes existing requirements for the State Director to reconsider inappropriate guidance during the planning process, consistent with the proposed rule. This language is vague and confusing, as it does not define what it means for guidance to be “inappropriate.” The BLM must comply with the requirements of Federal laws and regulations applicable to public lands and therefore guidance developed to inform the preparation of a resource management plan must also comply with Federal laws and regulations applicable to the public lands.

The final rule adopts the proposed change to remove existing § 1610.1(b), which states “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.” This language is

no longer necessary because final § 1610.4(a) describes the process for developing a preliminary planning area and final § 1601.0–4 describes the responsibilities for determining the final planning area. For more information, see the discussions on planning areas at the preamble for §§ 1610.4(a) and 1601.0–4.

The final rule adopts proposed § 1610.1–1(b), with minor edits. Section 1610.1–1(b) contains the provisions of existing § 1610.1(c). The first sentence is revised to read “the BLM shall use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences.” This language highlights the objective of using an interdisciplinary approach, as described in FLPMA (see 43 U.S.C. 1712(c)(2)), as well as the importance of integrated consideration of sciences in the planning process. This list is not intended to be exhaustive; rather, it describes the disciplines provided in FLPMA (see 43 U.S.C. 1712(c)(2)), including the broader inclusion of “other sciences,” and identifies social sciences for consistency with the CEQ NEPA regulations (see 40 CFR 1502.6).

As proposed, the second sentence of § 1610.1–1(b) is revised to replace the word “disciplines” with “expertise.” This change reflects that BLM staff may have expertise outside of their formal discipline, and an “interdisciplinary approach” should be based on expertise, not limited to formal disciplines. This change is consistent with current practice under the existing regulations. The final rule adds the word “resource” before values, to clearly identify what type of values this sentence applies to and to specify that “the expertise of the preparers will be appropriate to . . . the principles of multiple use and sustained yield, unless otherwise specified by law.” The final rule replaces the proposed phrase “or other applicable law” with “unless otherwise specified by law” for grammatical clarity and for consistency with FLPMA (see 43 U.S.C. 1701(a)(7); 43 U.S.C. 1732(a)). No change in meaning, practice, or policy is intended by these changes.

Finally, the final rule adopts the proposed change to replace “Field Manager” with “responsible official” in the last sentence of proposed § 1610.1–1(b). This change is consistent with other changes in terminology in this final rule.

The final rule adopts proposed § 1610.1–1(c) with only minor revisions. This section requires the BLM to use high quality information to inform the

preparation, amendment, and maintenance of resource management plans. High quality information includes the best available scientific information, but the requirement extends to other information as well. For example, “Traditional Ecological Knowledge” (TEK) refers to the knowledge specific to a location acquired by indigenous and local peoples over hundreds or thousands of years through direct contact with the environment. Under the proposed rule, TEK would be considered a type of high quality information that could inform the preparation, amendment, and maintenance of resource management plans, so long as the TEK is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods.

As the BLM considers what constitutes high quality information for purposes of the planning process, the BLM is mindful of its obligations under the Information Quality Act, section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, H.R. 5658), and implementing guidelines of OMB,<sup>7</sup> DOI,<sup>8</sup> and the BLM for “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”<sup>9</sup> The descriptions of objectivity, integrity, and utility provided in the BLM guidelines, as well as the principle of using the “best available” information, are particularly instructive with regard to information considered and shared with the public during resource management planning. In the planning process, the BLM also adheres to NEPA requirements for using “high quality” information and “[a]ccurate scientific analysis” (40 CFR 1500.1(b)), and for ensuring the “professional integrity, including scientific integrity, of the discussions and analyses in [EISs]” (40 CFR 1502.24).

<sup>7</sup> Office of Management and Budget, “OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication,” (67 FR 8452, February 22, 2002).

<sup>8</sup> U.S. Department of the Interior, “Information Quality Guidelines Pursuant To Section 515 Of The Treasury And General Government Appropriations Act For Fiscal Year 2001,” [http://www.doi.gov/ocio/information\\_management/upload/515Guides.pdf](http://www.doi.gov/ocio/information_management/upload/515Guides.pdf).

<sup>9</sup> Bureau of Land Management, “Information Quality Guidelines—Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Bureau of Land Management,” [http://www.blm.gov/style/medialib/blm/national/national\\_page.Par.7549.File.dat/guidelines.pdf](http://www.blm.gov/style/medialib/blm/national/national_page.Par.7549.File.dat/guidelines.pdf).

In addition, the BLM intends that the March 2015 publication, “Advancing Science in the BLM: An Implementation Strategy,” will inform a responsible official’s consideration of high quality information. This publication describes several principles and practices that pertain to the identification and consideration of high quality information in resource management planning. They include: Using the best available scientific knowledge relevant to a problem or decision, including peer-reviewed literature where it exists; acknowledging, describing, and documenting assumptions and uncertainties; and using quantitative data when it exists, together with professional scientific expertise from within and outside the BLM.<sup>10</sup> Moreover, all BLM employees are subject to the DOI scientific integrity policy in the Departmental Manual (305 DM 3, Dec. 16, 2014) when they use scientific information for DOI policy, management, or regulatory decisions. This policy states: “Scientific information considered in Departmental decision-making must be robust, of the highest quality, and the result of as rigorous a set of scientific processes as can be achieved. Most importantly, the information must be trustworthy.” (305 DM 3, section 3.4).

Together, these requirements, policies, and strategies relating to high quality information, including scientific information, will guide responsible officials as they consider information for planning purposes. The BLM anticipates that including the BLM’s commitment to using high quality information in the planning regulations, and operating consistent with Departmental policy on scientific integrity and BLM’s strategy for advancing science, will result in greater consistency in how BLM identifies and uses information, including scientific information, throughout the land use planning process. Section 1610.1–1(c) establishes an explicit regulatory requirement for using high quality information in the planning regulations, as the existing regulations do not address information quality.

#### Section 1610.1–2 Plan Components

The final rule adopts proposed § 1610.1–2 with some revisions, which are described in the discussion for each corresponding paragraph of § 1610.1–2.

Section 1610.1–2 describes the components of a resource management

plan. The existing definition of “resource management plan” lists eight elements that a plan “generally establishes” (see existing § 1601.0–5(n)). The final rule incorporates many of these elements into the “plan components” and removes several of the elements (for more information on elements that are removed from the planning regulations, please see the discussion at the preamble for proposed, but not adopted, § 1610.1–3). The plan components provide planning-level direction with which future management activities and decisions must be consistent (*i.e.*, planning-level management direction).

Consistent with the proposed rule, final § 1610.1–2 describes the following six “plan components” which every resource management plan will include: goals, objectives, designations, resource use determinations, monitoring and evaluation standards, and as applicable, certain lands identified as available for disposal. Plan components provide planning-level management direction and will therefore only be changed through plan amendments or revisions under § 1610.1–2(c). Typographical and mapping errors, or minor changes in mapping or data for a plan component could be updated through plan maintenance (see § 1610.6–4). This is consistent with current BLM policy and practice (see § 1610.6–4).

The final rule clearly identifies the planning-level management direction reflected in the plan components of an approved resource management plan. This planning-level management direction is intended to guide future management activities towards the achievement of goals and objectives across the landscape, while also providing for use of the public lands by tracts or areas as required by FLPMA (see 43 U.S.C. 1712(a)). The plan components will not, however, prescribe future management actions, which require further specific plans, process steps, or decisions. By doing so, the final rule enables the BLM to establish clear management direction in a resource management plan, while allowing adaptive approaches to implement future actions under the plan. It also provides consistency throughout the BLM in how plans are structured.

The six plan components are based on the first four elements and the eighth element described in the existing definition of a resource management plan (see existing §§ 1601.0–5(n)(1) through 1601.0–5(n)(4) and 1601.0–5(n)(8)). Under the final rule, these elements are called plan components and each component is provided a

<sup>10</sup> The implementation strategy is available at: [http://www.blm.gov/wo/st/en/info/blm-library/publications/blm\\_publications/advancing\\_science.html](http://www.blm.gov/wo/st/en/info/blm-library/publications/blm_publications/advancing_science.html).

distinct name and a precise definition to facilitate understanding and consistent interpretation and inclusion in resource management plans.

The final rule adopts proposed §§ 1610.1–2(a)(1) and 1610.1–2(a)(2), with some revisions. These sections describe the first two types of plan components—goals and objectives—and explicitly require the inclusion of goals and objectives, as proposed. While not a major change from current practice, the final rule also provides clarity on the definition of the goals and objectives, which improve understanding and consistency in implementation.

*Goals* are defined in the final rule as broad statements of desired outcomes addressing resource, environmental, ecological, social, and economic characteristics within the planning area or a portion of the planning area. The BLM will direct the management of the land and resources within the planning area toward the goals of the resource management plan. This plan component replaces “resource condition goals” described in existing § 1601.0–5(n)(3). The final rule removes the words “resource condition” as goals may address other characteristics within a planning area as well. This is an important distinction as FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA, means, in part, the management of the public lands so that all resources are utilized in the combination that best meet the needs of the American people taking into account the long term needs of future generations for renewable and non-renewable resources. The final rule provides that these needs are reflected in the goals of a resource management plan. These needs may address a broad range of desired outcomes related to resource, environmental, ecological, social, or economic characteristics. For example, the needs of local communities may include economic outcomes related to development of the public lands, or they may include social outcomes such as access to public lands for recreation, solitude, or gathering of traditional plants. The BLM intends no change from existing practice; rather, providing a clear definition of “goals” in the regulations will improve consistency and reflect FLPMA’s mandate to manage on the basis of multiple use and sustained yield.

The only change to proposed § 1610.1–2(a)(1) in the final rule is to replace the phrase “within a planning area” to “within the planning area,” for

grammatical clarity. The BLM intends no change in meaning by this grammatical clarification.

*Objectives* are described in paragraph (a)(2) of this section and replace the “resource condition . . . objectives” described in existing § 1601.0–5(n)(3). An objective is a concise statement of desired resource conditions that guides progress toward one or more goals. In response to public comment, we add language to the first sentence of paragraph (a)(2) of this section to make clear that an objective is a statement of desired resource conditions “within the planning area, or a portion of the planning area.” This new language clarifies that a single objective may apply to the entire planning area, or it may only apply to a portion of the planning area. For example, an objective related to the achievement of National Ambient Air Quality Standards would likely apply to the entire planning area, whereas an objective related to vegetation composition may only apply to a portion of it.

The final rule adopts the proposed new requirement that objectives must be specific and measurable and should have established time-frames for achievement. Measurable objectives will be defined using the most appropriate scale of measurement for that objective. For example, an objective to manage an area as visual resource class one, two, or three is based on an ordinal scale of measurement. An ordinal scale ranks categories in order (1st, 2nd, 3rd, etc.), but there is no relative degree of difference between the categories. In contrast, an objective related to managing for a specific proportion of vegetation cover (*e.g.*, total acreage) is based on a ratio scale of measurement. A ratio scale has a fixed zero value and allows the comparison of differences of values.

Establishing measurable objectives will improve the BLM’s ability to evaluate whether the objectives are being met, to track progress toward their achievement, and to change management direction, as appropriate, to meet established objectives. Since future resource management actions will be required to conform to the plan components, including the objectives (see the definition of “conformity or conformance” in § 1601.0–5), the requirement for measurable objectives will assist the BLM when determining if a proposed action is in conformance with the resource management plan objectives. For example, if the NEPA analysis reveals that a proposed action will prevent the achievement of an objective, the proposed action would not be in conformance with the resource

management plan. These changes also support the use of adaptive management, where appropriate, as a measurable objective could identify a threshold that triggers a response, such as the initiation of a plan amendment. If such a threshold is identified as part of a measurable objective, the BLM will use the monitoring and evaluation process to determine whether the threshold has been met (see the discussion on monitoring and evaluation at the preamble for § 1610.6–4).

The final rule adopts the proposal that objectives should identify standards to mitigate undesirable impacts to resource conditions, with minor edits. This change supports implementation of the BLM mitigation policy. For example, an objective might identify a mitigation standard for no net loss to a sensitive species, which would provide a standard to guide future authorizations in avoiding, minimizing, and compensating for any unavoidable remaining impacts to the sensitive species.

Changes between the proposed and final rule replace “to the extent practical” with “as appropriate” in paragraph (a)(2) of this section. This change is intended to clarify that there may be situations when it is not appropriate to identify a mitigation standard in a resource management plan, such as within a wilderness area where development is not allowed, or when there is insufficient scientific information available to develop a standard. The final rule also replaces the word “effects” with “impacts” in paragraph (a)(2)(i) of this section for consistency with the proposed and final definition of mitigation (see § 1601.0–5). The BLM intends no substantive change in meaning from these changes between the proposed and final rule.

The final rule adopts the proposal that objectives should provide integrated consideration of resource, environmental, ecological, social, and economic factors (see 43 U.S.C. 1712(c)(2)), however, this provision will also be applied “as appropriate” instead of “as practical” for improved clarity that there may be situations when it is not appropriate to provide integrated consideration of these factors. For example, when establishing measurable objectives for vegetation communities, social factors may or may not be pertinent depending on the location and circumstances.

Finally, in response to public comment, the final rule establishes an additional requirement (final § 1610.1–2(a)(2)(iii)) that, as appropriate, objectives should identify indicators for

evaluating progress toward achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives will be the same indicators as described in the monitoring and evaluation standards. Identifying these same indicators in both the objectives and the monitoring and evaluation standards more clearly links the achievement of objectives to monitoring and evaluation and will ensure that BLM is able to determine if the plan objective is being met through monitoring and evaluation. This provision is applied "as appropriate" because in some circumstances an objective may include more than one indicator, whereas in other circumstances an indicator may not be relevant or necessary in order to measure progress towards the achievement of the objective.

Section 1610.1-2(b) of the final rule describes four additional plan components that are developed either to achieve the goals and objectives of the resource management plan, or to comply with applicable legal requirements or policies. These four plan components include designations, resource use determinations, monitoring and evaluation standards, and lands identified as available for disposal, as applicable. These plan components will also provide planning-level management direction while supporting achievement of the goals and objectives of the resource management plan. The final rule adopts proposed section 1610.1-2(b), with the revisions described in the following paragraphs.

Paragraph (b)(1) of this section describes "*designations*," which replaces the existing element of a resource management plan described as "land areas for . . . designation, including ACEC designation" (see existing § 1601.0-5(n)(1)). Designations identify areas of public land where management is directed toward one or more priority resource values or resource uses. A designation highlights these areas to clearly communicate the BLM's intention to prioritize these resource values or resource uses when developing management direction or making future management decisions in the area. Changes between the proposed and final rule replace "uses" with "resource uses" for improved clarity. No change in meaning is intended by this revision.

Designations include both "planning designations," which are identified through the BLM land use planning process, and "non-discretionary

designations," which are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. The final rule adopts, with no changes, proposed paragraphs (b)(1)(i) and (b)(1)(ii) of this section which describe planning designations and non-discretionary designations.

Planning designations will be identified through the BLM land use planning process in order to achieve the goals and objectives of the plan or to comply with applicable legal requirements or policies. Examples of existing designations or allocations that will become planning designations that could be identified in a resource management plan are an ACEC, a research natural area, a special recreation management area, a backcountry conservation area, a wildlife corridor area, or a solar energy zone.

The BLM intends to include a list of planning designations available for use during the planning process in the revisions to the Land Use Planning Handbook. The BLM recognizes that new information or unique circumstances in a planning area may warrant the development of new planning designations; thus, the list in the handbook will not preclude development of additional designations in the future. The purpose of developing a list of available planning designations in the forthcoming revision of the Land Use Planning Handbook is to provide consistent terminology and naming conventions for use across BLM resource management plans. Further, it is not the BLM's intention that all public lands will be included in a planning designation; rather, the final rule and the forthcoming revision of the Land Use Planning Handbook will clarify that this is an existing planning tool that is available during the planning process to highlight and prioritize unique or special areas that require management that is different from surrounding lands.

Non-discretionary designations, in contrast, are identified by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities. For instance, Under the Wilderness Act of 1964, Congress has the exclusive authority to designate or change the boundaries of wilderness areas. The BLM and other Federal land management agencies manage wilderness areas consistent with Congressional direction. The BLM manages National Conservation Areas (NCA) and similarly designated lands such as Cooperative Management and Protection Areas, Outstanding Natural Areas, and the Headwaters Forest

Reserve in northern California pursuant to Congressional direction.

Non-discretionary designations are not established or amended through the BLM land use planning process. These non-discretionary designations will, however, be identified in a resource management plan, and management direction for the designation, including plan components, will be developed, consistent with applicable direction provided in the proclamation, legislation, or order that established the non-discretionary designation.

This section of the final rule does not represent a substantive change from the existing rule, other than identifying designations as a plan component and specifying that planning designations can be applied either to achieve the goals and objectives of the resource management plan or to comply with legal requirements or policies. Further, the final rule clarifies the difference between a designation and other plan components, such as a resource use determination. The BLM believes that differentiating between resource use determinations and designations in the regulations will help to improve general understanding of terminology.

*Resource use determinations* are another type of plan component described in final § 1610.1-2(b). Resource use determinations replace several existing elements of a resource management plan, including "land areas for limited, restricted, or exclusive use," "allowable resource uses," and "program constraints," (see existing § 1601.0-5(n)). A resource use determination identifies areas of public lands or mineral estate where specific uses are excluded, restricted, or allowed in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. Resource use determinations include the specific restrictions to an allowed use that will be required for all future activities and authorizations within the area. Examples of resource use determinations include: Areas identified as available or unavailable for livestock grazing, open or closed to mineral leasing, or open to mineral leasing subject to standard terms and conditions or major or moderate constraints, or open, limited, or closed to Off-Highway-Vehicle use. In most circumstances, a resource use determination indicating that a use is allowed, or allowed with restrictions in an area, will not represent a final decision allowing future use authorizations in the area, rather it will indicate that future authorizations for the activities may be considered for

approval following site-specific NEPA analysis.

In response to public comment, the final rule adds language to paragraph (b)(2) of this section to clarify that a resource use determination is “subject to valid existing rights.” The final rule includes this language in paragraph (b)(2) of this section, although it is not necessary, as determinations are always subject to valid existing rights, because we believe it is instructive in regards to resource use determinations, which provide for the use of public lands. This change between proposed and final rule does not represent a change in the meaning of this section, nor does it represent a change from current practice or policy.

Also in response to public comment, the final rule adds language to paragraph (b)(2) of this section stating that “resource use determinations shall be consistent with or support the management priorities (*i.e.*, the resource values and resource uses) identified through designations.” In contrast to designations, which indicate where one or more resources or uses is prioritized over other resources or uses, resource use determinations identify where a use is excluded, restricted, or allowed, but do not identify a priority for one or more multiple-uses. Resource use determinations may be developed for the designation, or they may be developed for another purpose, but overlay a designation; in these situations, the resource use determinations must be consistent with or support the management priorities established through the designations, subject to valid existing rights.

Final § 1610.1–2(b)(2) provides terminology for the “allowable resource uses” and “land use allowances, exclusions, and restrictions” identified in the existing definition of a resource management plan. This change improves the identification of these elements in a resource management plan and consistent use of terminology. The BLM intends no substantive change in practice or policy associated with this new terminology; however, under the final rule there are changes in how the various parts of a resource management plan are categorized.

For example, under this final rule, some common “management actions” described in resource management plans prepared under the existing planning regulations are classified as “resource use determinations,” such as any explicit restrictions to an allowed use at the land use planning level. For example, mineral lease stipulations such as No Surface Occupancy or Controlled Surface Use will be

considered resource use determinations, as these constraints represent restrictions to an allowed use that are explicitly required at the land use planning level. Resource use determinations will be changed only through plan amendments or revisions. This change does not represent a change in current practice under the existing regulations, as planning-level restrictions to an allowed use are currently subject to protest procedures and may be changed only through plan amendments.

With these changes, the BLM also affirms that planning designations and resource use determinations may be defined explicitly by geographic boundaries, or implicitly by describing the specific conditions or criteria under which a resource or use will be prioritized, or a use will be excluded, restricted, or allowed. In situations where a criteria-based approach is used, the BLM will develop maps showing where the criteria apply based on current data and conditions. These options for defining planning designations and resource use determinations are consistent with current practice and do not represent a change from existing policy, though it does represent a change in terminology.

For example, under the existing planning regulations, the BLM applied both approaches when developing the “Approved Resource Management Plan Amendments and Record of Decision (ROD) for Solar Energy Development in Six Southwestern States” (Western Solar Energy Plan). In this Plan the BLM developed a list of areas where utility-scale solar energy development was prohibited. Some of these areas were defined by explicit geographic boundaries, such as lands in the Ivanpah Valley in California and Nevada. Others were defined by the presence of a specific land use designation in an applicable land use plan (*e.g.*, ACECs) or the presence of a specific resource or condition (*e.g.*, designated or proposed critical habitat for ESA-listed species). The geographic boundaries for these areas may change over time as land use plans are revised or amended and new information on resource conditions is developed. When developing the Western Solar Energy Plan and its associated NEPA analysis, the BLM mapped and estimated the acreage for all exclusion areas based on best available information; however, those maps will be updated over time through plan maintenance.

*Monitoring and evaluation standards* are another type of plan component. These standards are described in paragraph (b)(3) of this section and

replace the existing element of a resource management plan entitled “Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision” (see existing § 1601.0–5(n)(8)). The final rule adopts proposed paragraph (b)(3) of this section with no changes. Monitoring and evaluation standards include “indicators and intervals for monitoring and evaluation to determine whether the objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.” Indicators and intervals for monitoring will be tied directly to the measurable objectives to clearly indicate how each objective will be measured (*i.e.*, the indicator) and how often it will be measured (*i.e.*, the interval). The indicators described in the monitoring and evaluation standards will be the same indicators as described in the objectives (see § 1610.1–2(a)(2)(iii)). Intervals for evaluating the resource management plan identify the frequency for evaluating the resource management plan to determine whether the resource management plan objectives are being met or if there is relevant new information that may warrant amendment or revision of the resource management plan. The forthcoming revision of the Land Use Planning Handbook will provide guidance on developing appropriate indicators and intervals for monitoring and evaluation.

*Lands identified as available for disposal from BLM administration* constitute the final type of plan component and replace the existing element of a resource management plan described as “land areas . . . for transfer from Bureau of Land Management Administration” (see existing § 1601.0–5(n)(1)). The final rule adopts proposed paragraph (b)(4), which specifies that lands identified as available for disposal will be considered a plan component. This paragraph is revised to clarify that lands identified for disposal may include, but are not limited to sales under section 203 of FLPMA. FLPMA provides for the disposal of tracts of public land where the BLM determines that the disposal meets specified criteria (see 43 U.S.C. 1713; 43 U.S.C. 1716; and 43 U.S.C. 1719).

Identification of lands available for disposal is “as appropriate” because they may not be applicable to every resource management plan. For example, it is unlikely that a resource management plan developed for a national monument or national conservation area will identify lands as

available for disposal. As a plan component, identification of lands as available for disposal will only be changed through amendment or revision. This is consistent with current BLM policy.

Collectively, the plan components described in this final rule provide the framework for a land use plan (*i.e.*, a resource management plan), as contemplated by FLPMA. FLPMA provides direction that the present and future use of public lands and their resources be projected through land use planning (*i.e.*, resource management planning) (43 U.S.C. 1701(a)(2)), and similarly, that land use plans provide, by tracts or areas, for the use of public lands (43 U.S.C. 1712(a)). In the development of land use plans, FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield. In doing so, the BLM must manage the 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 land 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 (see 43 U.S.C. 1702(c)).

Under the final rule, the plan components are designed to accomplish each of these FLPMA mandates. The needs of the American people are articulated through the goals of the resource management plan, the management of resource values is provided through the objectives, as well as the designations and resource use determinations. The resource use determinations also provide, by tracts or areas, for the use of the public lands. Finally, the standards for monitoring and evaluation provide the means to respond to changing needs and conditions, by ensuring the BLM monitors changes to the resource values identified in the plan objectives. This rule sets forward what the BLM will include in resource management plans, and a process for developing those plans, consistent with FLPMA.

#### Proposed Section 1610.1–3 Implementation Strategies

The final rule does not adopt proposed section 1610.1–3. Proposed § 1610.1–3 described implementation strategies that the BLM proposed to develop in conjunction with a resource management plan, but that would not represent planning level management direction and would not be considered components of the resource management plan. As proposed,

implementation strategies would be included as an appendix to the resource management plan. The proposed rule described implementation strategies as examples of how the BLM would implement future actions consistent with the planning-level management direction. After careful consideration of public comment, the BLM believes that this proposed concept is not appropriate for inclusion in this rule.

Many public comments indicated that the concept of implementation strategies, as described in the proposed rule, was confusing. Namely, commenters questioned why implementation strategies would be developed during the planning process and described in this subpart if they were not intended to be a part of the resource management plan. Several public comments suggested that implementation strategies should follow the same procedures as those required for the preparation and amendment of a resource management plan, which would effectively make implementation strategies a plan component. The BLM does not believe that implementation strategies would be appropriate as a plan component, however, because this approach would limit the BLM's ability to efficiently and effectively apply adaptive management approaches to ensure that the goals and objectives of land use plans are being met. Therefore, this proposed change would not support the goals of the Planning 2.0 initiative and this rulemaking.

As a consequence of not adopting proposed § 1610.1–3(a)(1), several elements described in the existing definition of a resource management plan are not retained in the final rule. These elements do not represent requirements under existing regulations, as they are described as “generally” included in a resource management plan. The existing elements include “general management practices,” the “need for an area to be covered by more detailed and specific plans,” “general implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action,” and some “support action[s].” These existing elements are removed from the final rule because they require site-specific information before a final decision can be rendered, or they describe procedures and are not associated with a formal decision, and therefore they do not represent planning-level management direction.

Under current practice, some of these existing elements are generally described as “management actions” (for a definition of management actions,

please see the current Land Use Planning Handbook, H–1601–1) and the removal of these existing elements represents a change from current practice; however, not all “management actions” are removed from the final rule, those that represent planning level management direction will be incorporated into the plan components. For example, under the final rule a restriction on use, such as a lease stipulation, will be a resource use determination; similarly a statement that describes desired resource conditions, such as a desired vegetation composition, will be a plan objective.

The removal of these existing elements in existing § 1601.0–5(n), combined with new requirements in final § 1610.1–2 related to plan components, represents a transition in the overall resource management planning framework applied by the BLM through the resource management planning process. This change is necessary in order to apply adaptive approaches to resource management and is based on new research and information that was not available when the existing definition of a resource management plan was promulgated (44 FR 46386). Under the final rule the plan objectives describe specific and measurable desired resource conditions, including indicators, as appropriate, for measuring progress towards their achievement. Further, the BLM will develop standards for monitoring and evaluating to determine if objectives are being achieved. These new requirements ensure that resource management plans will provide clear direction for the desired objectives to be achieved.

By identifying objectives, while maintaining flexibility to vary the actions taken to achieve the objectives, the BLM will be able to more readily respond to change. These changes are consistent with current guidelines for applying adaptive management. The DOI technical guide on adaptive management describes “adaptive management” as a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Adaptive management requires explicit and measurable objectives so that progress toward their achievement can be assessed, and performance that deviates from objectives may trigger a change in management. Adaptive management also requires flexibility to change management actions when necessary. The final rule supports the use of these types of adaptive approaches, while still

providing direction in resource management plans regarding the areas of public lands available for use, and the goals and objectives to be achieved, as provided for in FLPMA. The final rule does not preclude development of the information described in the two types of proposed implementation strategies—management measures and monitoring procedures. Rather, it affirms that while this information is not required as planning level management direction and need not be included in a resource management plan this information is important for resource management and essential to the effective implementation of adaptive management procedures. In some situations, the BLM may choose to develop this information concurrently with resource management planning, and the final rule does not preclude this option.

#### Section 1610.2 Public Involvement

In the heading of this section and throughout the planning regulations, the final rule adopts the proposal to replace the term “public participation” with “public involvement” to be more consistent with FLPMA. The BLM intends no change in practice or meaning from this revision. Public involvement is central to the BLM land use planning process under FLPMA, which directs the Secretary, “with public involvement” and consistent with FLPMA, to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.” (See 43 U.S.C. 1712(a).) FLPMA also requires that the Secretary “allow an opportunity for public involvement and by regulation shall establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.” (See 43 U.S.C. 1712(f).) FLPMA broadly defines the term “public involvement” as “the opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to

provide public comment in a particular instance” (see 43 U.S.C. 1702(d)). The final rule provides a similar definition to public involvement as “the opportunity for participation by the public in decision making and planning with respect to the public lands.” This is also discussed in the preamble discussion of the definition of public involvement § 1601.0–5.

The BLM interprets this definition (see § 1601.0–5) as encompassing notice by varied means, including by making a planning document available electronically (e.g., on the BLM Web site), providing direct notice to individuals or groups that have asked to receive notice about public involvement opportunities (e.g., by electronic means such as email or by U.S. mail), or publishing general notice for the public (e.g., in a local newspaper or in the **Federal Register**). The final rule adopts the proposal to revise § 1610.2 to indicate more clearly the points in the planning process when the BLM will provide notice through one or more of these means.

In addition, the final rule adopts the proposal to distinguish in the regulations between making a document “available for public review” and specifically requesting public comments. Where the BLM makes documents available for public review, the BLM believes it is important for the public to have an opportunity to see the BLM’s progress. The public is welcome to bring any questions or concerns to the responsible official’s attention based on public review and, to the extent that it is practical, the responsible official will consider their input and document it in the decision file associated with the resource management plan or plan amendment.

When the BLM makes a document “available for public review” the BLM is not required to provide a formal opportunity for public comment, including a time-period for submission of comments or a formal summary or response to any public comments received. This is not a change from existing practice, but clarifies the BLM’s intent when we use this terminology.

In contrast, where the BLM “requests written comments,” the BLM will provide a minimum of 30 days for response (see § 1610.2–2(a)). As

appropriate, the BLM will also summarize and respond to substantive comments. For example, the BLM will summarize public comments raised during scoping, develop planning issues based on the comments, and issue a scoping report. Similarly, the BLM will summarize and respond to substantive public comments submitted on a draft resource management plan and draft EIS. In some situations, the BLM may request written comments, but will not provide a written response to commenters. For example, the BLM may request public comment on a draft EA-level amendment without issuing a written response. Again, this is not a change from existing practice, but will clarify to the public the BLM’s intent when we use this terminology.

The final rule also makes it clear that the requirements to make a document “available for public review,” as described in this subpart, represent a minimum requirement and do not preclude the BLM from providing additional or enhanced opportunities for public involvement during any given planning effort. For example, a responsible official may choose to request written comments and provide a time-period for submission of comments when making the preliminary alternatives available for public review, should the responsible official believe that it would add value to that particular planning effort. The responsible official may not provide a summary of these written comments, but would describe in the draft resource management plan how public involvement informed the development of the draft alternatives (see § 1610.5–4(a)(1)).

The final rule adopts the proposal to restructure § 1610.2 to clearly indicate the different aspects of public involvement in the land use planning process. General provisions are outlined in final § 1610.2, which is followed by specific sections, including: Public notice (see final § 1610.2–1); public comment periods (see final § 1610.2–2); and availability of the resource management plan (see final § 1610.2–3). The following table and paragraphs explain the specific changes to § 1610.2 and the supporting rationale.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Planning assessment .....	Not applicable: The planning assessment will be a new requirement under the proposed rule, and therefore is not applicable to the existing regulations.	1610.4: The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which could include public meetings. The planning assessment would be documented in a report, which would be made available for public review. The BLM could waive the requirement to conduct a planning assessment for project-specific or minor EIS-level amendments.	1610.4: Same as proposed regulations, except for option to waive a planning assessment. The BLM could waive the requirement to conduct a planning assessment for project-specific or other minor EIS-level amendments.
Identification of planning issues .....	1610.2(c) and 1610.4–1: The BLM publishes a NOI in the <b>Federal Register</b> and publishes a notice in appropriate local media. The public is provided a minimum of 30-days to comment.	1610.2–1(f) and 1610.5–1: Same as existing regulations.	1610.2–1(f) and 1610.5–1: Same as existing and proposed regulations.
Development of planning criteria ...	1610.4–2: Proposed planning criteria are published in a NOI in the <b>Federal Register</b> and made available for public comment through the scoping period and comment on the draft resource management plan.	1610.5–2 and 1610.5–3: Planning criteria would no longer be required under the proposed rule. Instead, the BLM would describe the rationale for the differences between alternatives as well as the basis for analysis. Preliminary versions of both would be made available for public review prior to the publication of the draft resource management plan or EIS-level amendment.	1610.5–2 and 1610.5–3: Same as proposed regulations, except the public review of the rationale for alternatives and basis for analysis will be made available for public review “as appropriate” for EIS-level amendments.
Inventory data and information collection.	1610.4–3: No opportunities for public involvement are provided at this step.	1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which may include public meetings. The planning assessment would be documented in a report, which would be made available for public review.	1610.4: Same as proposed regulations.
Analysis of the management situation.	1610.4–4: No opportunities for public involvement are provided at this step.	1610.4: This step would be replaced with the planning assessment. The public would be provided opportunities to provide existing data or information or to suggest policies, guidance, or plans for consideration in the planning assessment. The BLM would identify public views in relation to the planning area, which could include public meetings. The planning assessment would be documented in a report, which would be made available for public review.	1610.4: Same as proposed regulations.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS—Continued

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Formulation of resource management alternatives.	1610.4–5: No opportunities for public involvement are provided at this step.	1610.5–2: The preliminary alternatives and preliminary rationale for alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment.	1610.5–2: Same as proposed regulations, except the public review of the rationale for alternatives and basis for analysis will be made available for public review “as appropriate” for EIS-level amendments.
Estimation of effects of alternatives	1610.4–6: No opportunities for public involvement are provided at this step.	1610.5–3: The preliminary procedures, assumptions, and indicators to be used when estimating the effects of alternatives would be made available for public review before publication of the draft resource management plan or EIS-level amendment.	1610.5–3: Same as proposed regulations, except the preliminary procedures, assumptions, and indicators to be used when estimating the effects of alternatives will be made available for public review “as appropriate” for EIS-level amendments.
Preparation of the draft resource management plan and selection of preferred alternatives.	1610.4–7: No opportunities for public involvement are provided at this step.	1610.5–4: Same as existing regulations.	1610.5–4: Same as existing and proposed regulations.
Publication of the draft resource management plan.	1610.2(e): The BLM requests public comment on the draft resource management plan and draft EIS and provides 90 calendar days for response.	1610.2–2: When requesting written comments on a draft resource management plan and draft EIS, the BLM would notify the public and provide at least 60 calendar days for response. When requesting written comments on an EIS-level amendment, the BLM would notify the public and provide at least 45 calendar days for response.	1610.2–2: When requesting written comments on a draft resource management plan and draft EIS, the BLM will notify the public and provide at least 100 calendar days for response. When requesting written comments on an EIS-level amendment, the BLM will notify the public and provide at least 60 calendar days for response.
Selection of the proposed resource management plan.	1610.4–8: The BLM publishes the proposed resource management plan and final EIS.	1610.5–5: The BLM would publish the proposed resource management plan or plan amendment and final EIS and also will publish any implementation strategies. The BLM expects that the implementation strategies will be included as appendices to the proposed resource management plan.	1610.5–5: Same as existing regulations.
Protest .....	1610.5–2: The BLM provides 30 calendar days for the public to protest plan approval. The public must submit a hard-copy of the protest to the BLM.	1610.6–2: The BLM would still provide 30 calendar days for the public to protest plan approval, but the proposed rule would describe more specific requirements on what constitutes a valid protest and allow for dismissal of any protest that does not meet these requirements. The public could submit a hard-copy or an electronic-copy of the protest to the BLM.	1610.6–2: Same as proposed regulations.
Resource management plan approval.	1610.5–1: The BLM must provide public notice and opportunity for comment on any significant change made to the proposed plan before approval of the plan.	1610.6–1: If the BLM intends to select an alternative that is substantially different than the proposed resource management plan or plan amendment, the BLM would notify the public and request written comments on the change before approval of the resource management plan or plan amendment. The BLM would notify the public when a resource management plan or plan amendment has been approved.	1610.6–1: Same as proposed regulations.

TABLE 1—COMPARISON OF PUBLIC INVOLVEMENT OPPORTUNITIES IN EXISTING VS. PROPOSED REGULATIONS VS. FINAL REGULATIONS—Continued

Step in planning process for the preparation of a resource management plan or an EIS-level amendment	Level of public involvement		
	Existing regulations	Proposed regulations	Final regulations
Monitoring and evaluation .....	1610.4–9: No opportunities for public involvement are provided at this step.	1610.6–4: The BLM would document the evaluation of the resource management plan in a report made available for public review.	1610.6–4: Same as proposed regulations.
Plan maintenance .....	1610.5–4: No opportunities for public involvement are provided at this step.	1610.5–4: When changes are made to an approved resource management plan through plan maintenance, the BLM will notify the public and make the changes available for public review at least 30 days prior to their implementation.	1610.5–4: Same as proposed regulations.

The final rule adopts proposed § 1610.2(a) with only minor revisions. Final § 1610.2(a) remains relatively unchanged from existing regulations and states that the BLM will provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. The final rule removes references to “related guidance” in order to focus this provision on the preparation and amendment of resource management plans. During the planning process, the public may submit comments on “related guidance” to the BLM and the BLM will consider substantive comments as they relate to the preparation of the resource management plan, but the BLM does not provide a separate and distinct comment period for related guidance. This is not a change in existing practice or policy, but will provide clarity to the public on opportunities for comment.

The final rule also removes language on giving “early notice of planning activities” from existing § 1610.2(a). This language is vague and unnecessary because final § 1610.2–1(e) carries forward the existing and proposed requirement that the BLM notify the public at least 15 days before any public involvement activities. The BLM will provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

Final § 1610.2(a) will also carry forward the existing requirement that public involvement in the planning process conform to the requirements of NEPA and its associated implementing regulations. The final rule also revises the paragraph to use active voice for improved readability. No substantive revisions were made to paragraph (a) of

this section between the proposed and final rule.

The final rule removes existing § 1610.2(b) and includes several of its provisions in final § 1610.2(c), consistent with the proposed rule.

Existing § 1610.2(b) requires the BLM to publish a planning schedule early in each fiscal year in order to advise the public of the status of each plan being prepared or scheduled to start during the year, the major planning actions expected during the fiscal year, and the projected new planning starts for the next three fiscal years. The final rule revises this requirement. Final § 1610.2(c) replaces existing § 1610.2(b) and requires the BLM to post the status of each resource management plan in the process of being prepared, or scheduled to be started, on the BLM’s Web site before the close of each fiscal year. The BLM often does not know its budget, priorities, or on-the-ground needs several years in advance; in recent years the BLM has operated under a continuing resolution to the budget for several months into the fiscal year, and is therefore unable to accurately predict a planning schedule with the specificity required in the existing regulations.

The BLM’s current practice is to post a planning schedule for resource management plans currently under preparation or approved to initiate preparation on the national BLM planning Web site when this information is available. This change in the regulations will give the BLM flexibility in communicating its planning schedule, including by posting the schedule electronically, and will be consistent with current practice. It also reflects the fact that budgetary constraints and the need to address new and emerging resource issues make it

difficult to accurately predict a planning schedule beyond the current fiscal year.

Final paragraph (c) of this section does not include the related requirement for requesting public comments on the projected new planning starts so that comments can be considered when refining priorities. This existing requirement is not practical, as the BLM often does not know its budget, priorities, or on-the-ground needs far enough in advance to request public comments on projected planning starts. However, by posting the status of resource management plans scheduled to be started, the BLM will provide transparency to the public, while also retaining adequate flexibility to respond to emerging resource management issues or changes in available budgets. This change will make the planning regulations consistent with current BLM practice, but will represent a change from existing regulations.

The final rule adopts proposed § 1610.2(b) with some revisions. Final § 1610.2(b) is adapted from §§ 1610.2(d) and (e) of the existing planning regulations. This section maintains the existing requirement that public involvement activities conducted by the BLM be documented either by a record or by a summary of the principal issues discussed and comments made. This requirement applies to “activities” the BLM hosts for the public during the preparation or amendment of a resource management plan, such as public meetings, listening sessions, or workshops. The final rule is revised to clarify that the BLM may provide “either” a record or a summary. No change in meaning is intended by this clarifying change. This provision further provides that the record or summary will be available to the public and open

for 30 days to any participant who wishes to review the record or summary. There will be no change in BLM operation or impact on the public from this change under the final rule. For example, the BLM will continue to prepare a scoping report following the identification of planning issues (see § 1610.5–1), which summarizes scoping meetings and written scoping comments under § 1610.2(b).

Existing § 1610.2(c) requires the BLM to publish a Notice in the **Federal Register** whenever beginning any new plan, revision, or amendment. This requirement is carried forward in final § 1610.2–1(f) and is discussed in the corresponding section of this analysis.

#### Section 1610.2–1 Public Notice

The final rule adopts proposed § 1610.2–1 with some revisions. Final § 1610.2–1 describes the requirements for when and how the BLM will provide public notice related to opportunities for public involvement.

Final § 1610.2–1(a) contains the provisions of existing § 1610.2(f) with edits for consistency with other proposed changes. Final § 1610.2–1(a) lists the points in the planning process when the BLM will notify the public and provide opportunities for public involvement that are appropriate to the areas and people involved in the preparation of a resource management plan, or an EIS-level amendment. We replace the existing and proposed phrase “steps in the planning process” with “points in the planning process” to clarify that the planning regulations do not require a sequential order for all of these “points” in the process. For example, the BLM intends that the review of the preliminary alternatives and the rationale for alternatives will generally be made available for public review concurrently with the basis for analysis, however there is no requirement that these occur concurrently. The BLM intends no change in meaning from this clarifying edit.

The following paragraphs describe each of these points in the planning process and any changes between the existing, proposed, and the final rule. These points will include new opportunities for public involvement early in the planning process, such as during the planning assessment, as appropriate.

The final rule adopts proposed paragraph (a)(1) of this section, with minor edits. This paragraph requires that the BLM notify the public and provides opportunities for public involvement during the preparation of the planning assessment, subject to

§ 1610.4. The BLM intends that such notification will occur when the BLM initiates the planning assessment and provides opportunities for public involvement during the planning assessment. The final rule is revised to replace “as appropriate” with “subject to § 1610.4” in this provision to clarify that under § 1610.4 the deciding official may waive the requirement to prepare a planning assessment for project-specific or other minor EIS-level amendments. In these specific circumstances, a planning assessment will not be conducted, and therefore the BLM cannot provide opportunities for public involvement. However, when a planning assessment is conducted, the BLM must notify the public and provide opportunities for public involvement. For more information on this waiver, please see the discussion at the preamble for § 1610.4(f). The planning assessment is a new requirement under the final rule, so this represents a new opportunity for public involvement.

The final rule adopts proposed paragraph (a)(2) of this section, with minor revisions. Final § 1610.2–1(a)(2) requires that the BLM notify the public and provide opportunities for public involvement during the identification of planning issues. Changes between the proposed and final rule include the “review of the preliminary statement of purpose and need” in this section. This added language identifies a new opportunity for public involvement, as there is no similar requirement under existing regulations, but does not represent a substantive change between the proposed and final rule, as this new opportunity for public review was described in proposed § 1610.5–1. The BLM will include this language simply for improved readability and consistency with the requirements of § 1610.5–1.

The final rule adopts and combines proposed paragraphs (a)(3) and (a)(4) of this section into a single final paragraph (a)(3). Final § 1610.2–1(a)(3) requires that the BLM notify the public and provide opportunities for public involvement during the public review of the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis. Changes between the proposed and final rule will add the phrase “subject to §§ 1610.5–2(c) and 1610.5–3(a)(1)” for consistency with these sections. Under §§ 1610.5–2(c) and 1610.5–3(a)(1) the BLM will provide a public review of preliminary alternatives, rationale for alternatives, and the basis for analysis for all resource management plans and “as appropriate” for EIS-level amendments. When the public review is

conducted, the BLM must notify the public and provide opportunities for public involvement.

The public review of the preliminary resource management alternatives, rationale for alternatives, and the basis for analysis is a new opportunity for public involvement and therefore a change from existing regulations. Please see the discussions at the preamble for §§ 1610.5–2(c) and 1610.5–3(a)(1) for more information on this change between the requirements of the existing, proposed, and final rule.

The final rule adopts proposed paragraph (a)(5) of this section, however, this paragraph will instead be designated as final § 1610.2–1(a)(4). Paragraph (a)(4) of this section requires that the BLM notify the public and provide opportunities for public involvement during the public comment period on the draft resource management plan. There will be no change from existing requirements.

The final rule adopts proposed paragraph (a)(6) of this section, however, this paragraph will be designated as final § 1610.2–1(a)(5). Paragraph (a)(5) of this section requires that the BLM notify the public and provide opportunities for public involvement during the protest period of the proposed resource management plan. This is not a change from existing requirements.

In the proposed rule, the BLM requested public comment on whether the provisions of proposed § 1610.2–1(a) should apply to the preparation of a resource management plan, but not apply to EIS-level amendments because plan amendments are generally smaller in scope than the preparation of a resource management plan. Under this alternative, the BLM would have notified the public and provided opportunities for public involvement in the preparation of an EIS-level amendment, as appropriate to the areas and people involved during: (1) Identification of planning issues; (2) Comment on the draft resource management plan; and (3) Protest of the proposed resource management plan. In response to public comment, the final rule does not adopt this proposal; however, final § 1610.2–1(a)(3) is revised, from the proposed rule, to specify that the BLM will provide a public review of the preliminary alternatives, rationale for alternatives, and the basis for analysis, “as appropriate.” Please see the discussions at the preamble for §§ 1610.5–2(c) and 1610.5–3(a)(1) for more information on this change between the proposed and final rule and for response to public comments related to this change.

The final rule adopts proposed § 1610.2–1(b), with minor edits. Final § 1610.2–1(b) lists the points in the planning process when the BLM will notify the public and provide opportunities for public involvement in the preparation of a plan amendment where an EA is prepared (EA-level amendment), as appropriate to the areas and people involved. Changes between the proposed and final rule will replace the word “steps” with “points” for consistency with the changes made to paragraph (a) of this section. The BLM intends no change in the meaning of this section from this change between proposed and final rules.

The final rule adopts proposed paragraphs (b)(1) through (b)(3) without edits. These paragraphs identify the points where the BLM will notify the public and provide opportunities for public involvement. The points include: (1) Identification of planning issues; (2) Comment on the draft resource management plan amendment, as appropriate; and (3) Protest of the proposed resource management plan amendment.

The existing regulations do not require that BLM provide opportunities for public involvement during the identification of planning issues for EA-level amendments, however, the BLM often chooses to provide such opportunities. Under the final rule, public involvement will be required when identifying planning issues for EA-level amendments. This change supports the goal of establishing early opportunities for public involvement in the planning process, including EA-level amendments. The final rule will not, however, require that the BLM request public comment on draft EA-level amendments, consistent with the existing regulations. However, the BLM often chooses to request public comments on draft EA-level amendments, and in such circumstances the public will be provided 30 calendar days for response (see final § 1610.2–2(a)).

The final rule adopts proposed §§ 1610.2–1(c) through (e), with some revisions. Sections 1610.2–1(c) through (e) are general provisions that will apply whenever the BLM provides public notice relating to the preparation or amendment of a resource management plan.

The final rule adopts proposed § 1610.2–1(c), which establishes new requirements that the BLM announce opportunities for public involvement by posting a notice on the BLM Web site and at all BLM offices within the planning area. In response to public comments, the final rule also includes a

new requirement that the responsible official identify additional forms of notification to reach local communities located within the planning area, as appropriate. The BLM acknowledges that in many rural communities, Internet access may not be readily available and residents often live many hundred or more miles from BLM offices. In these situations, the BLM will provide additional notifications using formats that are relevant and accessible to the various publics interested in or affected by the planning effort, including local communities. For example, the BLM may also post an announcement at a local library, post-office, or other frequently visited location; issue a local, regional, or national press release; notify community leaders of the opportunity; or post an announcement using various social media. The use of these additional formats will vary based on the location and public interest in the planning effort.

These new notification requirements are consistent with current practice in many BLM offices and ensure consistency in implementation throughout the BLM. Final § 1610.2–1(c) provides certainty to the public on where, at a minimum, they can find information on all public involvement opportunities.

The final rule adopts proposed § 1610.2–1(d) with only minor revisions. This section provides that individuals or groups could ask the BLM to notify them of opportunities for public involvement related to the preparation and amendment of a resource management plan. The BLM will notify those individuals or groups through written or electronic means, such as a letter sent by U.S. mail or email.

Under existing regulations (§ 1610.2(d)), the Field Manager must maintain a mailing list of those individuals or groups known to be interested in or affected by a resource management plan or that have asked to be placed on the list and notify those individuals or groups of public participation activities. The final rule removes the requirement for the BLM to maintain a list of groups or individuals “known to be interested in or affected by a resource management plan,” which places an unnecessary burden on the BLM to find contact information for groups or individuals that may not be readily available. The final rule instead requires the BLM to notify any groups or individuals that have explicitly requested to be notified of opportunities for public involvement.

The BLM will continue its current practice of conducting outreach to all

individuals or groups known to be interested in or affected by a resource management plan. The BLM believes that such outreach is important to a successful planning process. The final rule reflects the fact that the BLM cannot “guarantee” that such individuals or groups and their correct contact information will be added to the mailing list unless they request to be added and provide the BLM with current contact information. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on best practices for providing public notifications and public involvement.

The final rule adopts proposed § 1610.2–1(e) with only minor revisions. Under this section, the BLM will notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting. This requirement is the same as that in § 1610.2(e) of the existing regulations. It is intended to allow members of the public to plan their schedules and make arrangements to attend scoping meetings, “open house” style workshops, or other public meetings that are part of the BLM land use planning process. The BLM will provide further advance notice beyond the 15-day requirement to the extent possible, consistent with current practice.

In response to public comment, final § 1610.2–1(f) retains the existing requirement that the BLM publish a notice in the **Federal Register** when initiating the identification of planning issues for a resource management plan or plan amendment. The proposed rule would have removed this requirement for EA-level amendments; however, in response to public comments, the BLM will retain this existing requirement. The final rule combines proposed paragraphs (f)(1) and (f)(2) of this section into final paragraph (f)(1). Separate paragraphs distinguishing between the notice requirements for EA-level amendments and EIS-level amendments are no longer necessary, as the final notice requirements are the same.

Final § 1610.2–1(f)(1) provides that when initiating the identification of planning issues for the preparation of a resource management plan or plan amendment, in addition to posting a notice on the BLM’s Web site and at all BLM offices in the planning area and providing direct notice to those individuals or groups who have requested notification, the BLM will also publish a notice in appropriate local media, including in newspapers of general circulation in the planning area

and publish a notice of intent (NOI) in the **Federal Register**. This requirement will apply regardless of the level of NEPA analysis (e.g., whether the BLM prepares an EA or an EIS). This section retains existing language stating that the NOI also may constitute the NEPA scoping notice (see 40 CFR 1501.7 and 43 CFR 46.235(a)).

Final § 1610.2–1(f)(1) maintains the existing requirement (see existing §§ 1610.2(c) and (f)(1)) to publish a NOI in the **Federal Register** where the BLM prepares an EIS for a resource management plan or plan amendment. Publishing a NOI to prepare an EIS for a resource management plan or plan amendment in the **Federal Register** is consistent with NEPA requirements (40 CFR 1501.7 and 1508.22) and CEQ direction that agencies “integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts” (40 CFR 1501.2). Publishing an NOI for these EISs also contributes to an efficient, integrated process by offering an opportunity to integrate planning with NEPA scoping requirements.<sup>11</sup>

The final rule does not include the existing language in § 1610.2(c) allowing the Field Manager to decide whether it is appropriate to publish a notice in media in adjoining States. This language is no longer needed because final § 1610.2–1(f) allows the BLM discretion to identify “appropriate local media,” and this encompasses media in adjoining states. There will be no change in practice in the implementation of this section.

The final rule adopts proposed § 1610.2–1(f)(3), with minor edits; however, this section will be redesignated as § 1610.2–1(f)(2) in the final rule. This section outlines the information that will be included in the notices described in § 1610.2–1(f)(1) and contains the provisions of existing § 1610.2(c)(1) through (8), respectively, as follows.

There will be no changes to the requirement in final 1610.2–1(f)(2)(i) from existing requirements (see existing

§ 1610.2(c)(1)). The final rule adopts the proposal to specify in paragraph (f)(2)(ii) of this section that the “plan” in reference is a “resource management plan.” In response to public comment, we replace “geographic area” with “planning area” for consistent use in terminology throughout this part. There will be no change in the meaning of this provision from this change between the proposed and final rule. Final paragraph (f)(2)(iii) of this section remains unchanged from the existing and proposed requirements. In paragraph (f)(2)(iv) of this section, the final rule adopts the proposal to replace “disciplines” with “expertise,” to reflect that BLM staff may have expertise outside of their formal discipline, and an “interdisciplinary approach” should be based on expertise, not formal disciplines. The final rule also adopts the proposal to specify that the “plan” in reference is a “resource management plan” and the purpose of having a range of expertise represented is to “achieve an interdisciplinary approach.” There is no substantive change in practice or policy. Final paragraph (f)(2)(v) of this section adopts the proposal to add language indicating that the notice should include the kind and extent of public involvement activities “as known at the time.” Although there is no substantive change in practice or policy, this clarifies that the BLM may always provide additional opportunities for public involvement as planning proceeds. There are no substantive changes to the requirements in paragraphs (f)(2)(vi) through (f)(2)(viii) of this section.

The final rule adopts proposed §§ 1610.2–1(g) and (h) with only minor revisions. Final § 1610.2–1(g) contains the provisions of existing § 1610.2(f)(5) and provides that if the BLM intends to select an alternative that is substantially different than the proposed resource management plan, the BLM will notify the public and request written comments on the change. This requirement is intended to ensure that the public has an opportunity to comment on important changes that are made late in the planning process, such as those that result from protest resolution or the recommendations of a Governor during the Governor’s consistency review.

Final § 1610.2–1(h) establishes a new regulatory requirement for the BLM to notify the public when a resource management plan or plan amendment has been approved, consistent with current practice. The BLM expects to post this notification on the BLM Web site, at the local BLM office where the plan was prepared, and by direct

notification to those individuals and groups that have asked to receive notice of specific planning efforts. This notification will help those who are interested to stay up-to-date on plans and increase transparency.

The BLM did not receive public comments related to paragraph (h) of this section.

The final rule adopts proposed § 1610.2–1(i), with minor edits that require the BLM to notify the public any time changes are made to an approved resource management plan through plan maintenance and to make those changes generally available to the public at least 30 days before the change is implemented. This change will provide transparency to the public on any changes made to the resource management plan through plan maintenance, including the correction of typographical or mapping errors or changes made to reflect minor changes in mapping or data. The BLM expects to notify the public by posting the changes to the BLM Web site.

The final rule does not adopt proposed § 1610.2–1(j). This section would have required that the BLM notify the public any time a change is made to an implementation strategy and make those changes available to the public at least 30 days before their implementation. This provision is no longer necessary because the final rule does not include the concept of implementation strategies. For more information, please see the discussion on implementation strategies at the preamble for § 1610.1–3.

#### Section 1610.2–2 Public Comment Periods

The final rule adopts proposed § 1610.2–2, with revisions to the proposed lengths of public comments periods and inclusion of a new provision to address public comment requirements when a resource management plan or plan amendment involves the possible designation of ACECs.

Final §§ 1610.2–2(a) through (c) address the length of public comment periods when the BLM requests written comments and this final section also replaces most of existing § 1610.2(e). Final § 1610.2–2(a) requires that when requesting written comments, the BLM will provide a comment period of at least 30 calendar days, unless a longer period is required by law or regulation, in which case the longer period will be provided as a minimum. For example, when the BLM requests scoping comments, a minimum 30 day comment period will be required; if the BLM offers a public comment period for a

<sup>11</sup> CEQ and DOI NEPA regulations encourage such integration. See 40 CFR 1501.7(b)(4) (providing that as part of the NEPA scoping process, a lead agency may “(h)old an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has”) and 43 CFR 46.235(a) (stating that scoping “provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process”).

plan amendment where an EA is prepared, a minimum 30 day comment period will be required. This section maintains the requirement from existing § 1610.2(e) to provide at least 30 calendar days for public comment, while also clarifying that in certain circumstances the BLM is legally required to offer a longer comment period.

Final § 1610.2–2(b) describes the public comment period the BLM will provide for draft EIS-level amendments. The BLM proposed to require at least 45 calendar days for public comment on the draft plan amendment and draft EIS. This would have been shorter than the 90-day public comment period that applies to all EIS-level plan amendments under the existing planning regulations, but consistent with existing NEPA requirements. Many public comments did not support the reduction in the length of any public comment period, although a few comments did indicate support for the proposal. In response to public comments, the final rule requires at least 60 calendar days for public comment for draft EIS-level amendments.

The BLM acknowledges the importance in providing adequate lengths of time for the public to review and comment on draft plan amendments. At the same time, the BLM recognizes that the scope and scale of draft EIS-level amendments varies substantially. In many circumstances, an EIS-level plan amendment may be narrow in scope and scale, such as a project-specific amendment for a small geographic area. In these situations, a mandatory comment period of 90 calendar days is unnecessary and inefficient. The final rule provides a balanced approach by requiring a minimum of 60 calendar days for public comment, a period longer in length than the proposed rule, but shorter in length than the existing regulations. For those plan amendments that are broad in scope or scale, such as a multi-State programmatic plan amendment, the BLM expects to typically offer a longer public comment period, commensurate with the complexity of the draft plan amendment. The forthcoming revision of the Land Use Planning Handbook will provide guidance to responsible

officials regarding the length of the public comment period.

Final § 1610.2–2(c) describes the public comment period the BLM will provide for draft resource management plans and draft EISs. The BLM proposed to provide at least 60 calendar days for public comment on the draft resource management plan and draft EIS. This would have been shorter than the 90-day public comment period that applies to all draft resource management plans under the existing planning regulations. Although a few public comments supported this proposal, the majority of public comments did not, and some public comments suggested the BLM should provide a longer comment period than the existing regulations. In response to public comment, the final rule revises § 1610.2–2(c) to provide at least 100 calendar days for public comment, a period longer in length than the existing requirement.

Final § 1610.2–2(c) retains the existing provision that the public comment period begins when the EPA publishes a notice of availability (NOA) of the draft EIS in the **Federal Register**. The BLM will continue to comply with public involvement and notification requirements of NEPA, including 40 CFR 1506.6(b)(2), which provides that agencies must provide public notice of availability of environmental documents in the **Federal Register** for actions with effects of national concern. In many cases where the BLM prepares an EIS for a resource management plan or plan amendment, the BLM expects to continue its current practice of publishing a NOA in the **Federal Register** for Draft and Final EISs and the record of decision for these EIS level planning efforts.

Final § 1610.2–2(d) includes a new requirement that when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall request written comments on the designations under consideration. This paragraph is added between in the final rule for consistency with changes to § 1610.8–2 and in response to associated public comments. Existing regulations require a minimum of 60 calendar days be provided for public comments on a proposed ACEC designation (see existing § 1610.7–2(b)), and the proposed rule would have removed this requirement. The BLM received several

public comments indicating that a public comment period is necessary any time an ACEC is being considered for designation. In response to public comments, the final rule requires the BLM to provide a public comment period of at least 30 calendar days. The BLM intends that this comment period will normally be integrated with the public comment period on the draft resource management plan or plan amendment; therefore, a longer period will be provided for EIS-level amendments (at least 60-days) and resource management plans (at least 100-days). For more information, please see the discussion at the preamble for final § 1610.8–2(b)(1).

Consistent with the existing regulations, the final rule does not explicitly address situations where the BLM prepares an EA for a plan amendment (EA-level amendment) and the BLM elects to offer an opportunity for public comment. In this situation, however, the BLM will provide at least 30 calendar days for public comment on the draft plan amendment, unless a longer period is required by law or regulation, consistent with the requirements of final § 1610.2–2(a). The public comment period will begin on the date the BLM notifies the public of the availability of the draft plan amendment and EA.

While the BLM often offers a public comment period on an EA-level plan amendment, this is not required by NEPA,<sup>12</sup> the existing planning regulations, or the final planning regulations. There may be situations where there is no public interest in a minor EA-level amendment and a formal public comment period is not necessary. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on this topic.

The following table provides a comparison of some public involvement opportunities in the final rule for EA-level amendments, EIS-level amendments, and resource management plans.

<sup>12</sup> NEPA requires public involvement, to the extent practicable, in the preparation of an environmental assessment, but it need not take the form of a public comment period. 40 CFR 1504.1(b) and 43 CFR 46.305(a); see 40 CFR 1506.6; *BLM National Environmental Policy Act Handbook* (H-1790-1), 8.2, p. 76.

TABLE 2—PUBLIC NOTIFICATION AND INVOLVEMENT OPPORTUNITIES UNDER THE FINAL RULE

Step in the planning process	EA-level amendments	EIS-level amendments	Resource management plans
Planning Assessment .....	The BLM is not required to conduct a planning assessment for EA-level amendments.	When the BLM conducts a planning assessment for EIS-level amendments, to formally initiate the planning assessment, the BLM will post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	To formally initiate the planning assessment, the BLM will post a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.
Plan initiation and identification of planning issues.	The BLM will publish a NOI in the <b>Federal Register</b> and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.	The BLM will publish a NOI in the <b>Federal Register</b> and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.	The BLM will publish a NOI in the <b>Federal Register</b> and will publish a notice in appropriate local media, on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The BLM will offer a minimum 30 day comment period on identification of planning issues.
Review of the preliminary alternatives, rationale for alternatives, and the basis for analysis.	These steps do not apply to EA-level amendments.	The BLM will provide this step for EIS-level amendments, as appropriate. The BLM will post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web site. The BLM will post notice of their availability on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will post the preliminary alternatives, rationale for alternatives, and the basis for analysis on the BLM Web site. The BLM will post notice of their availability on the BLM Web site, and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.
Comment on the draft plan or amendment.	If the BLM requests written comment, BLM will offer a minimum 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 60 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the <b>Federal Register</b> .	The BLM will offer a 100 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the <b>Federal Register</b> under separate authorities.
Protest .....	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the <b>Federal Register</b> .	The BLM will offer a 30 day protest period. The BLM will announce the start of the protest period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification. The EPA will publish an NOA in the <b>Federal Register</b> under separate authorities.
Comment on a substantive change made after release of a proposed plan or amendment ( <i>i.e.</i> , if the BLM intends to select an alternative that is substantially different than the proposed plan or amendment).	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will offer a 30 day comment period. The BLM will announce the start of the comment period by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.

TABLE 2—PUBLIC NOTIFICATION AND INVOLVEMENT OPPORTUNITIES UNDER THE FINAL RULE—Continued

Step in the planning process	EA-level amendments	EIS-level amendments	Resource management plans
Plan approval .....	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.	The BLM will notify the public by posting a notice on the BLM Web site and at BLM offices within the planning area, and provide direct notification to those who have requested such notification.

### Section 1610.2–3 Availability of the Resource Management Plan

The final rule adopts proposed § 1610.2–3, with some revisions. This section addresses the availability of resource management plans.

Final § 1610.2–3(a) contains revised language from existing § 1610.2(g) and requires that the BLM make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available for public review. The final rule requires, at a minimum, that the BLM make copies of these documents available electronically and at all BLM offices within the planning area.

For example, the BLM could make documents available electronically by posting documents on the BLM Web site, or if Internet access is limited in an area, by sending participants a Compact Disc or a USB flash drive in the mail. The BLM will also make resource management plans available for public viewing at all BLM offices within the planning area. While this is a change from existing regulations, it is consistent with current practice for most BLM offices. This language replaces the existing requirements to make copies of the resource management plan available at the State, district, and field office (see existing §§ 1610.2(g)(1) through (3)) and copies of supporting documents available at the office where the plan was prepared. These changes will increase electronic availability of documents and change the BLM offices where the document is required to be available for viewing.

The final rule adopts the proposal to remove the existing requirement to make “supporting documents” available to the public as this term is vague and it is unclear what is considered a supporting document. In response to public comments, we will include new language in final § 1610.2–3(a) that the BLM will make scientific or technical reports that the responsible official uses in preparation of a resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law. For the purposes of this

provision, the BLM considers scientific or technical reports to be final documents that describe the results of scientific research or technical analysis related to the preparation of the resource management plan or plan amendment. The BLM includes pertinent scientific and technical information and reports in the project file and generally makes certain scientific or technical reports, such as a biological opinion, available to the public as appendices to the resource management plan or plan amendment, or on the BLM’s Web site. We expect that in most situations, the BLM will continue to post these types of scientific or technical reports on its Web site, make them available for viewing at BLM offices within the planning area, or make them available as appendices to the resource management plan. While this is a new requirement in the regulations, it is consistent with current BLM practice.

The BLM will not, however, post the entire project file, including email records or other types of communication, to the BLM’s Web site or make the entire project file available at BLM offices within the planning area. This would be inconsistent with current practice and policy and would place an unnecessary administrative and personnel burden on the BLM. These types of supporting documents are made available to the public through other means, such as a Freedom of Information Act request.

The new requirements in § 1610.2–3(a) to make resource management plans available electronically reflect that digital technology and Internet access is far more widely available than it was when these regulations were last updated. These requirements will advance BLM policy on transitioning to electronic distribution of NEPA and planning documents (IM 2013–144, Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats (June 21, 2013), [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/)

2013/IM\_2013-144.html), and with the DOI Environmental Statement Memorandum No. 13–7, “Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods” (Jan. 7, 2013), <http://www.doi.gov/pmb/oepr/upload/ESM13-7.pdf>). These changes will also ensure consistency in how the BLM makes documents available to the public, increase transparency, and help to ensure that the public has access to current versions of plans without missing amendments that only appear in paper copies. Electronic posting of planning documents also may help to reduce high printing costs.

The BLM recognizes, however, that there are many communities with limited technological and Internet availability, such as rural communities and some environmental justice communities.<sup>13</sup> The BLM will continue to work to involve these communities in the development of resource management plans and make planning documents available in the most appropriate formats. For example, resource management plans could be made available at public libraries, community centers, or other locations frequented by local communities.

The final rule adopts proposed § 1610.2–3(b) without any substantive revisions. This section clarifies the requirements in existing § 1610.2(g) that the BLM will make single printed copies of a resource management plan available to individual members of the public upon request during the public involvement process, and that after the BLM has approved a plan, the BLM may charge a fee for additional printed copies. The BLM considered an alternative option, which was discussed in the preamble for the proposed rule, to make these copies available through digital means, such as a compact disc or

<sup>13</sup> “Executive Order 12898—Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations” directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States (59 FR 7629, February 16, 1994).

other digital storage device, instead of printed copies and requested public comment on this option. This option would have allowed the agency to continue to move away from printing paper copies in the future as technology continues to become more available to the public. Although some public comments supported this approach, others indicated that a paper copy is necessary because not everyone uses or has the available resources to access digital media. In response to public comments, the final rule does not include this alternative, and the BLM will continue to provide paper copies as provided in final § 1610.2–3(b).

Final § 1610.2–3(b) also maintains the language in existing § 1610.2(g) concerning fees for reproducing requested documents beyond those used as part of the public involvement process, although this section refers to a “resource management plan” instead of a “revision” and “public involvement” instead of “public participation.” This word change will reflect changes made throughout this final rule and the use of the FLPMA term “public involvement.” These changes are not a change in practice or policy.

The final rule adopts the proposal to remove existing § 1610.2(j) and (k). The BLM prepared the coal program regulations simultaneously with the first land use planning regulations under FLPMA in the late 1970’s and certain coal-related provisions remain in 43 CFR subpart 1610. The BLM believes that these coal-related provisions are inappropriate in the planning regulations, as they are either duplicative of the coal program regulations, or reference procedures that are inconsistent with current practice and policy.

Existing § 1610.2(j) requires consultation with surface owners when resource management plans involve areas of potential mining for coal by means other than underground mining. Input and consent from a qualified surface owner is required at the leasing stage under 43 CFR 3427.1, therefore existing 1610.2(j) is duplicative of the consultation requirements at 43 CFR 3427.1 and unnecessary.

Existing § 1610.2(k) is also removed in the final rule. Existing § 1610.2(k) is consistent with a process of “regional coal leasing,” described in subpart 3420, which the BLM used in designated coal production regions (defined in § 3400.5) at the time the planning regulations were originally published. Since 1990, all coal production regions have been decertified and the BLM currently uses the “lease by application” process

described in subpart 3425, where approval for coal leasing is conducted for each individual application, as opposed to at the resource management plan level. Since publication of the resource management plan only designates areas as suitable for coal leasing and no longer approves coal leases over the entire suitable area, this public hearing is no longer appropriate during the land use planning process. Under the “lease by application” process, a hearing will be held for each coal lease application, consistent with the BLM coal regulations at § 3425.4(a)(1) and current BLM practice.

The BLM received a few comments in opposition to the removal of existing § 1610.2(j) and (k). These comments stated that the planning process is the appropriate time for BLM to contact surface owners about their preferences regarding leasing, and that the similar notice prescribed in the BLM’s leasing regulations may come after coal-related decisions in a resource management plan or plan amendment have been finalized. Additionally, comments stated that the BLM should not make coal-related regulatory changes until the ongoing review of the Federal coal program and its associated Programmatic EIS are completed.

The final rule is not revised in response to this comment. The BLM believes that removing § 1610.2(k) will help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal-specific requirements in the coal regulations, where they are more appropriate. Further, the BLM will provide for public involvement during the preparation and amendment of resource management plans, including for any coal-related issues. These regulatory changes will not be a change in current practice or policy during coal leasing.

As a separate matter, Secretarial Order 3338 issued on January 15, 2016, requires the BLM to conduct a comprehensive review to modernize the Federal coal program, including a Programmatic EIS. The regulatory changes in this final rule are unrelated to and will not impact the Secretarial Order or the BLM’s comprehensive review.

#### Section 1610.3 Consultation With Indian Tribes and Coordination With Other Federal Agencies, State and Local Governments, and Indian Tribes

The final rule revises the proposed heading of section 1610.3 to include “consultation with Indian tribes.” This change is necessary for consistency with

final § 1610.3–1, a new section in the final rule.

The final rule adopts the proposal to remove the words “federally recognized” before Indian tribes throughout final §§ 1610.3–1, 1610.3–2, and 1610.3–3 for consistent use in terminology. These references are no longer necessary with the inclusion of the proposed definition for Indian tribes in § 1601.0–5. For further information on this revision, see the preamble discussion of the definition for “Indian tribe.” The final rule is revised to replace any existing uses of “will” in this section with “shall,” for the reasons previously described. These changes are not a change in practice or policy.

#### Section 1610.3–1 Consultation With Indian Tribes

In response to input received during consultation with federally recognized Indian tribes regarding the proposed rule, as well as public comments, the final rule includes a new section on tribal consultation. Proposed § 1610.3–1 is redesignated as § 1610.3–2 in the final rule. This section provides that the BLM will initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This section is added to the final rule to reflect the fact that the BLM is required to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM’s request for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. Although this will be a new provision in the planning regulations, this is an existing requirement for the BLM under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments (2000) and Secretarial Order 3317—Department of the Interior Policy on Consultation with Indian Tribes (2011).

This government-to-government consultation shall be initiated regardless of an Indian tribe’s status as a cooperating agency or any on-going coordination with the Indian tribe. Should an Indian tribe choose to participate as a cooperating agency or to coordinate with the BLM, the BLM is still required to initiate government-to-government consultation.

#### Section 1610.3–2 Coordination of Planning Efforts

Proposed § 1610.3–1 is redesignated as § 1610.3–2 in the final rule. Final § 1610.3–2 contains the provisions of existing and proposed section 1610.3–1, with revisions. This section retains the

heading “coordination of planning efforts.”

The final rule adds introductory language to final § 1610.3–2(a) to clarify that this section describes the “objectives of coordination.” Final § 1610.3–2(a) contains the provisions of existing § 1610.3–1(a), but replaces the reference to “State Directors and Field Managers” with “the BLM” because the responsibility of coordination are those of the BLM and they extend beyond any individual.

Elsewhere throughout final §§ 1610.3–2(b) through (f), the final rule replaces references to “Field Manager(s)” with “responsible official(s)” and replaces references to “State Director(s)” with “deciding official(s),” as proposed. The new terms, which are defined in final § 1601.0–5, refer to specific official responsibilities.

Proposed § 1610.3–1(a) (final § 1610.3.2(a)) would have added language to clarify that coordination is accomplished “to the extent consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs of such laws and regulations.” Several public comments noted that this proposed requirement would exceed the statutory requirement that coordination occur “to the extent consistent with the laws governing the administration of the public lands” (43 U.S.C. 1712(c)(9)). In response to public comment, the final rule replaces the proposed language with “to the extent consistent with Federal laws and regulations applicable to public lands.” Although FLPMA only mentions the “laws governing the administration of the public lands,” the BLM interprets this phrase to encompass the regulations implementing the laws, as these regulations have the full force and effect of law and the BLM is required to comply with Federal laws and regulations. Final § 1610.3–2(a) does not represent a change from current practice or policy.

Final §§ 1610.3–2(a)(1) and (a)(2) are revised in response to public comments. Several public comments expressed concern over the proposal to remove existing § 1610.3–2(b) regarding consistency between resource management plans and the policies and programs of other Federal agencies, State and local governments, and Indian tribes as well as references to these “policies and programs” in other sections of the existing regulations (please see the discussion for the definitions of “consistent with officially approved and adopted plans” and “officially approved and adopted plans” at the preamble for final § 1601.0–5 as

well as the discussion for final § 1610.3–3(b)). Comments expressed concern that the BLM would no longer consider these policies and programs during the planning process and suggested that such a change would be in violation of FLPMA. The BLM acknowledges and affirms that coordination on relevant policies and programs of other Federal agencies, State and local governments, and Indian tribes is important to the success of a planning effort, consistent with FLPMA.

FLPMA requires that the BLM “coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located. . . . by, among other things, considering the policies of approved State and tribal land resource management programs.” (See 43 U.S.C. 1712(c)(9).) The final rule revises paragraphs (a)(1) and (a)(2) of § 1610.3–2 (proposed § 1610.3–1) to incorporate this direction provided by FLPMA and in response to concerns raised in public comments, stating that objectives of coordination are for the BLM to “[k]eep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes” and to “[a]ssure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands.”

The final rule supports the achievement of these objectives. For example, final § 1610.4(b)(2) requires that during the planning assessment the responsible official “identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.” Further, final § 1610.4(b)(3) requires that the responsible official provide opportunities for other Federal agencies, State and local governments, and Indian tribes to suggest other law, regulations, policies, guidance, strategies, or plans. The responsible official will fulfill these requirements through coordination, as contemplated by FLPMA, and in doing so the responsible official will assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands.

In addition, final § 1610.3–2(b) describes the procedures for establishing a cooperating agency relationship with governmental entities. Cooperating agencies are provided a

special role during the preparation of resource management plans. Cooperating agencies work closely with the BLM at every stage of the planning process to identify issues that should be addressed, collect or analyze data, develop or evaluate alternatives, and review preliminary documents. This unique partnership is provided only to governmental entities and helps the BLM develop a resource management plan that is responsive to the needs and concerns of local communities. Further, this partnership helps the BLM to achieve the objectives described in final § 1610.3–2(a)(1) and (a)(2). Should a governmental entity choose not to participate as a cooperating agency, final § 1610.3–2(c) provides additional requirements for coordination, to ensure that BLM achieves the objectives of coordination.

In response to public comments, the final rule also removes the existing and proposed phrase “non-BLM” plans in final § 1610.3–2(a)(1), and clarifies that this section refers to the plans, policies, and management programs of “other Federal agencies, State and local governments, and Indian tribes.” This distinction is important, as the objectives of this section apply uniquely to other governmental entities. This is not a change in practice or policy; rather, this change improves readability of these regulations.

The final rule adopts proposed paragraph 1610.3–2(a)(3) of this section without revision. The existing word “practicable” (see existing § 1610.3–1(a)(3)) is replaced with “practical” in the final rule for consistency with FLPMA (see 43 U.S.C. 1712(c)(9)). Several public comments noted that this represents a substantive change from existing regulations, as “practicable” and “practical” are not exact synonyms, and suggested that the proposed rule did not adequately address this subtle distinction. The BLM disagrees there is a substantive difference but acknowledges the subtle distinction in the meaning of these terms; however, we believe this change is appropriate for consistency with FLPMA, which uses the term “practical.” (See 43 U.S.C. 1712(c)(9) (“the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans . . .”).)

The final rule adopts proposed paragraph (a)(4) of this section. Changes to this section will remove the word “public” from “early public notice” for improved clarity. The BLM intends no change in practice or policy from this change.

The final rule adopts proposed paragraph (a)(5) of this section, which is identical to the existing regulations.

The final rule adopts the proposal to add introductory language to § 1610.3–2(b) (proposed § 1610.3–1(b)) to indicate that this section describes procedures and requirements related to “cooperating agencies.” This paragraph is also broken down into subparagraphs to improve readability and is revised as follows.

The final rule adopts proposed paragraph (b) of this section, with no substantive changes. The final rule is revised to replace the existing word “will” with “shall” for the reasons previously described. The first sentence of final § 1610.3–2(b) replaces “developing” with “preparing” for consistent use in terminology. The BLM intends no change in meaning or practice. The final rule also replaces “eligible Federal agencies, State and local governments, and Indian tribes” with “eligible governmental entities” for consistency with the DOI NEPA regulations, and to specify that the responsible official will follow applicable regulations regarding the invitation of eligible governmental entities, including the DOI NEPA regulations at 43 CFR 46.225. The BLM intends no change in practice or policy from these changes.

The second sentence of final § 1610.3–2(b) is revised to reflect the fact that a plan is not amended by an EIS, rather the EIS is prepared to inform the amendment.

The final rule does not adopt the proposal to remove the last three sentences of existing § 1610.3–1(b), which provided for State Director review of a Field Manager’s decision to deny requests for cooperating agency status. Several public comments noted that the DOI NEPA regulations do not provide an opportunity for governmental entities to appeal a denial to a request for cooperating agency status beyond the responsible official and suggested that the existing opportunity to appeal a denial provides more certainty to governmental entities that their request for cooperating agency status will be given due consideration. In response to public comments, the final rule will retain this opportunity to appeal, with revisions, by adding § 1610.3–2(b)(1) to the final rule.

Final § 1610.3–2(b)(1) states that the “responsible official shall consider any request by an eligible governmental entity to participate as a cooperating agency. If the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or

she shall inform the deciding official of the denial. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the [EIS].” In the first sentence, we replace “State Directors and Field Managers” with the “responsible official” for consistency with new terminology and to specify that the responsible official is the BLM employee responsible for considering cooperating agency requests. We revise the second sentence of this paragraph to use active voice, replace “field manager” with “responsible official,” and improve consistency with the DOI NEPA regulations (43 CFR 46.225(c)). In addition to denials of requests, responsible officials will also inform the deciding official if he or she determines it is inappropriate to extend an invitation to an eligible governmental entity (*i.e.*, any Federal agency or non-Federal agency (State, tribal, or local) that is qualified to participate by virtue of its jurisdiction by law or its special expertise (see 43 CFR 46.225(a))). This is a broader requirement than the existing regulations, which only apply to denials of requests and will ensure that deciding officials are aware of all eligible governmental entities that were not provided cooperating agency status. Finally, the third sentence replaces “State Director” with “deciding official” and will establish a new requirement that deciding officials “state the reasons for any denials in the [EIS].” Although this requirement is new to the planning regulations, it is already required under the DOI NEPA regulations (43 CFR 46.225(c)) and therefore does not represent a change in practice or policy.

The final rule adopts proposed § 1610.3–1(b)(1) with only minor revisions, however this section will be redesignated as final § 1610.3–2(b)(2). This section will describe that a memorandum of understanding (MOU) must be used for a non-Federal cooperating agency and must include a commitment to maintain confidentiality of documents and deliberations prior to their public release. The change reflects an existing requirement in the DOI NEPA regulations (see 43 CFR 46.225(d)) and therefore would not be a change in practice or policy. Although a written agreement is not explicitly required for Federal cooperating agencies, the BLM often chooses to prepare such an agreement to clarify the roles and responsibilities of all parties, and the final rule will not preclude the continuation of this practice. No change in practice or policy is intended.

The final rule adopts proposed § 1610.3–1(b)(2), with some revisions.

This section is redesignated as final § 1610.3–2(b)(3).

This section identifies the various steps during the planning process when the responsible official will collaborate with cooperating agencies. The BLM promulgated regulations in 2005 (70 FR 14561), which required BLM Field Managers to collaborate with cooperating agencies at steps throughout the planning process (see existing § 1610.4). The final rule adopts the proposal to consolidate these references that are currently inserted throughout existing § 1610.4 and to identify additional steps where cooperating agencies will be involved, including the preparation of the planning assessment and the preparation of the proposed resource management plan. The BLM intends no change in practice or policy by consolidating these references; rather, the BLM believes that consolidating these references improves readability and clarity.

Under the final rule, the BLM provides an additional role for cooperating agencies during the new planning assessment. While NEPA regulations require a lead agency to invite cooperating agencies to participate in the NEPA process “at the earliest possible time” (40 CFR 1501.6(a)(1); *see* 43 CFR 46.200(a) and (b)), the BLM recognizes that eligible governmental entities may be reluctant to agree to serve as cooperating agencies for a planning effort before the scoping process yields a fuller understanding of the scope of the plan or revision and the supporting NEPA analysis.

The BLM further recognizes that DOI NEPA regulations and the final rule (see final § 1610.3–2(b)(2)) require the BLM to work with non-Federal cooperating agencies to develop an MOU that outlines agencies’ respective roles, assignments, schedules, and other commitments and such a cooperating agency MOU may not yet be completed during the planning assessment step.

Nonetheless, the BLM does not foresee any problems working with eligible governmental entities without an MOU during the planning assessment step, because this step primarily involves information gathering by the BLM. Additionally, the BLM believes the planning assessment will afford the BLM and eligible governmental entities alike valuable time to build working relationships and share information that will inform the planning assessment and contribute to the formation of fruitful cooperating agency relationships. However, the BLM may need to withhold confidential information, such as locations of

sensitive cultural resources, until an MOU has been executed.

In response to public comments, final § 1610.3–2(b)(3) (proposed § 1610.3–1(b)(2)) is revised to provide “[t]he responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.” We remove the proposed phrase “as feasible and appropriate given their interests, scope of expertise and the constraints of their resources.” These changes are consistent with the DOI NEPA regulations which provide “the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise” (43 CFR 46.230). The proposed language was adapted from the final sentences of the existing definition of a cooperating agency (see existing § 1601.0–5) which states “[c]ooperating agencies will participate in the various steps of BLM’s planning process as feasible, given the constraints of their resources and expertise.” In response to public comments noting that it is the decision of a potential cooperating agency, and not the BLM, as to whether the potential cooperator has adequate resources to participate as a cooperating agency, the BLM will not retain this existing language in the definition of a cooperating agency, nor will it be retained in final § 1610.3–2(b)(3). Further, the final rule more precisely reflects the DOI NEPA regulations regarding the constraints of a cooperating agencies expertise.

The final rule adopts proposed §§ 1610.3–1(b)(2)(i) through (b)(2)(vi) (redesignated as final §§ 1610.3–2(b)(3)(i) through (b)(3)(vi)). The only change between the proposed and final rule is the removal of the phrase “and implementation strategies” from final paragraph (b)(2)(vi) of this section. This language is no longer necessary, as the concept of implementation strategies is not included in the final rule. For more information on this topic, please see the discussion on implementation strategies at the preamble for proposed § 1610.1–3.

The final rule adopts proposed § 1610.3–1(c), with some revisions. This section is designated as final § 1610.3–2(c). This section describes requirements for coordination with other Federal agencies, State and local governments, and Indian tribes, consistent with FLPMA (43 U.S.C. 1712(c)(9)). These requirements are in addition to the opportunities for public involvement described in § 1610.2, which apply to governmental entities

(see the definition of public in § 1610.0–5).

We adopt the proposal to add introductory language to paragraph (c) of this section to indicate that this section describes general “coordination requirements” and to divide the existing paragraph (c) into three separate paragraphs (paragraphs (c), (c)(1), and (c)(2) in the final rule) for improved readability.

The final rule adopts the proposed change to replace the existing phrase “State Directors and Field Managers” with “[t]he BLM” in the first sentence of paragraph (c) of this section because the responsibility of coordination are those of the BLM and they extend beyond any individual. Some public comments noted that although it is the BLM’s responsibility to provide for coordination, by not identifying the BLM employee who is responsible for this important task, there would be no accountability to the public regarding which BLM official will ensure the task is completed. The BLM believes it is appropriate to use “the BLM” when describing a role that applies to multiple BLM employees and describes a requirement related to coordination in general, such as in paragraph (c) of this section. Paragraphs (c)(1) through (c)(5) of this section, however, identify specific coordination requirements and these responsibilities are assigned to either the deciding official or the responsible official. In response to public comments, the final rule is revised to use “responsible official” instead of “the BLM” in a few sections that describe specific coordination requirements (see final §§ 1610.3–2(c)(5), 1610.3–2(d)).

Final § 1610.3–2(c)(1) provides that “deciding officials should seek the input of the Governor(s) on the timing, scope and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and resource management opportunities and constraints on public lands.” We adopt the proposed changes to replace “policy advice” with “input” because the topics listed in this provision are not “policy,” therefore the phrase “policy advice” is inaccurate. We also adopt the proposal to replace “plan components” with “resource management planning” because the existing language would be inconsistent with new terminology and definitions in the final rule (see § 1610.1–2). The final rule does not adopt the proposal to replace “multiple use” with “resource management” because this change is unnecessary. The term “multiple use” already includes the various aspects of resource

management (see 43 U.S.C. 1702(c)).

The final rule is instead revised to replace “multiple use” with “multiple use and sustained yield” for consistency with FLPMA (see 43 U.S.C. 1712(c)(2)) and throughout these regulations. The BLM intends no change from current practice or policy from these changes.

The final rule adopts the proposal to remove existing § 1610.3–1(d), which describes how the State Director will provide guidance to the Field Manager. This existing section is unnecessary as it describes an internal BLM process. Further, existing § 1610.3–1(d) exceeds the statutory requirements of FLPMA, which provides for consistency with resource management plans, but not BLM guidance. (See 43 U.S.C. 1712(c)(9).) Several public comments raised concerns over the removal of existing § 1610.3–1(d), stating that this is a significant and unjustified change from current regulations. The final rule is not revised in response to these comments. The removal of existing § 1610.3–1(d) represents a change from existing requirements; however, the BLM believes that this change is appropriate.

The final rule adopts proposed § 1610.3–1(c)(3), with some revisions. This proposed section will be split into two paragraphs and redesignated as §§ 1610.3–2(c)(3) and 1610.3–2(c)(4) in the final rule, for improved readability. Final § 1610.3–2(c)(4) contains the first sentence of proposed § 1610.3–1(c)(3) and final § 1610.3–2(c)(3) contains the remaining provisions of proposed § 1610.3–1(c)(3), with revisions.

Final §§ 1610.3–2(c)(3) and (c)(4) contains the provisions of existing § 1610.3–1(e) and are revised to reflect changes to § 1610.2 concerning public involvement, to use active voice for improved readability, and to respond to public comments.

Final § 1610.3–2(c)(3) requires that “[t]he responsible official shall notify Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment.” The final rule does not adopt the proposal to clarify that heads of county boards are “elected,” and to replace “Tribal Chairmen” and “Alaska Native Leaders” with “elected government officials of Indian tribes.” Instead, the final rule replaces existing language with a more general statement to notify “Federal agencies, State and local governments, and Indian tribes.”

A few comments noted that the proposed changes to replace “Tribal Chairmen or Alaska Native Leaders”

with “elected government officials of Indian tribes” would effectively exclude Alaska Native Corporations from the required notice. The final rule is not revised in response to these comments. Section 1610.3–2 applies to coordination with other Federal agencies, State and local governments, and Indian tribes, consistent with FLPMA (43 U.S.C. 1712(c)(9)). This section does not apply to Alaska Native Corporations, which are not a governmental entity. The BLM will, however continue to notify any Alaska Native Corporations that have requested to be notified or that the responsible official believes may be interested in a resource management plan. The BLM intends no change from current practice; rather, this change is intended to clarify that § 1610.3–2 applies to coordination as described in FLPMA (43 U.S.C. 1712(c)(9)). It is also important to note that the final rule does not affect implementation of “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). BLM remains committed to meaningful consultation with Alaska Native Corporations during the planning process.

We also rephrase the end of this sentence in final § 1610.3–2(c)(3), stating that the BLM shall notify Federal agencies, State and local governments, and Indian tribes that the responsible official has reason to believe would be “interested in” the resource management plan or plan amendment instead of “concerned with” the resource management plan or plan amendment. This revised language encompasses the existing requirement to notify those “concerned with” a resource management plan or plan amendment while broadening the requirement to also include those “interested in” a resource management plan or plan amendment. This is consistent with current BLM practice and reflects the fact that the BLM believes that any interest in the resource management plan or amendment, not just concern, warrants notification.

Final § 1610.3–2(c)(4) of this section adopts the first sentence of proposed § 1610.3–1(c)(3), and specifies that State procedures for coordination with Federal agencies will be followed, “if such procedures exist.” The BLM intends no change in practice or policy from this added language; rather, we wish to clarify that such procedures can only be followed if they exist.

The final rule adopts proposed § 1610.3–1(c)(4), with some revisions. This section is redesignated as final § 1610.3–2(c)(5).

Final § 1610.3–2(c)(5) contains the provisions of existing § 1610.3–1(f). The final rule adopts the proposed change to replace “resource management plan proposals” with “resource management plans and plan amendments” to clarify that this paragraph refers to all of the opportunities for public involvement described in § 1610.2, and not just the “proposed” resource management plan. The BLM intends no change from current practice or policy.

The final rule adopts the proposal to revise and move the final sentence of existing § 1610.3–1(f) to final § 1610.3–3(a)(3) (proposed § 1610.3–2(a)(3)). The existing language refers to consistency requirements and is therefore more appropriately addressed in the consistency section of the final rule, final § 1610.3–3.

The final rule adopts proposed § 1610.3–1(d), with some revisions. This section is redesignated as § 1610.3–2(d) in the final rule and the final rule replaces the existing word “will” with “shall” for the reasons previously described. Final § 1610.3–2(d) contains the provisions of existing § 1610.3–1(g). The final rule adopts the proposal to include introductory language indicating that this section describes requirements related to “resource advisory councils.” In response to public comments, the final rule replaces the existing word “BLM” with “responsible official” to specify that the responsible official is the BLM employee responsible for ensuring that this requirement is fulfilled. No substantive changes are intended other than to specify which BLM employee is responsible for ensuring that resource advisory councils are informed and their views considered during the planning process.

#### Section 1610.3–3 Consistency Requirements

The final rule adopts proposed § 1610.3–2, with revisions; however, this section is redesignated as § 1610.3–3 in the final rule. Unless otherwise noted, the final rule adopts the proposal to replace references to “Field Manager(s)” with “responsible official(s)” and references to “State Director(s)” with “deciding official(s)” throughout this section to reflect these individuals’ roles or responsibilities.

Final § 1610.3–3(a) revises existing § 1610.3–2(a) to read as follows: “Resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and

regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.” The final language reflects FLPMA requirements for consistency with the plans of other Federal agencies, State and local governments, and Indian tribes (see 43 U.S.C. 1712(c)(9)) while retaining several existing requirements regarding the extent to which such consistency may be achieved.

In response to public comment, the final rule removes the words “practical and” from the phrase “to the maximum extent the BLM finds practical and consistent . . .” in final § 1610.3–3(a). FLPMA states that “the Secretary shall . . . assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans,” (see 43 U.S.C. 1712(c)(9)); however, this language is already described under the objectives of coordination (see final § 1610.3–2(a)(3)) and is therefore unnecessary in this section. Through coordination, the BLM will assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans.

Final § 1610.3.3(a) retains the existing requirement that the plans of other Federal agencies, State and local governments and Indian tribes must be “officially approved and adopted,” but does not adopt the proposal to specify that these must be “land use plans.” For more information on this change throughout the final rule, please see the discussion on “officially approved and adopted plans” at the preamble for § 1601.0–5. The final rule also corrects an inconsistency in the use of terminology in the existing and proposed rule by replacing “officially approved *or* adopted” with “officially approved *and* adopted” as used elsewhere throughout this final rule.

Final § 1610.3–3(a) also retains the existing requirement that consistency with officially approved and adopted plans will be achieved to the extent consistent with the purposes of Federal laws and regulations applicable to public lands and the “purposes, policies and programs” implementing Federal laws and regulations. Changes between the proposed and final rule clarify that these purposes, policies and programs “implement” Federal laws and regulations.

The BLM received public comments in opposition to this existing requirement, noting that under FLPMA the obligation for consistency with local plans does not hinge on whether or not they are consistent with Federal purposes, policies and programs, only whether they do not contradict Federal

Laws. The BLM disagrees with these comments. The BLM does not interpret FLPMA to require resource management plans to be consistent with the described non-BLM plans if those plans are simply lawful under Federal law and FLPMA. Rather, and particularly given 1712(c)(9)'s explicit reference to the purposes of FLPMA, and BLM's and the Secretary's ultimate responsibility as the manager of the public lands, BLM interprets FLPMA to authorize it to evaluate whether those non-BLM plans are consistent with the policies underlying BLM management of the public lands. Inclusion of language stating that plan consistency shall only be achieved to the extent consistent with the purposes of Federal laws and regulations and the policies and programs implementing such laws and regulations is necessary in order for the Secretary of the Interior to fulfill his or her responsibilities under FLPMA. Through FLPMA, the Secretary of the Interior is provided the authority to administer the public lands (through the BLM) and the responsibility to implement the statutory direction provided in public land statutes, including FLPMA. In order to implement public land statutes and administer the public lands, the Secretary considers the purposes of the statutes and develops regulations, policies, and management programs to implement the statutes. These regulations, policies, and management programs are an important component of implementing public land statutes. Consistent with FLPMA, the existing regulations include a requirement that acknowledges the need for BLM to comply with and follow the direction provided through regulations, policies, and programs developed to implement public land statutes, and the final rule retains this requirement in the final rule.

Changes adopted in § 1610.3–3(a) of the final rule represent, in part, a change from current regulations, but will be consistent with the statutory direction provided by FLPMA. The BLM believes these changes clarify the BLM's plan consistency requirements and will assist other Federal agencies, State and local governments, and Indian tribes in engaging in the consistency process by providing those entities additional information on the BLM's process.

The final rule adopts the proposal to remove existing § 1610.3–2(b). The existing section exceeds the statutory requirements of FLPMA (see 43 U.S.C. 1712(c)(9)) by providing that in the absence of officially approved and adopted plans, resource management plans should be consistent with

“policies and programs” of other Federal agencies, State and local governments, and Indian tribes.

FLPMA provides that resource management plans “shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.” This FLPMA requirement is reflected in final § 1610.3–3(a) and applies to “State and local plans,” which constitute a formal decision regarding resource management, but does not apply to “policies and programs,” which do not constitute a formal decision regarding resource management; rather, policies and programs are tools for implementing laws and regulations and developing formal decisions.

FLPMA limits consistency requirements to “State and local plans” while the broader coordination requirements of FLPMA include the consideration of policies and management programs. In response to public comments, the final rule aligns with FLPMA (see 43 U.S.C. 1712(c)(9)) by requiring that the BLM coordinate with other Federal agencies, State and local governments, and Indian tribes on all types of plans, policies, and management programs that are germane to the development of resource management plans in order to assure that consideration is given to all of these documents during the preparation of resource management plans (see final § 1610.3–2(a)).

The BLM believes that coordination on and consideration of plans, policies, and management programs is important to a successful planning effort and this coordination is appropriately addressed in § 1610.3–2 of the final rule. The consistency requirements of final § 1610.3–3, however, only apply to “officially approved and adopted plans” as these plans constitute a formal decision regarding resource management. The BLM believes that such an approach more closely aligns with the statutory requirements of FLPMA. The final rule also removes references to consistency with “policies and programs” throughout § 1610.3–2. These changes represent a change from the existing regulations.

By removing existing § 1610.3–2(b) from the regulations, the final rule removes the reference to “Federal and State pollution control laws,” which are listed as an example of Federal laws that BLM resource management plans and guidance must be consistent with. Resource management plans must comply with Federal and State pollution control laws as implemented by applicable Federal and State air, water,

noise, and other pollution standards or implementation plans. It is unnecessary to identify all relevant laws the BLM must abide by in the regulations, as the BLM is required to comply with all applicable laws and regulations. The BLM does not intend any change in policy or practice with this change.

The final rule adopts proposed § 1610.3–2(a)(1) with only minor revisions. This section is redesignated as final § 1610.3–3(a)(1). The final rule removes the term “land use” from “officially approved and adopted [land use] plans.” For more information on the removal of “land use” please see the discussion on the definition of “officially approved and adopted plans” at the preamble for § 1601.0–5. The final rule also includes the plans of “other Federal agencies” in this section for consistency with paragraph (a) of this section.

Final § 1610.3–3(a)(1) contains the first sentence of existing section 1610.3–2(c). The first two references to “State Directors and Field Managers” in the first sentence are replaced with “the BLM,” because the requirement to keep apprised of State and local governmental and Indian tribal policies, plans, and programs is attributed to the BLM, rather than specific employees. The final rule also replaces “practicable” with “practical” for consistency with section of FLPMA (see 43 U.S.C. 1712(c)(9)) and final § 1610.3–2(a)(3). Several public comments noted that this represents a substantive change from existing regulations, as “practicable” and “practical” are not exact synonyms, and suggested that the proposed rule did not adequately address this subtle distinction. The BLM disagrees this is a substantive change, however acknowledges the subtle distinction in the meaning of these terms. We believe this change is appropriate for consistency with FLPMA, as this is the term used in FLPMA (43 U.S.C. 1712(c)(9)).

Final § 1610.3–3(a)(1) specifies that the “BLM shall, to the extent practical, keep apprised of the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.” The final rule removes the words “policies” and “programs” from the existing phrase “policies, plans, and programs” in existing § 1610.3–2(c) (for more information, see the discussion on consistency at the preamble for existing § 1610.3–2(b)) and adds language requiring that BLM consider those plans that are germane to the resource management plan. It would place an

unnecessary and inappropriate burden on the BLM to give consideration to plans that are not germane to the planning effort, thereby diminishing efficiency without adding value to the planning effort. These changes are consistent with FLPMA (see 43 U.S.C. 1712(c)(9)). This change reflects existing policy and procedure, as the BLM currently does not consider plans that are not germane to the planning effort. Therefore, this change provides clarity to other Federal agencies, State and local governments, and Indian tribes about the types of plans the BLM will consider.

The final rule adopts proposed § 1610.3–2(a)(2) (final § 1610.3–3(a)(2)), with minor revisions. The final rule includes the phrase “Federal agencies” for consistency with paragraphs (a) and (a)(1) of this section. This section is redesignated as § 1610.3–3(a)(2) in the final rule.

Final § 1610.3–3(a)(2) contains the second sentence of existing § 1610.3–2(c). The final rule replaces “accountable for ensuring consistency” with “required to address the consistency requirements of this section.” The BLM cannot “ensure” consistency, but seeks to achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the policies and programs implementing such laws and regulations. For example, if a State, local, or tribal plan is not consistent with a Federal law or regulation, the BLM will not be able to ensure consistency with the State, local, or tribal plan.

The final rule also replaces the reference to State Directors and Field Managers (“they”) with “responsible official,” thereby providing that the BLM will not be accountable for addressing the consistency requirements of final § 1610.3–3 if the “responsible official” has not received written notice of an apparent inconsistency from other Federal agencies, State and local governments, or Indian tribes, rather than “State Directors and Field Managers.” Because the responsible official is the BLM employee who is delegated the authority to prepare a resource management plan or plan amendment, it is important that the responsible official receives written notice of an apparent inconsistency so that it can be considered during the planning process. The BLM cannot ensure that notice sent to someone other than the responsible official will be redirected and delivered in a reasonable time-frame, although we will attempt to do so to the best of our ability.

This change provides clarity to other Federal agencies, State and local government officials, and Indian tribes of the appropriate BLM official to notify of inconsistencies; however, it also reduces the number of individuals that could be notified under the existing regulations from two individuals (the State Director and Field Manager) to one individual in the final rule (the responsible official). The BLM believes that this change will improve the BLM’s ability to consider potential inconsistencies at the earliest time possible, thereby promoting efficiency in the planning process.

The final rule adopts proposed § 1610.3–2(a)(3), with revisions. This section is redesignated as § 1610.3–3(a)(3) in the final rule and contains the provisions of existing § 1610.3–1(f). The final rule removes the term “land use” from “officially approved and adopted [land use] plans.” For more information on the removal of “land use” please see the discussion on the definition of “officially approved and adopted plans” at the preamble for § 1601.0–5.

Some public comments requested that the final rule provide a clearly-defined process for resolution of inconsistencies with local plans. In response to public comments, final § 1610.3–3(a)(3) is revised to clarify an important step in this process, stating that if the BLM is notified of specific inconsistencies between the BLM draft resource management plan and officially approved and adopted plans, the proposed resource management plan shall show how these inconsistencies were addressed and, if possible, resolved.

Changes between the proposed and final rule specify that inconsistencies should be identified in writing regarding the BLM’s “draft” resource management plan. The BLM believes that this is the appropriate stage to formally identify inconsistencies as this represents the first formal review of and comment on the resource management plan. Prior to the publication of the draft resource management plan, the BLM will coordinate with governmental entities and collaborate with cooperating agencies to identify and resolve potential inconsistencies, subject to the qualifications of § 1610.3. Upon publication of the draft resource management plan, the BLM will notify governmental entities of its availability (see § 1610.3–2(c)(3)) for review and comment (see §§ 1610.3–2(c)(5) and 1610.2–2(c)). During this public comment period, governmental entities may identify inconsistencies, in addition to any other comments they

may have on the draft resource management plan.

Final § 1610.3–3(a)(3) is also revised to replace “the resource management documentation” with “the proposed resource management plan.” This change provides transparency to governmental entities and to the public on where they can look for information on how the identified inconsistencies were addressed and, if possible, resolved; it also ensures governmental entities and the public will have access to this information during the protest period (see § 1610.6–2). This is important because it provides them the opportunity to protest should they believe an inconsistency, or the resolution of an inconsistency, does not comply with Federal laws or regulations, or is inconsistent with the purposes, policies, and programs implementing such laws and regulations.

The final rule adopts proposed § 1610.3–2(a)(4), with minor revisions. This section is redesignated as § 1610.3–3(a)(4) in the final rule and contains the provisions of existing § 1610.3–2(d). This paragraph states that where officially approved and adopted plans of State and local governments differ from each other, those of the higher authority will normally be followed. There are no substantive changes to this section from the existing requirements; the only revisions are to use active voice and consistent terminology for improved readability. The final rule removes the term “land use” from “officially approved and adopted [land use] plans.” For more information on the removal of “land use” please see the discussion on the definition of “officially approved and adopted plans” at the preamble for § 1601.0–5.

The final rule adopts proposed § 1610.3–2(b), with revisions. This section is redesignated as § 1610.3–3(b) in the final rule. The final rule also removes the words “land use” from “officially approved and adopted [land use] plans” throughout this section (please see the discussion on the definition of “officially approved and adopted plans” at the preamble for § 1601.0–5).

Final § 1610.3–3(b) contains the provisions of existing § 1610.3–2(e) and describes the Governor’s consistency review process. Several public comments stated that these provisions improperly bypass local governments by attempting to satisfy consistency requirements through Governors. In response to public comments, we wish to clarify that the Governor’s consistency review is a unique step in the planning process that affords the

Governor, as the elected representative of the State, a final opportunity to identify, discuss, and provide recommendations to remedy any relevant inconsistencies between a BLM resource management plan or amendment and State and local plans. The Governor may consider various State and local plans during the review. The BLM does not define a process for the Governor to consider those plans because creating a uniform process to apply to all Governors would be inappropriate. The Governor's consistency review, however, does not represent the only opportunity to identify, discuss, and remedy inconsistencies. A key objective of coordination, as described in final § 1610.3-2, is for the BLM to work with representatives from State and local governments to avoid or resolve inconsistencies with State and local plans. As outlined in final § 1610.3-2, the BLM will seek to coordinate during every stage of the planning process, including during the planning assessment (§§ 1610.3-2(b)(3)(i) and 1610.4(b)); the identification of planning issues (§§ 1610.3-2(b)(3)(ii) and 1610.5-1(b)); the review of the preliminary alternatives (§§ 1610.3-2(b)(3)(iii) and 1610.5-2(c)); the preparation of, and comment period on, the draft resource management plans (§§ 1610.3-2(b)(3)(v) and 1610.5-4(c)); preparation of the proposed resource management plan (§§ 1610.3-2(b)(3)(vi) and 1610.5-5); and the protest period on the proposed resource management plan (§ 1610.6-2(a)). Further, representatives from State and local governments are invited to participate as cooperating agencies, and therefore have the opportunity to partner with the BLM, and in doing so, identify and resolve inconsistencies during the development of key planning documents. The Governor's consistency review is not intended to replace early coordination, and the BLM intends that in most situations, inconsistencies will be avoided or resolved through early coordination.

Final § 1610.3-3(b) is revised for consistency with edits made throughout final § 1610.3-3. This section is also revised in response to public comments, and in order to provide clarity and align with other sections of these regulations and with FLPMA. The final rule breaks the provisions of the Governor's consistency review into multiple paragraphs to improve readability. In the following paragraphs, we describe the changes from the existing regulations that are adopted in the final rule.

The final rule adopts the proposal to replace references to "State Director"

with "deciding official," consistent with the new terms used throughout the final rule. There is no change in practice or policy, other than those changes described in the discussion on responsibilities in the preamble for § 1601.0-4.

The final rule adopts the proposal to specify that the document submitted to the Governor by the deciding official shall identify "relevant" known inconsistencies with "officially approved and adopted plans of State and local governments." This revision limits the inconsistencies that the deciding official must identify to those that are relevant. It also requires the deciding official to identify only inconsistencies with officially approved and adopted plans, not with "State or local plans, policies or programs" (see existing § 1610.3-2(b)), consistent with §§ 1601.0-5 and 1610.3-3(a) in the final rule.

Final § 1610.3-3(b)(1) states that within 60 days after receiving a proposed resource management plan or plan amendment, the Governor(s) may submit a written document to the deciding official identifying inconsistencies with the officially approved and adopted plans of State and local governments and provide recommendations to remedy them.

Final § 1610.3-3(b)(1)(i) clarifies that the Governor's recommendations should address identified inconsistencies with State and local plans, rather than other aspects of a resource management plan. This language reflects the fact that the Governor's consistency review is not intended to replace early coordination with State and local governments; rather, this unique step affords the Governor a final opportunity to discuss and remedy inconsistencies. These changes do not preclude the BLM from considering or responding to a Governor's recommendations on other subjects, but it underscores that the BLM's focus at this late stage of the planning process is on consistency with State or local plans. There is no change in meaning or practice associated with the change other than focusing the Governor's consistency review on consistency with officially approved and adopted State and local plans.

The final rule adopts proposed paragraph (b)(1)(ii) of this section, which introduces a new provision that allows the Governor to waive or shorten the 60-day consistency review period in writing. This provision facilitates a more efficient planning process by reducing the length of the review period in situations where the Governor has no comments to submit. For example, if representatives from the Governor's

Office participated as cooperators and found the plan to be adequately consistent with officially approved and adopted State and local plans, then the Governor may have no further comments and wish to expedite the review period. This change is consistent with current practice under the existing regulations, as the Governor is not precluded from waiving or shortening the consistency review period under the existing regulations. The addition of this language, however, provides more transparency to the public on the Governor's consistency review process and affirms the availability of this option for the Governor.

The final rule adopts proposed paragraph (b)(2) of this section, with no changes. This section retains existing language that the plan or amendment is presumed to be consistent if the Governor(s) does not respond to the BLM within the 60-day period, but is revised from the existing regulations to improve readability. There is no change in practice or meaning associated with these changes.

Final § 1610.3-3(b)(3) is revised to clarify existing language and reflect terms used in this rule. This paragraph provides that "[i]f the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM shall notify the public and provide opportunity for public comment on these changes." This clarifies that the public must be provided an opportunity to comment on any substantive changes recommended by the Governor to remedy inconsistencies between the BLM's proposed resource management plan and officially approved and adopted plans that were not previously raised or considered during the public involvement process, and this opportunity must be provided before the Director renders a decision. While this is not a change from BLM practice under existing regulations, these clarifications provide a more precise description of the public's opportunity to comment on the Governor's recommended changes to remedy inconsistencies.

The final rule adopts proposed paragraph (b)(4) of this section with only minor revisions. This section provides that the deciding official (revised from the State Director) shall notify the Governor(s) in writing of his or her decision regarding the Governor(s)' recommendations. The final rule adopts the proposed new requirements that the notification include the deciding official's reason for the decision and that the notification be

mandatory, replacing the existing requirement to notify the Governor only if their recommendations are not accepted. These changes are not a change in practice or policy, other than ensuring that the Governor is notified of any decision related to the Governor's recommendations.

Final paragraph (b)(4)(i) of this section maintains the existing process by which the Governor(s) may submit a written appeal to the BLM Director within 30 days after receiving the deciding official's decision.

The final rule adopts proposed paragraph (b)(4)(ii) of this section, with revisions. The final rule removes existing language requiring the BLM Director to accept the recommendations of the Governor(s) if the BLM Director determines that the recommendations "provide for a reasonable balance between the national interest and the State's interest." This existing language does not reflect the broader range of considerations that need apply. For example, the Director must consider whether the recommendations of the Governor are consistent with the purposes of FLPMA and other Federal laws and regulations, as well as the purposes, policies, and programs implementing such laws and regulations, as described in final § 1610.3–3(a). The Director must also consider whether the recommendations of the Governor are consistent with the purpose and need statement for the resource management plan revision or amendment, whether they were encompassed by the range of alternatives and analyzed in the effects analysis, as well as the environmental effects of the recommendations. We proposed to replace the existing language, instead stating that the BLM Director will consider the Governor(s)' comments in rendering a final decision. Several public comments opposed this proposed change, stating that the Congressional intent of FLPMA is to reach a reasonable balance between the national interests and the State or local interests without undue impacts to either the State or local governments. In response to public comments, final paragraph (b)(4)(i) of this section is revised to replace "comments" with "appeal" and to include additional language requiring that the Director also consider the consistency requirements of this section. In particular, this reference points the Director to the standard reflected in § 1610.3–3(a) that resource management plans shall be consistent with officially approved and adopted State and local plans to the maximum extent the BLM finds consistent with the purposes of FLPMA

and other Federal law and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The Director will review the Governor's appeal and determine whether the proposed resource management plan meets this standard, which encompasses the broader range of considerations described above.

Final § 1610.3–3(b)(4)(ii) retains the existing requirement, with clarifying edits, that the BLM Director will notify the Governor(s) in writing of his or her decision regarding the appeal. Final § 1610.3–3(b)(4)(ii) also replaces the existing requirement to publish the reasons for the BLM's decision in the **Federal Register** with commitments to notify the public of the decision and to make the written decision available to the public. The BLM will instead provide this notification on the BLM Web site, by posting a notice at BLM offices within the planning area, by sending an email to the mailing list, or by other means as appropriate.

The BLM received several public comments that expressed concern over the removal of the existing requirements to publish **Federal Register** notices. The BLM believes that it is appropriate to move away from relying on **Federal Register** notices at this step, given that Internet communications are both readily available and widely used. Further, at this late stage of the planning process, individuals or organizations interested in the planning effort will have had many opportunities to request to be added to the mailing list (see § 1610.2–1(d)) to receive notifications related to the planning effort. In locations where Internet is not readily available, the responsible official will identify additional forms of notification to reach local communities within the planning area (see § 1610.2–1(c)). Removal of the unnecessary requirement to publish a notice in the **Federal Register** provides for a more efficient planning process.

In the proposed rule, the BLM requested public comments on whether to adjust the timeline or appeal process for the Governor's consistency review. Although some comments expressed support for shortening the timeline to 30 days and requested the BLM eliminate the appeal process, the BLM received many comments expressing concern over any changes that would reduce opportunities for coordination or achievement of consistency. In light of these comments, the final rule does not adjust the timeline or appeal process.

#### Section 1610.4 Planning Assessment

Existing § 1610.4 consists only of the section heading "Resource management planning process." This section is revised in the final rule as follows.

The final rule adopts proposed § 1610.4, "Planning assessment," with revisions. This section combines and revises the existing sections for inventory data and information collection (existing § 1610.4–3) and the analysis of the management situation (AMS) (existing § 1610.4–4) into a new planning assessment section. The planning assessment will occur before the BLM initiates the preparation of a resource management plan and will be consistent with the nature, scope, scale, and timing of the planning effort. The combination of those points in the planning process into this early planning assessment will result in a more informed scoping process; however, several existing provisions are removed because they will no longer be relevant at this early stage. These changes are described in detail at each corresponding section of the planning assessment provisions in this rule.

The planning assessment includes new opportunities for public involvement, coordination with other Federal agencies, State and local governments, and Indian tribes, and collaboration with cooperating agencies. The BLM anticipates that greater coordination, collaboration and public involvement, particularly early in the planning process, will result in efficiencies by ensuring that the BLM considers a wide range of relevant policies, information, and perspectives even before scoping.<sup>14</sup>

The planning assessment is intended to help the BLM better understand resource, environmental, ecological, social, and economic conditions, and identify public views and resource management priorities for the planning area. The planning assessment will occur early in the process, before the formal initiation of a planning effort and before the steps that the BLM traditionally has taken first—namely, the identification of issues and the

<sup>14</sup> See OMB and President's CEQ Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), 4.b., p. 3 ("Given possible cost savings through improved outcomes, fewer appeals and less litigation, department and agency leadership should identify and support upfront investments in collaborative processes and conflict resolution . . .") and 5, p. 4 ("Federal departments and agencies should prioritize integrating collaboration and conflict resolution objectives and "a focus on up-front collaboration as a key principle in agency mission statements and strategic plans"), available at: [https://ceq.doe.gov/ceq\\_regulations/OMB\\_CEQ\\_Env\\_Collab\\_Conflict\\_Resolution\\_20120907.pdf](https://ceq.doe.gov/ceq_regulations/OMB_CEQ_Env_Collab_Conflict_Resolution_20120907.pdf).

development of planning criteria. The BLM believes that conducting an upfront assessment will provide useful baseline information to inform subsequent steps, such as the preparation of a preliminary purpose and need statement, the identification of planning issues, and the formulation of resource management alternatives. The planning assessment will include new opportunities for collaboration and public involvement and measures that will increase transparency. Further, the planning assessment is similar to the assessment procedures in the U.S. Forest Service 2012 Planning Rule (see 36 CFR 219.6(a)), and therefore create a new opportunity for inter-agency coordination.

The final rule adopts proposed § 1610.4, which serves as an introduction and provides that the planning assessment shall be required before the BLM initiates the preparation of a resource management plan.

In response to public comment, the final rule adds new § 1610.4(a), which addresses the determination of a planning area. Several public comments suggested that the planning regulations would benefit from more direction on how the BLM will determine future planning areas. Some comments requested that the BLM clarify how the planning assessment informs and helps to establish the planning area boundary. Other comments recommended that planning areas be based on common management concerns. This new paragraph requires that the BLM identify a preliminary planning area for use as the basis for the planning assessment.

Paragraph (a)(1) and paragraphs (a)(1)(i) through (a)(1)(v) of this section describe the factors that the BLM will consider when identifying a preliminary planning area. First, the BLM will consider relevant management concerns identified through monitoring and evaluation. These management concerns will be available to the public through the summary report of the plan evaluation (see § 1610.6–4). Next the BLM will consider any relevant landscapes associated with these management concerns. (See final § 1601.0–5). For example, if the plan evaluation indicates that the existing resource management plan does not adequately address the impacts of new resource uses on sensitive plant species, then the BLM would take into consideration the area of land where these new resource uses are relevant as well as the extent of the sensitive plant species. This does not mean that the planning area must encompass the full geographic extent of the resource use

and sensitive plant species; rather, it means that the BLM must consider the geographic extent of this interaction when determining an appropriate planning area and the potential consequences for the species as a result of this interaction. The BLM also must consider any relevant guidance provided by the deciding official or the BLM Director, as well as the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, as well as other relevant information, as appropriate. For example, if a State wildlife action plan identifies a management area for an important wildlife species, then the BLM will take that into consideration when developing a preliminary planning area.

Several public comments raised concern that under the proposed rule, there would be no opportunity for public involvement in the determination of a planning area. In response to public comments, this section also includes a new requirement (final § 1610.6–4(b)) that the responsible official shall make the description and a rationale for the preliminary planning area available for public review prior to the publication of the NOI in the **Federal Register**. The BLM intends that this description and rationale will normally be made available at the onset of the planning assessment, which will take place before an NOI is published. The planning area will be revised, as necessary, based on any feedback provided by other Federal agencies, State and local governments, Indian tribes, or the public during the planning assessment. For example, the BLM intends to host public meetings during the planning assessment to assist in identifying public views (see § 1610.4(b)(4)). During these public meetings, the BLM will also discuss the preliminary planning area with participants and consider any input received. The BLM will also coordinate with other Federal agencies, State and local governments, and Indian tribes to receive feedback on the preliminary planning area. A planning area will be identified in the NOI (see § 1610.2–1(f)(2)(ii)) and will be informed by the input received during the planning assessment. For more information on the determination of a planning area, please see the discussion of § 1601.0–4 in this preamble.

The final rule adopts proposed § 1610.4(a), with revisions. This section is redesignated as § 1610.4(b) in the final rule. This section addresses “information gathering” and replaces and enhances the existing inventory data and information collection

requirements (see existing § 1610.4–3), providing that the responsible official will follow the four requirements described in paragraphs (b)(1) through (b)(4) of this section.

Under paragraph (b)(1) of this section, the responsible official will arrange for relevant resource, environmental, ecological, social, economic, and institutional data or information to be gathered, or assembled if it is already available, including the identification of potential ACECs. This replaces language in existing § 1610.4–3 that requires the BLM to “arrange for resource, environmental, social, economic and institutional data and information to be collected or assembled if already available.” The final rule replaces the word “collected” with “gathered” to avoid potential confusion with the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The final rule includes “the identification of potential ACECs” in this step to specify when potential ACECs should be identified (see § 1610.8–2). It is important to note that as planning proceeds the BLM may identify the need for additional information gathering or new information may become available. The BLM will consider this new information, such as the identification of a potential ACEC.

Paragraph (b)(1) of this section encompasses the BLM’s statutory obligation for inventory of “public lands and their resource and other values,” as described in FLPMA (see 43 U.S.C. 1711(a)), and also provides for the gathering and consideration of the best available scientific information, or other types of high quality information, provided by sources outside of the BLM.

The final rule does not carry forward language from existing § 1610.4–3 requiring that “new information and inventory data . . . emphasize significant issues and decisions with the greatest potential impact.” At this early stage in the planning process, the BLM recognizes that all significant issues may not yet be known and without conducting a broad assessment, the BLM may not be able to reasonably identify all of the significant issues. At the same time, the BLM must make every effort to conduct a planning assessment relevant to the issues and concerns associated with the incipient planning process recognizing existing budgets and timeframes. The BLM intends that “relevant” data and information will include inventory of the land and resources (see 43 U.S.C. 1711(a)) and any other available high quality information, including the best available scientific information, relevant

to the planning process and necessary to address the applicable factors described in proposed § 1610.4(d).

The final rule adopts the proposal to include a provision in final § 1610.4(b)(1) to avoid unnecessary data-gathering, similar to the existing provision in the development of planning criteria regulations (see existing § 1610.4–2(a)(2)), however, in response to public comment, this sentence is revised in the final rule to incorporate a new provision. Several public comments stated that the planning rule does not adequately address the FLPMA requirement for the BLM to “coordinate the land use inventory” (43 U.S.C. 1712(c)(9)). In response to public comments, this sentence is revised to provide that “to the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located, and in a manner that aids the planning process and avoids unnecessary data-gathering.” This language aligns with FLPMA (see 43 U.S.C. 1712(c)(9)) and reflects the importance of early coordination with other Federal agencies, State and local governments, and Indian tribes on inventory and information gathering.

In addition, the BLM intends to emphasize that inventory data and information gathered for the planning assessment should be responsive to the relevant issues and geared to inform the overall planning process, including subsequent monitoring and implementation of the resource management plan. The responsible official will determine what information is relevant to the planning process based on available resources and existing requirements, such as inventory of the land and resources, the previous results of monitoring and evaluation, or existing assessments or strategies that overlay the planning area.

In paragraph (b)(2) of this section, the final rule adopts the new regulatory requirement, consistent with current practice, that the responsible official “[i]dentify relevant national, regional, State, tribal or local laws, regulations, policies, guidance, strategies or plans for consideration in the planning assessment.” In response to public comments, the final rule adds “State” and “tribal” to this list, as well as “laws” and “regulations.” This expands the relevant laws, regulations, policies, guidance, strategies, and plans for

consideration, and better helps the BLM meet its consistency requirements by conducting this assessment early in the process. Examples identified in the final rule include Executive Orders issued by the President, Secretarial Orders issued by the Secretary of the Interior, DOI or BLM policy, BLM Director or deciding official guidance, mitigation strategies, interagency initiatives, State, multi-State, tribal, or local resource plans. In response to public comments, the final rule includes “tribal” and “local” resource plans as examples. Recent examples might include: Secretarial Order 3336—*Rangeland Fire Prevention, Management and Restoration* (Jan. 5, 2015); the *National Cohesive Wildland Fire Management Strategy* (Apr. 2014) (<http://www.forestsandrangelands.gov/strategy>); a State wildlife action plan such as the Nevada Wildlife Action Plan which was prepared by the Nevada Department of Wildlife and approved by the U.S. Fish and Wildlife Service ([http://www.ndow.org/Nevada\\_Wildlife/Conservation/Nevada\\_Wildlife\\_Action\\_Plan/](http://www.ndow.org/Nevada_Wildlife/Conservation/Nevada_Wildlife_Action_Plan/)); or a community wildfire protection plan (<http://www.forestsandrangelands.gov/communities/cwpp.shtml>).

Identifying policies and strategies up front is important because successful planning needs to be informed by policies and strategies that cross traditional administrative boundaries. This step also enables the BLM Director and the deciding official to consider input during the planning assessment process, including information from other Federal and State agencies engaged in planning in the same or similar geographic area. Further, this step ensures that the BLM keeps apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes and considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands (see § 1610.3–2(a)).

The final rule adopts proposed paragraph (b)(3) of this section, with edits. The final rule adopts the proposal to add a new regulatory requirement that the responsible official provide opportunities for other Federal agencies, State and local governments, Indian tribes and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans for the BLM to consider in the planning assessment. For example, a State wildlife agency might ask the BLM to consider a conservation plan for a sensitive species; a member of the public might

ask the BLM to consider the results of a peer-reviewed study relevant to the planning area; or a recreation user group might ask the BLM to consider data identifying areas of high recreation use in the planning area. This opportunity will be provided through a general request for information from the public. In addition to accepting written input, the BLM may provide opportunities through in-person meetings or workshops, webinars, collaborative Web sites, or other information gathering techniques. In response to public comments, and for consistency with revisions to paragraph (a)(2) of this section, the final rule includes relevant “laws” and “regulations” in this section. These could include Federal, State, or tribal laws and regulations, such as the California Environmental Quality Act.

The adoption of this new requirement in the final § 1610.4(b)(3) establishes a new public involvement opportunity during the planning assessment, which supports the Planning 2.0 goal to provide new and enhanced opportunities for collaborative planning. It will also help the BLM consider relevant data and information in the planning assessment.

The final rule adopts proposed paragraph (b)(4) of this section, with no edits, which requires that the BLM identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area. The BLM intends that these views will be identified through a public “envisioning process.” This process will generally include public meetings, although the BLM may also use other techniques, such as a collaborative Web site, for example. Final § 1610.4(b)(4) will help the Bureau to better understand public views in relation to the planning area, including what is important to the public, where important areas are located, and why these areas are important to members of the public. Under current practice, the BLM identifies public views during the identification of planning issues. By providing this opportunity during the planning assessment, the BLM will be able to summarize public views in the planning assessment report (see § 1610.4(e)). This will provide increased transparency, will help to inform the preparation of a preliminary purpose and need statement, and will help inform the identification of planning issues.

The final rule adopts proposed § 1610.4(b) with revisions. This section is redesignated as § 1610.4(c) in the final rule. This new section addresses

“information quality” for the planning assessment. The responsible official will evaluate the data and information gathered or provided to the BLM to ensure the use of high quality information in the planning assessment and to identify any data gaps or further information needs.” In this new step, the responsible official must evaluate the information that has been gathered to ensure the use of high quality information in the planning assessment (for more information on high quality information, please see the discussions for §§ 1601.0–5 and 1610.1–1(c) in this preamble). Including this new requirement in the planning regulations is important because it clearly communicates to the public that any information submitted to the BLM must be high quality information to be considered further in the planning assessment. After evaluating information, the responsible official, in collaboration with any cooperating agencies, will use the high quality information to assess the resource, environmental, ecological, social, and economic conditions of the planning area.

Several public comments requested that the responsible official document his or her evaluations of information quality, including a rationale for any information excluded from use in the planning assessment, and make this information available to the public. The evaluation of high quality information will be documented in the administrative file for the planning effort and the BLM expects the evaluation will be summarized in the planning assessment report in most cases (see § 1610.4(e)). The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on these steps.

The final rule adopts proposed § 1610.4(c) with revisions. This section is redesignated as § 1610.4(d) in the final rule. This section describes the factors that the responsible official must consider when assessing the resource, environmental, ecological, social, and economic conditions of the planning area for the planning assessment. The responsible official will consider and document these factors whenever they are applicable, however, the responsible official will not be limited to the proposed factors.

These factors contain elements from the nine factors in § 1610.4–4(a) through (i) of the existing planning regulations, which outline the AMS. The planning assessment also includes some factors that were not included in the existing regulations regarding the AMS (see existing § 1610.4–4). These new factors

are intended to help inform the planning process and include types of information the BLM already may consider under the existing regulations. The inclusion of these factors in the regulations provides the public with a better understanding of the types of information that will be considered during the preparation of a resource management plan. The BLM anticipates no direct impacts to the public from these proposed additions. The following paragraphs highlight the changes and rationales.

Paragraph (d)(1) of this section ((c)(1) in the proposed rule) revises existing § 1610.4–4(a), providing that the BLM consider “the types of resource management authorized by FLPMA and other relevant authorities” during the planning assessment. The final rule replaces Federal Land Policy and Management Act with the acronym FLPMA and replaces “legislation” with “authorities.” The proposed rule would have replaced “resource use and protection” with “resource management.” Several public comments suggested that the proposed change could be interpreted to mean that the BLM would no longer consider resource uses authorized by FLPMA. In response to public comment, the final rule maintains the term “use” from the existing regulations to clarify and affirm that resource use is considered in the assessment. There is no change in meaning or practice associated with these edits, as the term “resource management” encompasses “resource use and protection” as well as other types of management such as restoration.

The final rule adopts paragraph (d)(2) of this section ((c)(2) in the proposed rule) with revisions. The final rule includes “land status and ownership . . . infrastructure, and access patterns in the planning area,” consistent with the proposed rule. The final rule changes “existing resource uses” to “existing resource management” because existing resource uses are covered by other factors in this section (including, but not limited to § 1610.4(d)(7)), but existing resource management (as described in the existing land use plan) is not. Further, it is important to identify existing management direction that allows for a use, such as a known valid existing right, even if that use is not yet applied in the area. The final rule also adds “including any known valid existing rights” for the reasons discussed in the preamble to § 1610.1–2(b)(2). This factor, although often included in the AMS under current practice, is not identified in the current regulations and

will provide important baseline information on current uses within the planning area to inform the identification of planning issues and the formulation of alternatives.

The final rule adopts paragraph (d)(3) of this section ((c)(3) in the proposed rule) without revisions. This paragraph refers to current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions. This information is typically included in the AMS under current practice, but is not identified in the current regulations. It is important that current conditions serve as a starting point for the planning assessment. This information provides the basis for the affected environment and assists in the identification of planning issues and formulation of a reasonable range of alternatives for analysis. Trends in resource or other conditions, such as economic trends, wildlife population trends, or recreation use trends, could also provide useful information for the planning process. If this information is available, the BLM will consider it during the planning assessment.

The final rule adopts paragraph (d)(4) of this section ((c)(4) in the proposed rule) with revisions. This paragraph refers to “known resource constraints or limitations.” The final rule removes the term “thresholds” because it is unnecessary and duplicative of the terms “constraints or limitations.”

Paragraph (d)(4) of this section modifies and expands on existing § 1610.4–4(i), which refers to “critical threshold levels which should be considered in the formulation of planned alternatives.” Known resource constraints or limitations will be identified based on the best available scientific information. For instance, a known limitation might include a minimum viable population number for an endangered species as determined by the U.S. Fish and Wildlife Service, or a minimum area of critical habitat, such as breeding grounds or winter range, as determined by peer-reviewed scientific research. The BLM believes this concept is important to the planning process because it informs the development of plan components in the resource management plan, including disturbance limits, mitigation standards, or decision points for applying adaptive management. For example, a land use plan could establish an objective to support viable populations for a sensitive species by protecting important habitat. If a known minimum viable population for the species was identified in the planning assessment, this information could be used to

establish a decision point to consider a plan amendment if the population numbers dropped near or below the minimum.

Under this new provision, the BLM will identify any known constraints or limitations to resource management that should be considered in order to effectively manage resources consistent with its multiple use and sustained yield mandate, including any known and potential conflicts between multiple uses. For example, the BLM may identify uses that are known to be incompatible with important habitat for a sensitive species based on the best available scientific information in order to provide for the long-term sustainability of the species.

The BLM will also identify any related or indirect constraints to resource management. For example, wildfire propensity in an area might provide a constraint to future allowed uses, because in addition to use disturbance, the protection of habitat for a sensitive species could also be affected by natural disturbance. Or rights-of-way corridors might be constrained by natural features in certain areas, limiting where a transmission corridor could be located on the landscape. The BLM does not anticipate that all resource limitations will be identified at this stage of planning; many will be identified later through the formulation of alternatives and the estimation of their effects. At this early stage in planning, the BLM will identify known limitations based on best available scientific information, such as peer-reviewed research. This information will be useful to inform the identification of planning issues and resource management alternatives, and will promote a transparent and efficient planning process.

Paragraph (d)(5) of this section ((c)(5) in the proposed rule) refers to areas of potential importance within the planning area and is adopted in the final rule with revisions. This information is typically included in the AMS under current practice, but is not identified in the current regulations. The identification of these areas will inform the identification of planning issues and the formulation of alternatives. The following paragraphs describe the different types of "areas of importance" that are included.

Paragraph (d)(5)(i) of this section ((c)(5)(i) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of tribal, traditional, or cultural importance. These could include areas important for subsistence use, important cultural sites, traditional cultural

properties, or a cultural landscape. Although the BLM will identify these areas during the planning assessment, sensitive or confidential areas may not be made available to the public or included in the planning assessment report.

Paragraph (d)(5)(ii) of this section ((c)(5)(ii) in the proposed rule) is adopted in the final rule with one revision. This paragraph refers to habitat for special status species, including state or federally listed threatened or endangered species. The final rule changes "and/or" to "or" because the "and" is unnecessary. No change in meaning is intended.

Paragraph (d)(5)(iii) of this section ((c)(5)(iii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat. The identification of these areas is important at the onset of planning because fish and wildlife habitat often crosses jurisdictional boundaries and conservation of such habitat will often require landscape-scale management approaches.

Paragraph (d)(5)(iv) of this section ((c)(5)(iv) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change. For example, areas of ecological importance might include refugia or migratory corridors identified to help sensitive species respond to the effects of climate change or wetlands that help to buffer the effects of weather fluctuations by storing floodwaters and maintaining surface water flow during dry periods.

Paragraph (d)(5)(v) of this section ((c)(5)(v) in the proposed rule) is adopted in the final rule with revisions. This paragraph refers to lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scenic value. A comment stated that the term "candidate wild and scenic rivers" is unclear, and suggested the final rule replace "candidate" with "eligible" and adopt the Department of Interior's definition for eligible wild and scenic rivers as its definition for candidate wild and scenic rivers. In response to public comments, the final rule instead replaces "candidate wild and scenic rivers" with "wild and scenic study rivers." This term is defined in BLM Manual 6400 and is

therefore consistent with current BLM practice and policy.

A few comments requested the planning assessment include specific consideration of areas of scientific value. The comments stated that scientific value is listed in FLPMA (43 U.S.C. 1701(a)(8)), but the proposed rule does not account for it. In response to public comments, final paragraph (d)(5)(v) of this section is revised to include areas of significant "scientific" value, consistent with FLPMA (see 43 U.S.C. 1701(a)(8), 1702(c)).

Paragraph (d)(5)(vi) of this section ((c)(5)(vi) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas of significant historical value, including paleontological sites. A comment urged the BLM to include archaeological sites to the list of areas of potential importance, among others. Archeological sites are encompassed by "areas of significant historical value" and may also be identified under this paragraph, subject to any requirement that the BLM keep the location of archeological sites confidential.

Paragraph (d)(5)(vii) of this section ((c)(5)(vii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to existing designations in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or existing ACECs.

Paragraph (d)(5)(viii) of this section ((c)(5)(viii) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to areas with potential for renewable or non-renewable energy development or energy transmission.

The BLM received comments requesting that areas with mineral potential, as well as timber, be included in the planning assessment. In response to comments, the final rule includes new paragraphs (d)(5)(ix) and (d)(5)(x), which refer to areas with known mineral potential and areas with known potential for producing forest products, including timber. This information is typically identified in the affected environment section of a draft resource management plan and draft EIS under current practice, but is not identified in the current regulations. Identification of these areas at the outset of the planning process is important because minerals and forest products are among the resources that BLM manages under FLPMA's multiple use standard and other statutory mandates.

Paragraph (c)(5)(ix) of this section in the proposed rule is redesignated as paragraph (d)(5)(xi) in the final rule, but

otherwise is adopted without revisions. This paragraph refers to areas of importance for recreation activities or access. These might include high use recreation sites or areas with limited access points.

Paragraph (c)(5)(x) of this section in the proposed rule is redesignated as paragraph (d)(5) (xii) in the final rule, but otherwise is adopted without revisions. This paragraph refers to areas of importance for public health and safety, such as abandoned mine lands or natural hazards.

Paragraph (d)(6) of this section ((c)(6) in the proposed rule) is adopted in the final rule without revisions. This paragraph refers to dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change. This information is not identified in the current regulations, but will be useful to inform the formulation of alternatives and assess the need for adaptive management approaches or cross-boundary collaboration with other land managers. For example, halting the spread of invasive species may require collaboration between adjacent landowners such as the BLM, the United States Forest Service, or willing private landowners.

Paragraph (c)(7) of this section in the proposed rule is adopted as paragraph (d)(7) in the final rule with revisions. We adapted this paragraph from the beginning of existing § 1610.4–4(d), which directs the BLM to consider the “estimated sustained levels of the various goods, services and uses that may be attained.” The proposed rule referred instead to identifying the “various goods and services, including ecological services, that people obtain from the planning area.” The phrase “goods and services” includes the many ecological services (*i.e.*, ecosystem services) that are provided by the public lands, in addition to the “principal or major uses” described in FLPMA (see 43 U.S.C. 1702(l)), and other multiple uses. “Ecosystem goods and services include a range of human benefits resulting from appropriate ecosystem structure and function, such as flood control from intact wetlands and carbon sequestration from healthy forests.”

Several public comments expressed concern that, as a whole, the factors identified in proposed paragraph (c) (final paragraph (d)) of this section would not adequately address resource uses. In response to public comments, the final rule uses the phrase “goods, services, and uses” instead of the proposed language “goods and services” in final §§ 1610.4–7(d)(7) and (d)(7)(i) through (d)(7)(iii). Resource uses result

in the production of “goods and services;” therefore, the inclusion of this word does not represent a substantive change in meaning. The inclusion of this word is intended to provide clarity that this provision applies to resource uses. This paragraph is also revised to refer expressly to those principal or major uses described in FLPMA, which include domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

“Uses,” in this context, means existing or potential resource uses, but does not mean resource use determinations, which are also referred to as “allowable uses” in the existing Land Use Planning Handbook. At this early stage in the planning process, the BLM believes it is appropriate to identify the goods and services, including resource uses that people obtain from the planning area, but it is not yet appropriate to establish allowable uses (resource use determinations in the final rule).

Paragraph (c)(7)(i) of the proposed rule is redesignated as paragraph (d)(7)(i) in the final rule, but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph incorporates language from existing § 1610.4(g), which directs the BLM to consider the “degree of local dependence on resources from public lands.” The BLM will instead consider the degree of local, regional, national, or international importance of these goods and services. “Resources” is replaced with “goods, services, and uses” to provide a more precise explanation of what the BLM considers in regards to those resources. For example, the BLM could identify the degree of local dependence on potable water from groundwater recharge in the planning area (*i.e.*, local dependence on a service associated with water resources). The BLM believes that use of more precise terminology in the regulations improves understanding of this provision; no change in meaning is intended by this proposed word change.

In addition to the degree of local importance of goods and services, the BLM may also consider the degree of regional, national, or international importance of goods and services. This is particularly important when planning across traditional administrative boundaries and implementing landscape-scale management approaches. Examples of regional or national importance include goals for renewable energy generation on Federal lands under the President’s Climate Action Plan (June 2013), (<http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>), and the Nation’s reliance on the BLM-administered Federal Helium Reserve ([http://www.blm.gov/nm/st/en/prog/energy/helium\\_program.html](http://www.blm.gov/nm/st/en/prog/energy/helium_program.html)).

*www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*), and the Nation’s reliance on the BLM-administered Federal Helium Reserve ([http://www.blm.gov/nm/st/en/prog/energy/helium\\_program.html](http://www.blm.gov/nm/st/en/prog/energy/helium_program.html)).

Paragraph (c)(7)(ii) is redesignated as paragraph (d)(7)(ii) in the final rule, but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph incorporates language from existing § 1610.4–4(c) and refers to “available forecasts and analyses related to the supply and demand for these goods and services.” The final rule broadens this provision to include both supply and demand and to apply to “goods, services, and uses” including ecological services, instead of “resource demands.”

Paragraph (c)(7)(iii) is redesignated as paragraph (d)(7)(iii), but otherwise is adopted with only minor revisions for consistency with final § 1610.4(d)(7). This paragraph refers to “the estimated sustained levels of the various goods and services that may be produced based on a sustained yield basis.” For example, the BLM commonly estimates the sustainable levels of timber production. This factor is adapted from existing § 1610.4–4(d), which links estimated sustained levels to those 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 [deciding official] guidance.” The final rule simplifies the language in this factor for improved readability and understanding. At this early stage in the planning process, the BLM believes that the planning assessment should focus on the capability of resources to provide goods and services on a sustained yield basis. This information is important for the development of resource management plans based on the principles of multiple use and sustained yield and will assist the BLM in developing a range of alternatives that is consistent with FLPMA.

In addition to the foregoing changes, we removed some of the factors that are described in existing § 1610.4–4 regarding the AMS and will not include them in the planning assessment. The planning assessment will not include “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes” (see existing § 1610.4–4(e)). At this early stage in the planning process, the BLM will identify

these plans, but will not have sufficient information to identify “requirements and constraints” related to consistency, as the BLM will not yet be developing resource management alternatives. This step is more appropriately considered when developing the draft resource management plan.

Paragraph (d) of this section also does not include “[o]pportunities to meet goals and objectives defined in national and State Director guidance” (see existing § 1610.4–4(b)). This language is no longer necessary, because final § 1610.4(b)(2) directs the responsible official to identify BLM guidance that is relevant to the planning assessment. That paragraph requires the responsible official to consider BLM guidance.

Another factor not included in the planning assessment section of the final rule is “Opportunities to resolve public issues and management concerns” (see existing § 1610.4–4(f)). The planning assessment will typically be conducted before the identification of planning issues (see § 1610.5–1), and the BLM may not yet have the information necessary to resolve public issues and management concerns. The BLM will instead identify these opportunities during the formulation of alternatives (see final § 1610.5–2). We believe that this is the appropriate step to consider these opportunities because it allows the BLM to consider more than one opportunity and compare their impacts through the effects analysis (see final § 1610.5–3). This is consistent with current practice and policy, as the AMS is currently prepared after the identification of planning issues.

The final rule also removes “the extent of coal lands which may be further considered under provisions of § 3420.2–3(a) of this title” from the existing regulations (see existing § 1610.4–4(h)) because it references a regulation that does not currently exist (§ 3420.2–3(a)). Removing § 1610.4–4(h) will help reduce confusion, avoid redundancy with existing requirements in the coal regulations, and keep coal-specific requirements in the coal regulations where they are more appropriate. This does not change practice or policy.

Proposed § 1610.4(d) is redesignated as final § 1610.4(e) and adopted with revisions. This paragraph states that the responsible official will document the planning assessment in a report made available for public review and this report will include the identification and rationale for potential ACECs. The responsible official will post the report on the BLM Web site and make copies available at BLM offices within the planning area and other locations, as

appropriate. This provision introduces a new requirement for the BLM, as the current regulations do not require the AMS to be made available to the public. In the final rule, we clarify that the responsible official must make the report available to the public before the NOI is published. The planning assessment report will be made available before scoping so that it can inform the scoping process and help in the identification of planning issues. The BLM intends that the planning assessment will inform stakeholders’ input throughout the development of the resource management plan and provide increased transparency to the planning process.

This section also establishes that, to the extent practical, the BLM should make non-sensitive geospatial information used in the planning assessment available to the public on the BLM’s Web site. This change provides for public transparency and supports meaningful public involvement in the planning process.

Finally, proposed § 1610.4(e) is redesignated as final § 1610.4(f) and adopted with revisions. This paragraph requires that the BLM conduct a planning assessment before initiating the preparation of an EIS-level amendment. The planning assessment only applies to the geographic area being considered for amendment, and the content of the planning assessment only includes information relevant to the plan amendment. For example, if the BLM were considering an amendment solely to a visual resource class, the planning assessment will only consider information relevant to a potential change in visual resource class within the geographic area of the potential amendment. In the final rule we clarified that the planning assessment is to be completed consistent with the requirements of final § 1610.4.

Proposed § 1610.4(e) would have provided the deciding official the discretion to waive the requirements of § 1610.4 for minor amendments or if he or she determined that an existing planning assessment was adequate (see proposed § 1610.4(e)). Several comments expressed that such discretion was too open-ended. In response to public comments, the final rule does not adopt the proposed language allowing for a “waiver” if an existing planning assessment is determined to be adequate. In the case when an existing assessment provides the needed information to inform the planning process, the responsible official will identify those parts of the existing assessment that are pertinent to

the geographic area being identified and the issues to be addressed. This information, along with any new information, will be incorporated into the planning assessment for the plan amendment and made available for public review, consistent with final paragraph (e) of this section. The final rule retains the deciding official’s discretion to waive the requirements of this paragraph for minor amendments, however, because the BLM believes there are situations for minor amendments where a planning assessment would not add value to the planning process and these situations need to be considered on a case-by-case basis.

Several public comments expressed confusion over the meaning of the term “minor amendment.” In this context, this term is intended to address amendments that are either small in scope or scale and the BLM prepares an EIS to inform the amendment. The most common type of minor amendments for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In these situations, a planning assessment may not add value to the amendment process and could unnecessarily delay the amendment process; the responsible official will have the discretion to assess whether the preparation of a planning assessment is necessary in these situations. Although less common, the BLM recognizes that there are other types of EIS-level plan amendments that are also small in scope or scale, and therefore the planning rule provides the discretion to identify these situations on a case-by-case basis.

#### Section 1610.5 Preparation of a Resource Management Plan

This section serves as an introduction to final §§ 1610.5–1 through 1610.5–5, which outline the process the BLM must follow when preparing a resource management plan, or an EIS-level plan amendment. These sections are based on existing § 1610.4 “Resource management planning process.” Other revisions from the existing regulations are discussed in the appropriate sections of this preamble.

The final rule removes existing § 1610.4–2 “Development of Planning Criteria,” consistent with the proposed rule. This section is no longer necessary under the final rule. Existing paragraph (a)(1) of this section is incorporated into final § 1610.5–2(b). Existing paragraph

(a)(2) of this section is incorporated into §§ 1610.4(b)(1) and 1610.5–3(a) of the final rule. For more information, see the discussion in the preamble for §§ 1610.4(b)(1), 1610.5–2(b), and 1610.5–3(a). The final rule also removes existing §§ 1610.4–3 “Inventory data and information collection” and 1610.4–4 “Analysis of the management situation” and combines many of the provisions into final § 1610.4 “Planning assessment,” consistent with the proposed rule. Finally, the final rule removes existing § 1610.4–9 “Monitoring and evaluation” and incorporates many of the provisions from this section into § 1610.6–4 of the final rule.

The final rule removes the words “federally recognized” before Indian tribes throughout these sections for consistent use in terminology. These references will no longer be necessary with the inclusion of the definition for Indian tribes in § 1601.0–5 of the final rule. The final rule removes the phrase “in collaboration with any cooperating agencies” from throughout these sections. These references will be consolidated and moved to final § 1610.3–2(b)(3) (for more on “cooperating agencies,” see the preamble discussion of § 1610.3–1(b)(3)).

#### Section 1610.5–1 Identification of Planning Issues

Final § 1610.5–1 is based on existing § 1610.4–1, with revisions to clarify existing text, ensure consistency with other changes in this rule, and to require the preparation of a preliminary purpose and need statement.

Paragraph (a) of this section establishes a new requirement for the BLM to prepare a preliminary statement of purpose and need and to make this statement available for public review when initiating the identification of planning issues, consistent with the proposed rule. The preliminary statement of purpose and need will be informed by Director and deciding official guidance, preliminary public views, the planning assessment, the results of previous monitoring and evaluation, and Federal laws and regulations, and the purposes, policies, and programs implementing such laws and regulations. The latter language was revised consistent with the revisions to § 1610.3–3, discussed above.

Preparation of a statement of purpose and need is currently required under the DOI NEPA regulations (see 43 CFR 46.415(a) and 46.420(a)(1)). Final § 1610.5–1(a) adopts a new requirement that the preliminary statement of purpose and need be made available to

the public when initiating the identification of planning issues, consistent with the proposed rule. The change provides transparency to the public and support the Planning 2.0 goal to provide earlier opportunities for public involvement.

Making the document available for public review does not constitute a formal request for public comment on the preliminary statement of purpose and need; however, the public is welcome to provide feedback on it, and, in particular, the BLM expects that the preliminary statement of purpose and need could be updated based on the issues identified during the scoping process (see § 1610.5–1(b)). This opportunity for public review is important because the statement of purpose and need informs the development of all subsequent steps in the preparation of a resource management plan. For example, the BLM does not typically formulate or analyze a resource management action alternative (see final §§ 1610.5–2 and 1610.5–3) to the no action unless it is consistent with the statement of purpose and need.

Final paragraph (b) of this section is based on existing § 1610.4–1. The final rule adopts the proposal to remove the existing language “[a]t the outset of the planning process,” due to the new planning assessment and the preparation of a preliminary statement of purpose and need, both of which will occur prior to the identification of planning issues. An upfront planning assessment will result in more information on resource, environmental, ecological, social and economic conditions for the planning area being available to the public and the BLM during the identification of planning issues. There will be no impact from this change, other than the availability of more information at this point in the process.

The final rule adopts the proposed language to include “concerns, needs, opportunities, conflicts, or constraints related to resource management” as types of suggestions the public can provide during the identification of planning issues step. The final rule removes “resource use, development, and protection opportunities” as these are encompassed by the final language and are therefore unnecessary. There will be no change from current practice.

Based on public comment, the final rule adds clarification to the first sentence of final paragraph (b) of this section. Proposed paragraph (b) of this section provided that the public, other Federal agencies, State and local governments, and Indian tribes would

be given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management for consideration in the preparation of the resource management plan. Final paragraph (b) of this section is revised to include concerns, needs, opportunities, conflicts, or constraints, “including those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes.” This change is consistent with the purpose of identifying planning issues and responds to public comment. Several public comments requested that the final rule incorporate existing § 1610.4–4(e) into the planning assessment. This existing provision states that a factor which may be included in the existing AMS step is “specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes.” The BLM believes that this existing optional provision is more appropriately incorporated into § 1610.5–1(b), which includes the identification of “constraints.” The word “requirements” is not necessary, as the word “constraints” encompasses “requirements.”

The final rule adopts the last sentence of proposed paragraph (b) of this section stating that the identification of planning issues “should be integrated” with the scoping process required by regulations implementing the NEPA. The final language does not represent a change in practice or policy, rather the final rule clarifies that although the identification of planning issues should be integrated with the NEPA scoping process, these are two distinct steps with distinct regulatory requirements that the BLM must comply with during the planning process.

Final paragraph (b) of this section also adopts proposed changes which reflect new terms used throughout the proposed and final rule. The term “Field Manager” is replaced with “responsible official” to maintain consistency with other proposed changes. The term “planning issue” replaces “issues” for consistency with the newly added definition for planning issues (see § 1601.0–5) and to clarify what type of “issues” are intended. The term “information” is added, to clarify that the BLM analyzes data and information when we determine planning issues, consistent with current BLM practice. “Planning assessment,” replaces the existing examples of other available data. The planning assessment includes the existing examples, thus the

change is consistent with new terminology introduced in the final rule (see final § 1610.4), but does not represent a change from current practice in the types of available data and information that the BLM analyzes.

Here, and throughout the final rule, the term “information” is used consistent with the definition of information provided in the OMB “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies” (67 FR 8452). “Information” means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.” As discussed in the preamble for § 1610.1–1(c), the BLM uses “high quality” information, which includes the best available scientific information, to inform the resource management planning process.

The BLM intends no change in practice with the changes to final § 1610.5–1, other than to provide increased transparency by making a preliminary statement of purpose and need available to the public.

#### Section 1610.5–2 Formulation of Resource Management Alternatives

Final § 1610.5–2 is based on existing § 1610.4–5. The final rule revises the heading of this section to read “[f]ormulation of resource management alternatives,” consistent with the proposed rule. The words “resource management” are added to the heading to more precisely describe the “alternatives” and for consistent use in terminology. No change in practice or policy is intended by the change.

Paragraph (a) of this section describes the requirements for developing resource management alternatives. The first sentence in final paragraph (a) of this section includes the proposed introductory language indicating that this section describes “[a]lternatives development,” for improved readability. The final rule also adopts the proposed change to remove the phrase, “At the direction of the Field Manager,” because it is the obligation of the BLM, not of any individual, to consider all reasonable resource management alternatives and develop several for detailed study. The final rule adopts the proposal to add the abbreviation “alternatives” for “resource management alternatives” and remove the word “[n]onetheless” for improved readability in the final rule. No change in practice or policy is intended by these changes.

Final paragraph (a)(1) of this section adopts the proposed requirement that the alternatives developed be informed by Director or deciding official guidance, the planning assessment, and the planning issues and removes the existing requirement that alternatives “reflect the variety of issues and guidance applicable to resource uses.” This language is consistent with other changes and more accurately describes the information that informs the development of alternatives.

A public comment suggested that the final rule include language stating that all alternatives must be developed with the intent to achieve the purpose and need for the planning process. In response to this public comment, the final rule includes a new requirement that the alternatives developed shall also be informed by the statement of purpose and need (see § 1610.5–1). This change is consistent with the BLM’s current practice and policy for the compliance with NEPA requirements, and also reflects the fact that the “no action” alternative must be included in the range of alternatives (see 43 CFR 1502.14) regardless of whether it would achieve the statement of purpose and need, as suggested in the public comment. There will be no substantive change from current practice or policy, other than the availability of the planning assessment to inform the development of alternatives.

Several public comments raised concerns that the BLM would not consider citizen-proposed alternatives under the proposed rule. Under the final rule, the BLM will continue to comply with NEPA requirements for alternatives, including the requirement that the BLM analyze all reasonable alternatives, and discuss the reasons for alternatives eliminated from detailed study (40 CFR 1502.14). This requirement applies to citizen-proposed alternatives. The final rule adopts proposed paragraph (a)(2) with no revisions. Final paragraph (a)(2) of this section is based on the fourth sentence of existing § 1610.4–5, and states that “[i]n order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.” The final rule replaces the phrase “all reasonable variations shall be treated as subalternatives” with “reasonable variations may be treated as subalternatives.” The change provides the BLM flexibility to develop subalternatives when appropriate, but will not explicitly require the use of subalternatives. In some instances, it may be appropriate to develop a new

alternative, rather than a subalternative. In other situations, a subalternative may not be necessary because it is already covered under the full spectrum of examples in existing alternatives. The final changes are consistent with CEQ guidance that “when there are a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of examples, must be analyzed.”<sup>15</sup> The BLM intends no change from current practice or policy from this change.

Final paragraph (a)(3) of this section is based on the fifth sentence of existing § 1610.4–5 and requires the inclusion of a no action alternative. The final rule adopts the proposal to replace “resource use” with “resource management” because the no-action alternative applies to resource management in general, and not just resource use. There is no change in practice or policy from this change.

Final paragraph (a)(4) of this section is based on the sixth sentence of existing § 1610.4–5 and requires that the BLM note in the resource management plan any alternatives that are eliminated from detailed study, along with the rationale for their elimination. No substantive changes are made to this sentence.

Final paragraph (b) of this section establishes a new requirement that the BLM describe the rationale for the differences between alternatives, consistent with the proposed rule. This requirement incorporates and expands on the requirements of existing § 1610.4–2(a)(1) that the resource management plan be “tailored to the issues previously identified.” The proposed rationale for alternatives includes: A description of how each alternative addresses the planning issues, consistent with the principles of multiple use and sustained yield, unless otherwise specified by law; a description of management direction that is common to all alternatives; and a description of how management direction varies across alternatives to address the planning issues. The BLM believes that the rationale for alternatives will provide transparency to the public on the reasons for the formulation of alternatives and will ensure that the resource management plan is “tailored to the issues previously identified.”

With regards to the rationale for the differences between alternatives, final paragraph (b)(1) modifies the proposed

<sup>15</sup> “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations.” 46 FR 18026. <http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>.

phrase “consistent with the principles of multiple use and sustained yield, or other applicable law” to state “consistent with the principles of multiple use and sustained yield unless otherwise specified by law.” This change between the proposed and final rule is made for consistency with the changes to § 1601.0–1 and throughout these regulations. For more information, please see the discussion to § 1601.0–1 for this preamble.

Final paragraph (c) of this section adopts the proposal to add a new public involvement opportunity. The responsible official must make the preliminary resource management alternatives and the preliminary rationale for these alternatives available for public review prior to the publication of the draft resource management plan and draft EIS. The BLM intends that the preliminary alternatives and rationale for alternatives ordinarily will be made available for public review prior to the estimation of effects of alternatives.

This public review is intended to serve as a “check” of the preliminary alternatives and affords the public an opportunity to bring to the BLM’s attention any possible alternatives that may have been overlooked before the BLM conducts the environmental impact analysis and prepares a draft resource management plan and draft EIS. The BLM anticipates that this review will increase efficiency by avoiding the need to re-do or supplement NEPA analyses if alternatives are identified during the public comment period on the draft resource management plan and draft EIS. Accordingly, the BLM will build time for this public review of preliminary alternatives and rationale for alternatives into their planning schedules. This public review also increases transparency in the BLM’s planning process.

As previously discussed, the BLM does not request written comments when making documents available for public review. However, the public is welcome to contact the BLM with any appropriate concerns. For more information, please see the discussion at § 1610.2 for this preamble.

The preliminary alternatives and rationale for alternatives will be posted on the BLM’s Web site and made available at BLM offices within the planning area. The BLM may consider hosting public meetings to discuss the alternatives and the forthcoming revision of the Land Use Planning Handbook will describe situations in which the BLM might hold public meetings.

In the preamble to the proposed rule, the BLM requested public comment on whether the requirements in paragraph (c) should apply to draft plan amendments. The BLM received some comments indicating that these requirements should apply to plan amendments as well as other comments suggesting that while in general this step should occur, the BLM should have the ability to skip this step on a case-by-case basis, when appropriate. In response to public comment, the final rule includes new language requiring the responsible official to make preliminary alternatives and preliminary rationale for alternatives available for public review, as appropriate, for draft EIS-level plan amendments. The BLM intends that in general this step will occur during draft plan amendments. In some situations, such as project-specific or other minor amendments, the public review of preliminary alternatives and rationale for alternatives may not be appropriate or necessary.

Final paragraph (d) of this section adopts proposed language stating that the BLM may change the preliminary alternatives and the preliminary rationale for alternatives as planning proceeds, if it determines that public suggestions or other new information make such changes necessary. The final language supports BLM’s intent to consider public input on the preliminary alternatives and make changes accordingly. Further, a primary purpose of making preliminary documents available to the public is for the BLM to receive feedback and revise these documents, prior to issuing a formal draft. Therefore, the BLM expects that in most situations, the preliminary alternatives will be revised during the preparation of the draft resource management plan.

Several public comments suggested that the BLM should disclose changes made to the preliminary alternatives and the preliminary rationale for alternatives. In response to public comment, final paragraph (d) adds a requirement that a description of changes made to the preliminary alternatives and preliminary rationale for alternatives shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to these preliminary documents; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan. For example, a citizen-proposed alternative might be incorporated into the draft

resource management plan as a result of public involvement activities associated with the review of the preliminary alternatives. In this situation, the draft resource management plan would describe the origin and purpose of the citizen-proposed alternative.

#### Section 1610.5–3 Estimation of Effects of Alternatives

Final § 1610.5–3 is based on existing § 1610.4–6 and incorporates elements of existing § 1610.4–2(a)(2).

Final paragraph (a) of this section establishes a new requirement that the responsible official identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of the alternatives considered in detail, consistent with the proposed rule. These procedures, assumptions, and indicators are referred to as the “basis for analysis.” Although this is a new requirement in the planning regulations, there are existing examples where the BLM has developed a “basis for analysis,” or similar document, before conducting an effects analysis. For example, in the preparation of the Western Oregon Resource Management Plans finalized in 2016, the BLM described the analytical methodology the BLM intended to use to estimate the effects of alternatives and made this available to the public.

Final paragraph (a)(1) of this section requires that the responsible official make the preliminary basis for analysis available for public review prior to the publication of the draft resource management plan and draft EIS, consistent with the proposed rule. The BLM expects that in most situations this information will be made available to the public concurrently with the preliminary alternatives and rationale for alternatives and prior to conducting the effects analysis. As previously discussed, the BLM does not request written comments when making documents available for public review (see the discussion at § 1610.2 for this preamble). However, the public is welcome to contact the BLM with any appropriate concerns.

In the preamble to the proposed rule, the BLM requested public comment on whether the requirements in paragraph (a)(1) should apply to draft plan amendments. The BLM received some comments indicating that these requirements should apply to plan amendments as well as other comments suggesting that while in general this step should occur, the BLM should have the ability to skip this step on a case-by-case basis when appropriate. In response to public comments, the final

rule will add a requirement to this paragraph requiring the responsible official to make preliminary alternatives and preliminary rationale for alternatives available for public review, as appropriate, for draft EIS-level plan amendments. The BLM intends that in general this step will occur for these amendments. In some situations, such as project-specific or other minor amendments, the public review of the basis for analysis may not be appropriate.

This paragraph is adapted from an existing requirement of § 1610.4–2(a)(2) that the “BLM avoids unnecessary . . . analyses.” The BLM believes that identifying the basis for analysis and making that information available to the public will provide a more precise description in the regulations of how to avoid unnecessary analyses than existing language. The final change also supports the Planning 2.0 goal to provide early opportunities for meaningful public involvement.

Final paragraph (a)(2) of this section adopts proposed language explaining that the BLM could change the preliminary basis for analysis as planning proceeds to respond to new information, including public suggestions. The final language supports BLM’s intent to consider public input on the basis for analysis and make changes accordingly. A few public comments expressed concern that the proposed rule did not explain how the BLM will notify the public when the basis for analysis changes during planning process. In response to public comment, final paragraph (a)(2) adds a requirement that a description of changes made to the basis for analysis shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to basis for analysis; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan, including the basis for analysis.

Final paragraph (b) of this section is adapted from existing § 1610.4–6 and adopts the proposed introductory phrase “[e]ffects analysis” for improved readability. The term “Field Manager” is replaced with “responsible official” for the reasons previously explained.

The first sentence of final paragraph (b) of this section adopts the proposed change to replace the phrase “physical, biological, economic, and social effects” with “environmental, ecological, economic, and social effects” for consistent use in terminology. The final language encompasses the existing

terminology. The BLM intends no change in practice or policy from this change in terminology.

In the second sentence of paragraph (b) of this section, the final rule adopts the proposal to replace the “planning criteria” with the “basis for analysis” and to add the “planning assessment.” Final paragraph (b) states “the estimation of effects must be guided by the basis for analysis, the planning assessment, and procedures implementing NEPA.” Changes to this section incorporate new terminology and reflect the fact that planning criteria are no longer required under the final rule. The planning assessment and the basis for analysis will provide the appropriate information to guide the effects analysis. No substantive changes were made to paragraph (b) of this section between the proposed and final rule.

#### Section 1610.5–4 Preparation of the Draft Resource Management Plan and Selection of Preferred Alternatives

This section is based on existing § 1610.4–7. This final section replaces references to “Field Manager” with “responsible official,” references to “State Director” with “deciding official,” and makes grammatical edits. The heading of the section is revised to include the new provision in paragraph (a) of this section regarding the preparation of the draft resource management plan.

Final paragraph (a) of this section states that the responsible official shall prepare a draft resource management plan based on Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives, consistent with the proposed rule. This language highlights the unique step in the BLM land use planning process of preparing a draft resource management plan, consistent with current practice, and it will facilitate public understanding of the planning process outlined in § 1610.5. There is no change from existing requirements associated with this final language, other than to reflect new terminology in this final rule and more broadly describe the information the BLM uses to prepare the draft resource management plan and draft EIS.

The final rule separates proposed paragraph (a) of this section into several subparagraphs for improved readability. No change in meaning is intended by this revision.

In response to public comment, final paragraph (a)(1) of this section includes a new requirement that the draft resource management plan and draft EIS

shall “describe any changes made to the preliminary alternatives and preliminary procedures, assumptions, and indicators.” This description is not intended to identify each and every change made; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan. This revision is consistent with the revisions made to final §§ 1610.5–2(d) and 1610.5–3(a)(2).

Final paragraph (a)(2) of this section adopts the existing requirement that the draft resource management plan and draft EIS shall “evaluate the alternatives,” consistent with the proposed rule and removes the existing language requiring the BLM to “estimate their effects according to the planning criteria” because planning criteria will no longer be prepared under the proposed rule and the estimation of effects of alternatives is already addressed in proposed § 1610.5–4.

Final paragraph (a)(3) of this section requires that the draft resource management plan and draft EIS “identify one or more preferred alternatives, if one or more exist.” This represents a change from existing regulations which direct the field manager to “identify a preferred alternative.” The proposed rule would have broadened this requirement to allow the responsible official to select “one or more” preferred alternatives and in the preamble to the proposed rule, the BLM requested public comments on whether the final regulations should require a single preferred alternative, allow for multiple preferred alternatives, or allow for no preferred alternative if one does not exist. Several comments expressed that identifying multiple preferred alternatives could create confusion and uncertainty, making it more difficult for the public to provide meaningful comments. A few comments stated that it would increase the time needed for critical evaluation of the preferred alternative, and be time consuming and burdensome for the public. Other comments expressed support for the three options, noting that there may be instances where it is not possible to select only one preferred alternative, or alternatively any preferred alternative, and as such, it is appropriate to provide regulatory provisions addressing those instances.

The BLM considered these comments and has revised the proposed language to include the option of identifying no preferred alternative, if no preferred alternative exists. Under this change to existing regulations, the BLM might select a single preferred alternative,

multiple preferred alternatives, or no preferred alternative. The BLM expects that in most situations a single preferred alternative will be identified, consistent with current practice; however, there may be instances in which either several may be identified, or where none of the alternatives are preferred. The latter instances, in particular, are rare, and usually occur when a plan amendment is being initiated in conjunction with decision-making regarding a site-specific proposal, and it is unclear which of possibly several project alternatives, each designed to reduce adverse environmental consequences, might be preferred. The BLM also sought public comment on whether to include a specific regulatory provision addressing these circumstances, to clarify that these are the only kinds of instances in which a preferred alternative need not be identified. The BLM will not include this provision in the final rule. The BLM did not receive comments suggesting specific circumstances, and the BLM believes that these circumstances are more appropriately identified on a case-by-case basis. The final rule provides such flexibility. This change also makes the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)), which were promulgated after the BLM planning regulations were last amended. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on the selection of preferred alternatives.

The final rule adopts the proposal to replace the existing requirement to select a preferred alternative that “best meets Director and State Director guidance” with a requirement to explain the rationale for the preferred alternative(s) in final paragraph (a)(3) of this section. There are many factors that might influence the selection of a preferred alternative, in addition to Director or deciding official guidance, such as assessment findings, public involvement, local planning priorities, and identified planning issues. The preferred alternative(s) must be consistent with Federal laws, regulation, and policy guidance, and will represent the alternative that the deciding official believes is most responsive to the planning issues and the planning assessment, which includes Director and deciding official guidance. The final rule states that the BLM will identify one or more preferred alternatives, “if one or more exist,” and will explain the rationale for the preference “or absence of a preference.” The added language reflects the new option where a preferred alternative may not exist and

requires the BLM to provide a rationale for the absence of a preference.

Final paragraph (a)(3) of this section further states that “[t]he identification of one or more preferred alternatives remains the exclusive responsibility of the BLM.” The final rule replaces the phrase “the decision to select” with the phrase “the identification of” to improve readability, clarify meaning, and for consistent use in terminology. The BLM intends no change in meaning from existing regulations. The final rule also specifies that this applies to the identification of “one or more” preferred alternatives, for consistency with changes made earlier in paragraph (a)(3) of this section.

Final paragraph (b) of this section adopts the last sentence of proposed paragraph (a). This change to create a new subparagraph is to improve readability. There is no substantive change to this provision, which provides that the draft resource management plan and EIS will be forwarded to the deciding official for publication and filing with the EPA.

Final paragraph (c) of this section is based on existing § 1610.4–7 and adopts the language from proposed § 1610.5–4(b), with revisions. The final rule adopts the proposal to replace “draft plan and [EIS]” with “draft resource management plan and draft [EIS],” for improved readability, and also adopts the proposal to pluralize the word “Governor” to acknowledge that a resource management plan may cross State boundaries and in that situation the draft resource management plan should be provided to the Governors of all States involved.

In response to public comment, the final rule is revised to include language requiring the BLM to provide a copy of the draft resource management plan and draft EIS to officials of other Federal agencies, State and local governments, and Indian tribes “that have requested to be notified of opportunities for public involvement” in addition to the proposed requirement to provide a copy to those officials that the deciding official has reason to believe would be interested. These changes are to address concerns expressed in public comments that the deciding official might exclude government officials if the deciding official has reason to believe an agency or unit may lack interest. This change is consistent with final § 1610.3–2(c)(3). The final rule adopts the proposal to replace the word “concerned” with “interested” because any type of interest from a government official, including concern, is sufficient reason for the BLM to provide such official with a copy of

the draft resource management plan and EIS for review.

The final rule adopts the proposal to add a reference to § 1610.3–2(c) to improve readability of the regulations text. There is no change in practice or policy from this change.

#### Section 1610.5–5 Selection of the Proposed Resource Management Plan

Final § 1610.5–5 is based on existing § 1610.4–8. The final rule does not adopt the proposal to include “preparation of implementation strategies” in the heading to this section because the concept of implementation strategies was not adopted in the final rule (see the discussion to proposed § 1610.1–3 in this preamble).

The final rule adopts proposed paragraph (a) of this section. Changes to this section replace the existing reference to the “Field Manager” with “responsible official” stating that the “responsible official” shall evaluate the comments received after publication of the draft resource management plan and draft EIS and will prepare the proposed resource management plan and final EIS.

The final rule does not adopt proposed paragraph (b) of this section which would have provided that the responsible official prepare implementation strategies for the proposed resource management plan, as appropriate. This paragraph is no longer relevant because the concept of implementation strategies was not adopted in the final rule (see the discussion to proposed § 1610.1–3 in this preamble).

The final rule redesignates proposed paragraph (c) of this section as final paragraph (b) of this section. Final paragraph (b) requires that the deciding official publish the proposed resource management plan and file the final EIS with the EPA, consistent with current practice and policy. The final rule will no longer detail the BLM’s internal review process. The final rule adopts the proposal to remove references to internal steps such as “supervisory review” because these internal review processes are better established through BLM policy. The BLM intends no change to existing policy or practice, but the final rule will provide the BLM discretion on how to conduct its internal review process, which is addressed through BLM policy.

#### Section 1610.6 Resource Management Plan Approval, Implementation and Modification

The final rule adopts proposed § 1610.6, with revisions. Final § 1610.6 is adapted from existing § 1610.5. This

section heading provides an introduction to final §§ 1610.6–1 through 1610.6–8. The final rule adopts the proposed change to replace the word “use” with “implementation” in the heading to final § 1610.6 to more accurately describe the provisions of these sections.

#### Section 1610.6–1 Resource Management Plan Approval and Implementation

Section 1610.6–1 is adapted from existing § 1610.5–1. There are no substantive revisions to § 1610.6–1 between the proposed and final rule.

The final rule replaces “and administrative review” with “and implementation” in the heading of this section to focus this section on resource management plan approval and implementation. Similarly, the final rule deletes the existing first paragraph, which refers to internal procedures such as “supervisory review and approval.” The BLM’s internal review procedures are better established through BLM policy. The BLM intends no change in practice or policy from these changes.

Final paragraphs (a), (b), and (c) of this section contain the provisions of existing § 1610.5–1. The final rule adopts edits to this section to improve understanding of existing requirements, but does not anticipate any change in implementation from existing regulations.

Under final paragraph (a) of this section, the deciding official will approve a resource management plan, or EIS-level amendment, no earlier than 30 days after the EPA publishes a **Federal Register** notice of the filing of the final EIS. This is an existing part of the process and regulations, but the final rule uses “deciding official” instead of the State Director, to maintain consistency with other changes (see § 1601.0–4(b)). The final rule removes the provision that approval depends on “final action on any protest that may be filed” as this requirement is already addressed in 1610.6–1(b) and in the protest procedures at § 1610.6–2(b). This revision is not a change in practice or policy.

Final § 1610.6–1(b) contains some language from existing § 1610.5–1 (b), with clarifying edits. In addition to existing provisions stating that plan approval will be withheld until after protests have been resolved, paragraph (b) of this final section also clarifies an existing requirement to provide public notice and opportunity for public comment if the BLM intends to select a different alternative, or portion of an alternative, than the proposed resource management plan or plan amendment.

Such a change may result from the BLM’s decision on a protest or from the BLM’s consideration of inconsistencies identified by a Governor. The final rule revises this sentence to explain that “if, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is within the spectrum of alternatives in the final [EIS] or [EA] but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved.” The final language will more precisely describe what is meant by the existing phrase “any significant change made to the proposed plan.” The final rule uses “within the spectrum of” instead of “encompassed by” for consistency with CEQ terminology.<sup>16</sup> The BLM intends no change from current practice or policy; rather this provision will provide a more precise description of existing requirements.

Final § 1610.6–1(c) contains language from the last sentence of existing § 1610.5–1(b) and provides that the approval of a resource management plan or a plan amendment for which an EIS is prepared must be documented in a concise public ROD, consistent with NEPA requirements (40 CFR 1505.2). Current language refers to “the approval,” and this change will specify that a ROD will be prepared for approval of a resource management plan or EIS-level amendment. Approvals of EA-level amendments need not be documented in a ROD; however, current BLM policy requires the preparation of a decision record to document these decisions (see BLM NEPA Handbook, H-1790–1).

#### Section 1610.6–2 Protest Procedures

Final § 1610.6–2 contains the protest procedures found at existing § 1610.5–2. The final rule revises this existing section to update the procedures for the public’s submission and the BLM’s action on protests of a resource management plan or plan amendment.

Under the introductory text in final paragraph (a) of this section, the final rule clarifies that a member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which “may be adversely affected” by the approval of a proposed resource management plan or plan amendment may protest such approval.

The final rule adopts the proposed change to replace “planning process” with “the preparation of the resource management plan or plan amendment” to more precisely describe what steps of the “planning process” apply to paragraph (a) and for consistency with other changes. Under current practice, the BLM generally considers the “planning process” to mean the preparation of a resource management plan or plan amendment. The final rule clarifies that the preparation of a resource management plan is just one step of the planning process. Other steps include the planning assessment, the approval of the resource management plan, the implementation of the resource management plan, monitoring and evaluation, and future modification of the resource management plan through plan maintenance, amendment, or revision. A member of the public may only submit a protest, however, if they participated in the preparation of the resource management plan or plan amendment. This change is consistent with current practice and policy. Final § 1610.6–2(a) is revised to remove reference to § 1610.4, which was incorrect. The planning assessment is not considered a step in the preparation of a resource management plan; rather, it precedes the initiation of the preparation of a resource management plan. In order to be eligible to submit a protest, a member of the public must participate in the preparation of the resource management plan or plan amendment, and not just the planning assessment.

In response to public comment, final paragraph (a) of this section replaces the existing phrase “[a]ny person” with “[a]ny member of the public.” Some public comments suggested that the phrase “any person” should be revised to include cooperating agencies. The BLM currently interprets the phrase “any person” to include cooperating agencies. The term “public,” however, is defined at final § 1610.0–5 and therefore provides a more precise description of who may submit a protest, including cooperating agencies or other government officials. This change is consistent with current practice and policy under existing regulations, and is made for clarification and improved readability only. The BLM intends no change in the meaning of this provision.

The final rule adopts the proposal to remove language in paragraph (a) of this section stating that any person who 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

<sup>16</sup> NEPA’s Forty Most Asked Questions, Question 29B. <https://ceq.doe.gov/nepa/regs/40/40p3.htm>.

amendment. Instead, the final rule states that any member of the public who has an interest which “may be” adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. The final rule replaces the phrase “is or may be” with “may be” to eliminate duplicative and unnecessary language. An interest that “may be adversely affected” includes an already affected interest. This final change is made to improve readability only; the BLM intends no change to the meaning of this provision.

Final paragraph (a) of this section is revised to include new language stating that a protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment “unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.” This change in the final rule is made throughout the subparagraphs of § 1610.6–2(a) and clarifies that if an issue arises after the close of the formal public comment period on a draft resource management plan, the public may submit a protest regarding that issue. This exclusion only applies to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue. For example, the issue may arise due to a change that was made to the draft resource management plan or due to new information that was not previously available. This revision is consistent with current practice and policy and is made for clarification purposes only.

The final rule adopts the proposal to split existing § 1610.5–2(a)(1) into paragraphs (a)(1) and (a)(2) of final § 1610.6–2. The final rule adopts proposed paragraphs (a)(1) and (a)(2) with only minor revisions. These paragraphs contain the requirements for filing protests, including new provisions for electronic submission.

Final paragraph (a)(1) of this section adopts the proposed introductory text “Submission,” and describes the procedures for submitting a protest. The final rule adopts the new provision which states that the protest may be filed as a hard-copy or electronically and that the responsible official will specify protest filing procedures for a resource management plan or plan amendment (beyond these general requirements in the planning regulations), including the method the public may use to submit a protest electronically. Under the existing

regulations, a protest must be filed as a hard-copy. Although the BLM will continue to accept hard-copy protest submissions, providing an additional option for electronic submission will reduce the burden on the public by reducing the expense associated with mailing a hard-copy. An electronic format will also streamline the processing of protests, since the protest will already be digitized, thereby eliminating a step from the process. Further, a protest sent by mail may take many days to arrive at the appropriate BLM office and delay the start of the BLM’s protest resolution process. Electronic means for protest submission are more readily available to the public today and electronic options will promote a more efficient protest resolution process. The final rule provides flexibility for how protests will be submitted electronically to the BLM to accommodate future advances in electronic technology. The BLM expects to provide an electronic submission option either through email submission or through the BLM Web site.

Although the BLM believes that electronic submission promotes efficiency, it is also important to note that providing an electronic option for protest submission could also lead to an increased burden on the agency by increasing the number of protest submissions, such as form letters. In this situation, it will take additional time to process protests. Under current practice, the BLM summarizes protest issues and provides a single response to each issue; regardless of how many times the issue was raised. We intend to continue this practice, thus a possible increase in form letters will not lead to an increase in the number of responses or the complexity of the final protest resolution report.

Final paragraph (a)(2) of this section adopts the proposed introductory text “Timing.” The final rule also adopts the proposal to maintain the existing time periods for submitting a protest and to make edits for improved readability and understanding. There are no changes to existing requirements. For resource management plans and EIS-level amendments, protests must be filed within 30 days after the date the EPA publishes a NOA of the final EIS in the **Federal Register**. For EA-level amendments, protests must be filed within 30 days after the date the BLM notifies the public of the availability of the proposed plan amendment.

Final § 1610.6–2(a)(3) adopts the proposed introductory text “Content Requirements,” and describes the required content of a protest.

The final rule adopts proposed paragraph (a)(3)(i) of this section with no revisions. This paragraph includes a new provision that protesting parties include their email address (if available) in addition to other identifying information in the protest letter in order to facilitate BLM communications with protesting parties in the event of a question regarding a protest or its filing. It often is easier to communicate by email than by telephone and this requirement is in line with the BLM’s acceptance of protests electronically under final § 1610.6–2(a)(1). This provision includes the statement “if available” because the BLM recognizes that not all members of the public have easy access to the Internet, and the lack of an email address will not preclude a member of the public from submitting a protest. There is no change in practice or policy, other than to clarify that an email address, if available, should be included.

The final rule adopts proposed paragraph (a)(3)(ii) of this section with no revisions. Final paragraph (a)(3)(ii) of this section requires a statement of how the protestor participated in the preparation of the resource management plan. This is a change from existing language that requires a statement of the issue or issues being protested, which is instead included in final paragraph (a)(2)(iii) of this section. Although existing paragraph (a) states that only a person who participated in the preparation of a resource management plan may submit a protest, final paragraph (a)(3)(ii) places the burden on the protestor to demonstrate their eligibility for submitting a protest. This requirement is a more efficient method for the BLM to determine eligibility to protest and will help the BLM to more efficiently respond to all protests in a timely manner.

The final rule adopts proposed paragraph (a)(3)(iii) of this section with only minor revisions. Final paragraph (a)(3)(iii) replaces the requirement to provide a “statement of the part or parts of the plan or amendment being protested” with a new requirement to identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations. The change is consistent with other changes made in this final rule (see final § 1610.1–2). Plan components provide planning-level management direction. The final decision to approve a resource management plan or plan amendment represents the final decision to approve the planning level management

direction, which will guide all subsequent management decisions. The final rule replaces the proposed phrase “purposes, policies, and programs of such laws and regulations” with “purposes, policies and programs implementing such laws and regulations” for consistency with changes made throughout these regulations (see § 1610.3–3, for example). No change in meaning is intended by this revision; rather, this change improves readability and clarifies that purposes, policies, and programs are developed to “implement” laws and regulations. This revision is also made in paragraph (a)(3)(iv) of this section.

Final paragraph (a)(3)(iv) of this section requires the protest to include a concise explanation of why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs implementing such laws and regulations, and identification of the associated issue(s) raised during the planning process. This provision replaces existing paragraph (a)(1)(ii) and the final sentence of existing paragraph (a)(1)(iv) of this section. The final rule requires that protests include more specific grounds for challenging a plan component than the existing regulations, which require only “(a) concise statement explaining why the State Director’s decision is believed to be wrong.” The identification of more specific grounds for protests will help the BLM to identify, understand, and respond thoughtfully to valid protest issues, such as inconsistencies with Federal laws or regulations.

This final change also provides a more clear distinction between the protest process and the earlier public comment period on a draft resource management plan and draft EIS. The earlier public comment period offers an opportunity to comment on a wide variety of matters relating to a draft plan. The protest procedures, in contrast, are intended to focus the BLM Director’s attention on aspects of a proposed resource management plan that may be inconsistent with legal requirements or policies. These changes are not a change from existing practice or policy; rather they provide clarification to the public on how the BLM interprets and implements the regulations. The BLM believes that the change will more effectively communicate to the public what the BLM considers when addressing protests.

Final paragraph (a)(3)(iv) adopts the proposed requirement that a protest

identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; however this section is revised to clarify that this requirement is not necessary if the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan. This exclusion would only apply to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue. For example, the issue may arise due to a change that was made to the draft resource management plan or due to new information that was not previously available. These changes do not represent a change from current practice or policy; rather they provide clarification to the public on existing requirements.

Final paragraph (a)(3)(v) of this section retains the existing requirement that protests include a copy of all documents addressing the issue(s) raised that the protesting party submitted during the planning process or an indication of the date the issue(s) were discussed for the record. These documents or dates will assist the BLM in responding to protests. The final rule clarifies that this requirement is not necessary if the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan and the public has not had an opportunity to raise the issue, for consistency with changes made throughout this section.

Final paragraph (a)(4) of this section adopts the proposed introductory text “availability” and establishes a new requirement that protests will be made available to the public upon request and this is independent of existing requirements under the Freedom of Information Act. This commitment demonstrates the value the BLM places on public involvement in resource management planning. The BLM intends for this commitment to promote transparency and consistency in practice. The BLM is exploring how to make protests available in a timely and efficient manner, including by posting all protest submissions to the BLM Web site. In response to public comment, final paragraph (a)(4) includes an additional provision that in making the protests available to the public, the Director shall withhold any protected information that is exempt from disclosure under applicable laws or regulation. Several public comments noted that sometimes it is necessary for a member of the public to include protected information as part of a

protest, and the BLM may not make this information available to the general public. Comments provided as an example that release of commercial or financial information may violate the Trade Secrets Act. This change is consistent with current practice and policy.

Final paragraph (b) of this section includes the existing requirements at existing § 1610.6–1(b) that the BLM Director render a decision on all protests. The final rule adopts the proposal to remove “promptly” from this requirement, as the term is vague and does not account for the many variables that affect timelines for protest resolution, including the magnitude and complexity of protest issues, as well as available budgets and competing workloads. This edit clarifies that the timeline to resolve the protest varies extensively across planning efforts. This is not a change in practice or policy; the BLM will continue to resolve protests as quickly as possible.

Final paragraph (b) further provides that the BLM notify protesting parties of the decision and make both the decision and the reasons for the decision on the protest available to the public. The BLM expects that these typically will be posted on the BLM Web site and the BLM will notify individuals or groups that have requested notification in conjunction with the preparation or amendment of a resource management plan. The final rule adopts the proposal to remove the requirement that the BLM send its decision on a protest to the protesting parties by certified mail, return receipt requested. The BLM believes that the wide availability and ease of use of the Internet and electronic communications make these means of notifying the public well-suited for sharing protest decisions with the public. Electronic communications allow the BLM flexibility to make protest decisions available to a potentially large number of protesting parties or members of the public without an overly burdensome workload. These means are also consistent with BLM policy promoting the use of electronic communications in the land use planning process.<sup>17</sup>

<sup>17</sup> BLM, Instruction Memorandum No. 2013–144, “Transitioning from Printing Hard Copies of National Environmental Policy Act and Planning Documents to Providing Documents in Electronic Formats” (June 21, 2013), [http://www.blm.gov/wo/st/en/info/regulations/Instruction\\_Memos\\_and\\_Bulletins/national\\_instruction/2013/IM\\_2013-144.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html); DOI Office of Environmental Policy and Compliance, Environmental Statement Memorandum No. 13–7, “Publication and Distribution of DOI NEPA Compliance Documents via Electronic Methods” (Jan. 7, 2013), <http://www.doi.gov/pmb/oepec/upload/ESM13-7.pdf>.

Nonetheless, where Internet access is limited or protesting parties or members of the public express concerns about electronic communications, the BLM will provide notice by other means, as necessary.

The second sentence of final paragraph (b) reflects existing § 1610.5–2(b) and explains that the BLM Director's decision is the final decision of the Department of the Interior. This decision may be subject to judicial review. The final rule adopts the proposal to change “shall be” to “is,” to comply with more recent style conventions and improve readability. There is no change in meaning from this style change.

In response to public comment, paragraph (b) of this section is revised to incorporate language from final § 1610.6–1(b), stating that “[a]pproval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest.” This does not represent a change in practice or policy, as this is an existing requirement. In conjunction with this revision, the first sentence of paragraph (b) is revised for consistency and readability; however, there are no changes in the meaning of this provision.

Final paragraph (c) of this section adopts the proposal to add a new provision stating that the BLM Director may dismiss any protest that does not meet the requirements of this section. For example, the BLM may dismiss protests where protestors lack standing or protests that are incomplete or untimely. The final text does not represent a change in requirements or in existing practice. The BLM Director may currently dismiss protests that do not meet the regulatory requirements. The BLM believes that adding this text will more effectively communicate to potential protestors that their protest may be dismissed if it does not meet the requirements for submission. In response to public comment, the final rule adds a new sentence to the end of paragraph (c) of this section stating that the Director shall notify protesting parties of the dismissal and provide the reasons for the dismissal. The Director will provide this notification either through written or electronic means, depending on available contact information. This revision provides transparency to a member of the public should their protest be dismissed. In a situation where the BLM is not provided contact information from a protesting party, we will not be able to provide such notification. The BLM intends that dismissals will also be described in a

protest resolution report, consistent with current practice. These reports are generally posted to the BLM Web site; therefore protesting parties and any other members of the public could still find this information.

#### Section 1610.6–3 Conformity and Implementation

The final rule adopts proposed § 1610.6–3 with only minor revisions. Section 1610.6–3 is based on existing § 1610.5–3. Changes to this section are made only for improved readability or improved understanding of existing practice or policy.

In paragraph (a) of this section, the final rule removes the phrase “as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department.” All future authorizations and actions must conform to the approved resource management plan, thus this language is confusing and unnecessary. No change from current practice is intended by this change. The final rule adds the words “plan components,” stating “All future resource management authorizations and actions . . . must conform to the plan components of the approved resource management plan.” These edits are consistent with the definition of “plan components” in § 1601.0–5 and the requirements of § 1610.1–2 and more precisely describe how the BLM will interpret conformance under this final rule.

In paragraph (b) of this section, the final rule specifies that the “plan” referenced is a “resource management plan” and that the requirements of this section also apply following the approval of a plan amendment. The final rule replaces “Field Manager” with the “BLM.” As previously described, replacing the “Field Manager” with the “BLM” acknowledges responsibilities that might be fulfilled by a BLM employee other than a Field Manager.

Changes to paragraph (c) of this section also specify that the “plan” referenced is a “resource management plan” and that conformance applies to “plan components” for consistency with changes made elsewhere in these regulations. The final rule further specifies that the “deciding official” is responsible for the determination that an action warrants further consideration before a plan revision is scheduled. These changes are intended to provide clarity, but do not represent a change in policy or practice.

There are no substantive changes made to paragraph (d) of this section, only grammatical edits made throughout this part.

#### Section 1610.6–4 Monitoring and Evaluation

The final rule adopts proposed § 1610.6–4 with revisions. This section addresses monitoring and evaluation of resource management plans following their approval. It incorporates much of the language from existing § 1610.4–9 with edits for consistency with other changes to the regulations. Revisions to this section split the existing provision into subparagraphs for improved readability.

Under the final rule, the BLM will monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards (see final § 1610.1–2(b)(3)). The final rule does not include the proposed reference to “monitoring procedures” because the final rule does not adopt proposed § 1610.1–3 or the concepts described in that section, including implementation strategies (for more information please see the discussion on proposed § 1610.1–3 for this preamble to the final rule).

The final rule is also revised to include language from final § 1610.1–2(b)(3) for improved readability and understanding of these regulations. Final paragraphs (a)(1) and (a)(2) of this section incorporate provisions from § 1610.1–2(b)(3) which specify that, through monitoring and evaluation, the BLM will determine whether the resource management plan objectives are being met and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan. For more information regarding this language, please see the discussion at § 1610.1–2(b)(3) for this preamble. Revisions to this section improve readability and understanding of the relationship between this section and final § 1610.1–2(b)(3).

Final paragraphs (a)(1) and (a)(2) of this section replace existing language that the BLM “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 evaluation of specific mitigation measures generally occurs during the implementation phase of a project or activity, not during an evaluation of a resource management plan. The effect of mitigation on the achievement of plan objectives is evaluated under paragraph (a)(1) of this section. “Significant

changes in the plans of other Federal agencies, State or local governments, or Indian tribes,” and “new data of significance” are encompassed by the phrase “relevant new information” and are evaluated under paragraph (a)(2) of this section. The BLM intends no change in practice or policy by the removal of this existing language.

The last sentence of proposed § 1610.6–4 is redesignated as final § 1610.6–4(b) and adopts the proposal to establish a new requirement that the BLM document the evaluation of the resource management plan in a report made available for public review. The BLM believes that sharing this information with the public will provide transparency during the implementation of a resource management plan. The final rule is revised to specify that this report shall be made available for public review on the BLM’s Web site. This change is intended to provide clarity and transparency to the public on where to find the evaluation report.

#### Section 1610.6–5 Maintenance

The final rule adopts proposed § 1610.6–5 with only minor revisions. This section is based on existing § 1610.5–4. It explains the reasons for updating RMPs through plan maintenance and identifies the parameters for plan maintenance. Under the existing regulations and the final regulations, maintenance includes minor changes and updates to an RMP that do not change any fundamental aspects of the plan. Maintenance does not change a plan component except to correct typographical or mapping errors or to reflect minor changes in mapping or data.

The final rule adopts the proposal to delete “and supporting components” from the first sentence of this section in the existing regulations to avoid confusion. The existing regulations are unclear on what is meant by “supporting components” in this provision. Supporting information, such as a visual resources inventory or a model predicting wildfire propensity, can be updated at any point in time; such a change is not considered plan maintenance as it does not constitute a change to the resource management plan itself. Further, the BLM does not consider supporting information such as the planning assessment to be a component of the approved resource management plan, because it does not provide planning-level management direction. Rather, the planning assessment provides baseline information to inform the preparation of a resource management plan. That type

of support information can be updated at any point in time, and such a change is not considered plan maintenance because it does not constitute a change to the resource management plan itself.

The final rule also adopts the proposal to replace “shall be maintained” in the first sentence of the existing regulations with “may be maintained.” The BLM intends to maintain its resource management plans to ensure that they are current and reflect existing resource conditions and land and resource uses to the fullest extent permitted by available funds and staffing, but those constraints could affect BLM’s ability to fully achieve this goal.

The final rule also adopts the proposal to expand existing language stating that plans are maintained as necessary to “reflect minor changes in data” with language stating that the plans will be maintained as necessary “to correct typographical or mapping errors or to reflect minor changes in mapping or data.” The new language provides a more precise and accurate description of changes that are made using plan maintenance. This change does not represent a substantive change from existing regulations as “mapping errors” or “changes in mapping” are currently considered as a type of minor change in data, and typographical errors do not represent a substantive change to a resource management plan. These changes are intended to provide clarification and improved understanding of changes that may be made through plan maintenance.

The final rule adopts the proposal to remove existing language that limited maintenance “to further refining or documenting a previously approved decision incorporated in the plan” as well as language that indicated that “maintenance must not result in the expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan.” Instead, the final rule states that maintenance must not change a plan component of the approved resource management plan except to correct typographical or mapping errors or to reflect minor changes in data. This change makes the maintenance provisions consistent with other changes to the regulations. The plan components encompass the “scope of resource uses or restrictions” and the “terms, conditions, and decisions” of the approved resource management plan (see § 1610.1–2). Therefore there is no substantive change from current policy.

The final rule retains existing language which indicates that maintenance is not considered a plan

amendment and therefore does not require the same public involvement, interagency coordination, or NEPA analysis as plan amendments. This language is still relevant and applicable because plan components (*i.e.*, the management-level direction of the approved plan) may not be changed through plan maintenance other than to correct typographical or mapping errors or reflect minor changes in mapping or data.

The final rule does not adopt the proposal to replace the words “shall not” with “does not” where the existing regulations state that maintenance “shall not” require the formal public involvement and interagency coordination process described in §§ 1610.2 and 1610.3.

Finally, the final rule removes the existing requirement that maintenance be documented in plans and supporting records. Instead, the final rule adopts a new requirement for the BLM to notify the public when changes are made to an approved resource management plan through plan maintenance and, through notice to the public at least 30 days prior to their implementation, document the proposed changes. We anticipate that changes will be posted on the BLM Web site and made available at BLM offices within the planning area, with direct notice sent to those individuals and groups that have requested such notice. The forthcoming revision of the Land Use Planning Handbook will provide more detailed guidance on how the BLM will make different types of plan maintenance available to the public.

#### Section 1610.6–6 Amendment

The final rule adopts proposed § 1610.6–6 with minor revisions. This section is based on § 1610.5–5 in the existing regulations and explains how the BLM amends its resource management plans. Changes update existing language to be consistent with other changes in this final rule.

Paragraph (a) of this section revises the undesignated introductory text in existing § 1610.5–5 to explain that a “plan component” may be changed through amendment, consistent with the proposed rule. This represents a change from the existing regulations, which provide that a “resource management plan” may be changed by amendment. The change is necessary for consistency with changes to § 1610.1, which describes plan components. As explained in the preamble for § 1610.1–2, plan components represent planning-level management direction and may only be changed through amendment or revision.

Paragraph (a) of this section adopts the proposal to specify that an amendment “may” be initiated when the BLM determines that monitoring and evaluation findings, new high quality information, including best available scientific information, new or revised policy, a proposed action, “or other relevant changes in circumstances” warrant a change to one or more plan components of the approved plan. The final rule replaces “shall be initiated” with “may be initiated” reflecting the fact that the BLM must ensure that the public is aware that monitoring and evaluation findings, new high quality information, including best available scientific information, new or revised policy, a proposed action, “or other relevant changes in circumstances” warrant a change to one or more plan components of the approved plan but may be limited by available budgets and competing workload priorities when making the determination to initiate a plan amendment. The BLM intends no change in practice or policy from this final change as the BLM currently is limited by available budgets and competing workload priorities when making the determination to initiate a plan amendment.

Paragraph (a) of this section adopts the proposal to clarify that an amendment must be made “in conjunction” with an EA or EIS. The final rule replaces the word “through” with “in conjunction” because the EA or EIS informs the amendment, but is not the mechanism through which the amendment is made. The final rule clarifies that the procedures for plan amendments include public involvement (see final § 1610.2), interagency coordination, tribal consultation, and consistency review (see final § 1610.3), and protest procedures (see final § 1610.6–2). The final rule is revised from the proposed rule to include “tribal consultation” for consistency with modifications made to final § 1610.3 and to clarify that the initiation of tribal consultation is required during a plan amendment. This does not represent a change in practice or policy, as the BLM currently must initiate tribal consultation during a plan amendment. The final rule is also revised to replace “consistency” with “consistency review.” This change is made to improve readability only and for consistency with final § 1610.3.

The final rule adopts the proposal to replace the existing requirement to evaluate the effect of the amendment on “the plan” with a requirement to evaluate the effect of the amendment on “other plan components.” This change

is made for consistency with final § 1610.1–2 which describes plan components, and reflects the fact a plan amendment could potentially have an effect on other plan components that are not being considered for amendment and it is important that the BLM understand these potential effects before rendering a decision to ensure that plan amendments do not introduce inconsistencies between plan components in a resource management plan.

The final sentence of paragraph (a) of this section retains the existing provision that if the amendment under consideration is in response to a specific proposal, the requisite analysis for the proposal and the amendment may occur simultaneously. This is consistent with NEPA regulations encouraging Federal agencies to integrate NEPA with other planning processes (see 40 CFR 1500.2(c) and 1500.4(k)).

The final rule adopts proposed paragraph (b) with only minor revisions. Paragraph (b) describes the requirements for a plan amendment when an EA is prepared and does not disclose significant impacts. The final rule replaces existing references to the “Field Manager” with the “responsible official” or the “BLM” and replaces a reference to the “State Director” with the “deciding official.” These changes are consistent with new terms used throughout this new rule. This section also provides that, upon approval of a plan amendment, the BLM will issue a public notice of the action taken, and that an amendment may be implemented 30 days after such notice. There is no substantive change to this paragraph or the BLM’s implementation of it.

The final rule adopts the proposal to remove the existing requirement in existing § 1610.5–5(b) that 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 a resource management plan. Instead, in the relevant sections, the final rule identifies where EIS-level amendments must follow the same procedures as those required for preparing and approving a resource management plan.

The final rule also adopts the proposal to remove the existing requirement in existing § 1610.5–5(b) that consideration for an EIS-level amendment is limited to “that portion of the plan being amended.” This existing language contradicts the requirement in paragraph (a) that the “effect of the amendment on other plan components must be evaluated.” For

example, if an amendment will preclude the BLM from achieving other goals and objectives of the approved RMP that are not explicitly addressed in the amendment, this is important information of which BLM and the public should be aware.

The final rule adopts proposed paragraph (c) of this section with only minor revisions. Paragraph (c) of this section is adapted from the existing provision of § 1610.5–5(b) that “if several plans are being amended simultaneously, a single [EIS] may be prepared to cover all amendments.” For improved readability, this provision is revised to state that “if the BLM amends several resource management plans simultaneously, a single programmatic [EIS] or [EA] may be prepared to address all amendments.”

#### Section 1610.6–7 Revision

The final rule adopts proposed § 1610.6–7 with only minor revisions. Section 1610.6–7 is based on existing § 1610.5–6 in the existing regulations. Changes to this section are made to improve readability and explain more clearly when the BLM will prepare a plan revision.

In the first sentence, the clause “a resource management plan shall be revised” is replaced with “the BLM may revise a resource management plan.” The final rule uses the active voice to indicate that the BLM will be revising the plan. The final rule adopts the proposal to change the mandatory term “shall” to the discretionary term “may.” In both the existing regulations and this final rule, revisions occur “as necessary.” The change from “shall” to “may” reflects the fact that the BLM must consider many factors including available budgets, competing workload priorities, and development of new policy when making the determination to revise a resource management plan. The BLM currently must take these factors into account when determining when to revise a resource management plan, so there will be no change in practice or policy.

The existing rule states that “monitoring and evaluation findings . . . new data, new or revised policy and changes in circumstances” that affect an entire plan or major portions of a plan require a plan revision. The final rule clarifies that “other relevant changes in circumstances” may justify a plan revision. This does not represent a change in practice. For example, the need to provide habitat protection for a wide-ranging species that is considered for listing as threatened or endangered in an area could result in a plan revision if the BLM believed that a plan revision

was necessary to address adequately this concern and consider impacts at a regional-scale. This section maintains the existing requirement that revisions must comply with all of the requirements of the planning regulations for preparing and approving a resource management plan, with minor edits to improve readability.

#### Section 1610.6–8 Situations Where Action Can Be Taken Based on Another Agency's Planning Documents

The final rule adopts proposed § 1610.6–8 with revisions. This section is based on existing § 1610.5–7. The final rule replaces the “Bureau of Land Management” with the “BLM” and replaces a reference to the “Field Manager” with “the BLM,” as the action described applies more to the agency than any particular individual. In response to public comment, the final rule revises the existing introductory text in this section stating that the BLM “may use the plans or land use analysis of other agencies” to instead read that the BLM may “rely on” those plans or analysis. This revised text more accurately describes BLM practice and is consistent with the language of paragraph (a) of this section in the proposed and final rule. The final rule replaces “there are situations of mixed ownership” in the existing regulations with “including mixed ownership” in the first sentence for improved readability. No changes in practice or policy are intended by these changes.

The final rule revises the existing and proposed language in this section by replacing the reference to other agencies’ plans or land use analyses to other agencies’ “planning documents.” The new term better encompasses the types of documents referred to in the following paragraphs of this section, including the added provision for resource assessments (see paragraph (c) of this section).

The final rule revises paragraph (a) of this section, which lists those other agency plans that may be relied on as the basis for a BLM action to include a reference to tribal plans. The final rule replaces “public participation” with “public involvement,” consistent with FLPMA and other changes throughout this rule.

Final §§ 1610.6–8(a) and (b) are revised from the proposed rule to clarify that for the BLM to rely on or adopt another agency’s plan, that plan must be consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations. For example, the other agency’s plan must comply with NEPA.

These changes are consistent with current practice and policy. For consistency with other revisions made to the proposed rule (for example, see § 1610.3–3(a)), the final rule clarifies that the “purposes, policies and programs” to which paragraphs (a) and (b) refer are those that implement Federal laws and regulations.

Final § 1610.6–8 (b) removes the existing phrase “to comply with law and policy applicable to public lands” because that language is no longer necessary with the added text.

Public comments suggested that the BLM should have the discretion to rely on other agencies’ resource assessments. In response to public comment, the final rule includes a new paragraph (c) in this section which provides that another agency’s resource assessment may be relied on if it is comprehensive, meaning that it is consistent with the nature, scope, and scale of the issues of concern relevant to the planning area, and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment, including the opportunity for public involvement. If the agency’s resource assessment process did not provide public involvement, the BLM could choose to provide such opportunities in order to rely on the other agencies resource assessment. For example, the BLM could rely on an assessment developed by the United States Forest Service during the development of a land and resource management plan, which provides opportunities for public involvement.

Paragraph 1610.8–6(c) of the proposed rule is redesignated as paragraph (d) in the final rule. The final rule removes the final sentence of § 1610.5–7 in the existing regulations, which provides that “[t]he 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.” This language is unnecessary in the planning regulations. The final rule is revised to replace “public participation” with “public involvement” for consistency with changes made throughout this part.

Finally, the reference to § 1610.5–2 is updated to reflect other changes to this rule. No change in meaning is intended by updating this reference.

#### Section 1610.7 Management Decision Review by Congress

The final rule adopts proposed § 1610.7 with only minor revisions.

This section is based on existing § 1610.6 with minor revisions. The final rule replaces the “Federal Land Policy and Management Act” with “FLPMA,” and the “Bureau of Land Management” with the “BLM.” In the second sentence of this section, the final rule replaces “[t]his report shall not be required” to “[t]his report is not required” for improved readability and ease of understanding. The final rule clarifies that this report is not required prior to approval of a RMP which, if fully or partially implemented, will result in elimination “of use(s).” No change in meaning is intended with these changes.

#### Section 1610.8 Designation of Areas

The final rule adopts proposed § 1610.8 with only minor revisions.

##### Section 1610.8–1 Designation of Areas Unsuitable for Surface Mining

The final rule adopts proposed § 1610.8–1 without revision. This section is based on existing § 1610.7–1. The final rule replaces references to the “Field Manager” and the “Bureau of Land Management” with the “BLM” in this section. The Field Manager commitments described in this section are those of the BLM, not any one individual.

##### Section 1610.8–2 Designation and Protection of Areas of Critical Environmental Concern

The final rule adopts proposed § 1610.8–2 with revisions. This section is based on existing § 1610.7–2. In response to public comment, the heading for this section is revised to include designation “and protection” of ACECs. This new language is consistent with the statutory requirement to “give priority to the designation and protection of areas of critical environmental concern” (see 43 U.S.C. 1712(c)(3)) and provides improved clarity and understanding that the BLM gives priority to the designation and protection of ACECs as required by FLPMA through the procedures outlined in this section.

The final rule adopts proposed paragraphs (a), (a)(1), and (a)(2). Paragraph (a) of this section contains the undesignated introductory language in existing § 1610.7–2. The final rule replaces “areas of critical environmental concern” with the abbreviation “ACEC” for improved readability. The existing language stating that potential ACECs are identified and considered throughout the resource management planning process is removed. Instead the final rule states that “Areas having potential for ACEC designation and protection management will be

identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan.” This change reflects the fact that FLPMA directs the BLM to identify potential ACECs through the inventory of public lands (see section 201(a) of FLPMA) and to prioritize their consideration for designation through land use planning (see section 202(c)(3) of FLPMA). When the BLM prepares a resource management plan or an EIS-level amendment, potential ACECs will be identified during the planning assessment stage (see § 1610.4(b)(1)). Potential ACECs may also be identified when the BLM conducts inventories at times not associated with the preparation or amendment of a resource management plan. The identification of potential ACECs will be given priority consistent with FLPMA and initially identified during the planning assessment, a new step in the planning process.

Final §§ 1610.8–2(a)(1) and (a)(2) include language from existing 1610.7–2(a) that describes the criteria for identifying a potential ACEC.

The final rule maintains the existing descriptions of the “relevance” and “importance” criteria in paragraphs (a)(1) and (a)(2) of this section, except that “shall” is replaced with “must” for improved readability and the phrase “more than local significance” is removed from the description of importance. This phrase is vague and unnecessary in the regulations. There are many existing examples where an area of local significance has been determined to meet the “importance” criteria. This change is consistent with FLPMA (43 U.S.C. 1702(a)) and improves the understanding that the importance criteria is based on the degree of significance (*i.e.*, substantial significance and values); a local value, resource, system, process, or natural hazard could have “substantial” significance.

Paragraph (b) of this section addresses the designation of ACECs and provides that the process for considering whether potential ACECs should be designated as ACECs is during the preparation or amendment of a resource management plan. This replaces language in existing § 1610.7–2 stating that ACECs are “considered throughout the resource management planning process.” In response to public comment, the final rule is revised to include the phrase “consistent with the priority established by FLPMA.” This new language references the statutory requirement to “give priority to the designation and protection of areas of critical

environmental concern” (see 43 U.S.C. 1712(c)(3)). The language references this statutory requirement for improved clarity and understanding that the BLM gives priority to the designation and protection of ACECs as required by FLPMA through the procedures outlined in this section.

Paragraph (b) of this section also contains the provision that “[t]he identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands,” which is moved from the definition of “Areas of Critical Environmental Concern or ACEC” in existing § 1601.0–5(a) to this section. This provision belongs with the ACEC provisions, and this placement avoids including substantive regulatory provisions in the definitions. Changes between the proposed and final rule replace the phrase “in of itself” with “of itself” for grammatical clarity and to reflect the phrasing used in FLPMA (43 U.S.C. 1711(a)).

The final rule includes new language at the end of paragraph (b) providing that “ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.” That language is consistent with FLPMA (see section 103(a)) and will provide useful information in regard to designating ACECs. The BLM intends no change in practice or policy from adding this language; rather, the planning regulations reflect existing statutory direction.

The proposed rule would have referred to “potential” ACECs at the end of paragraph (b), however public comments noted that FLPMA defines ACECs “as areas within the public lands where special management is required . . .” but contains no language regarding “potential” ACECs or their management. In response to public comments, the final rule is revised to remove the word “potential” from this sentence because FLPMA does not require “special management attention” for potential ACECs; rather, a potential ACEC which requires special management attention may be formally designated as an ACEC.

The final rule splits existing § 1610.7–2(b) into two paragraphs (final §§ 1610.8–2(b)(1) and (2)) to distinguish more clearly between the BLM’s notice of potential ACECs and the formal designation of ACECs in the approved plan.

Paragraph 1610.8–2(b)(1) maintains the existing requirement, with clarifying edits, that upon release of a draft resource management plan or plan amendment involving a potential ACEC, the BLM will notify the public. The proposed rule would have eliminated the requirement from the existing regulations (see existing § 1610.7–2(b)) that the BLM publish notice and provide a 60-day public comment period on potential ACEC designations. Several public comments expressed that notification and public comment on potential ACECs is essential and these existing provisions should be retained in the final rule. In response to comments, the final rule retains the existing requirement that the BLM publish notice in the **Federal Register** and replaces the existing requirement for a 60-day public comment period with a requirement to “request written comments.”

The final rule further specifies that notice and comment on potential ACECs may be integrated with notice and comment on the draft RMP or plan amendment. The planning process provides an opportunity to consider impacts to potential ACECs through the development of a range of alternatives and to assess effectively whether special management attention is needed. The planning process also provides substantial opportunity for public involvement. We believe that consistency between ACEC requirements and the other steps of the planning process will be less confusing and will more effectively integrate ACEC consideration into the planning process.

The final rule does not specify any particular length for the public comment period in this section, because it is not necessary. The BLM is required to provide a minimum of 30 days when requesting public comments (see § 1610.2–2(a)). The BLM intends that this comment period will generally be integrated with the public comment period on the draft resources management plan or plan amendment. The length of these public comment periods are provided appropriate to the level of BLM action under final § 1610.2–2.

The BLM will notify the public of each potential ACEC by posting a notice on the BLM Web site and at the BLM office where the plan is being prepared (see § 1610.2–1(c)), and through written or email correspondence to those individuals or groups who have requested to receive updates throughout the planning process (see § 1610.2–1(d)). For the preparation of a RMP, the BLM will provide a 100-day comment period;

for EIS-level amendments, the BLM will provide a 60-day comment period; and for EA-level amendments when an ACEC is involved, the BLM will provide a 30-day comment period (see § 1610.2–2).

Paragraph 1610.8–2(b)(1) also maintains the existing requirement that any draft RMP or plan amendment involving potential ACECs include a list of each potential ACEC and any special management attention which will follow a formal designation. For clarity and readability, the final rule replaces “Upon release of a” with “Any.” This does not change existing practice or policy. The final rule also replaces the term “proposed ACEC” in the existing rule with “potential ACEC” in order to avoid confusion with the proposed resource management plan. The BLM provides notice of potential ACECs upon release of a draft resource management plan or plan amendment, rather than upon release of a proposed resource management plan or plan amendment. The BLM intends no change in practice or policy from this word change. The final rule also replaces “resource use limitations” with “special management attention.” That language is based on the definition of an ACEC provided in FLPMA (43 U.S.C. 1702 (a)) and reflects the fact that special management attention is not restricted to resource use limitations. For example, special management attention might include objectives related to plant species composition to maintain habitat for a wildlife resource.

Paragraph (b)(2) of this section maintains the existing provision with edits clarifying that the approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The final rule removes the phrase “plan revision” as this is included in the definition of a resource management plan (see § 1601.0–5). This paragraph also replaces the existing requirement for the approved plan to include “general management practices and uses, including mitigation measures” with a new requirement to include “any special management attention” identified to protect the designated ACEC. We believe that the new requirement for plan objectives to be measurable (see § 1610.1–2(a)(2)) provides a more effective method to apply special management attention because it allows the BLM to track progress toward the achievement of the objective while incorporating new science and information when implementing specific management measures. This change also reflects the definition of an ACEC provided in

FLPMA (section 103(a)). Under the final rule, the BLM will provide “special management attention,” as required by FLPMA, through the development of plan components. For example, special management attention could include goals, measurable objectives, mitigation standards (as part of a measurable objective), or resource use determinations, among others. In response to public comment, the final rule includes the example “such as resource use determinations” (see final § 1610.1–2(b)(2)) for improved clarity.

#### Section 1610.9 Transition Period

The final rule adopts proposed § 1610.9 with revisions. This section contains the provisions of existing § 1610.8, amended as follows. The existing regulations address the transition from management framework plans, the land use plans the BLM prepared beginning in 1969 under authorities predating FLPMA, to resource management plans, which the BLM has prepared and approved under FLPMA and the planning regulations first adopted in 1979. The final rule revises existing § 1610.8(a) and (b) to refer to “public involvement” instead of “public participation” and to the “responsible official” instead of the “Field Manager,” consistent with changes made throughout this rule.

In the proposed rule, we would have revised paragraph (a)(1) by specifying that management framework plans may be the basis for considering a proposed action if the management framework plan is in compliance with the principle of multiple use and sustained yield “or other applicable law.” In the final rule, we employ the phrase “unless otherwise specified by law” for consistency with changes made to other sections (for example, see § 1610.0–1). We believe this language better fulfills the purpose of recognizing that in some situations the BLM must be in compliance with other legal authorities. For instance, BLM management of national monuments established under the Antiquities Act of 1906 (16 U.S.C. 431–433) must comply with the terms in the Proclamation establishing the specific national monument.

The final rule removes existing § 1610.8(a)(2), because it is no longer necessary. The BLM will rely instead on § 1610.9(a)(2) when considering proposed actions under a management framework plan.

Final § 1610.9(b)(1) and (b)(2) are adopted from existing § 1610.8(b)(1) and (b)(2) with only minor revisions for improved readability or to fix grammatical or reference mistakes.

New paragraphs 1610.9(c) and (d) address the transition from resource management plans approved under the existing regulations, which first became effective on September 6, 1979 (44 FR 46386) and which were updated with revisions that became effective on July 5, 1983 (48 FR 20364) and April 22, 2005 (55 FR 14561), to resource management plans that will be prepared, revised, or amended under the final rule.

In considering the transition provisions, it is important to remember that this final rule changes the procedures the BLM uses to prepare, revise, or amend RMPs and provides more detailed guidance in areas where the current regulations are vague, unclear, or silent. This final rule does not change the nature of a RMP itself (*i.e.*, a document developed to guide future management activities on the public lands). Additionally, although the final rule includes new terms for the contents of a plan (*e.g.*, plan components), the contents of a plan promulgated under this final rule will not differ substantially from the contents of existing plans. For instance, plan objectives developed under this final rule will likely be more specific and measurable than many plan objectives developed under the existing regulations. Nonetheless, plan objectives developed under the new rule and the previous regulations will guide the BLM’s management of the public lands across varied programs.

Accordingly, § 1610.9(c)(1) discusses how the BLM will evaluate whether a proposed action, such as an oil and gas lease sale, is in conformance with a resource management plan once these regulations become effective. The BLM will use an existing resource management plan (*i.e.*, one approved by the BLM before these regulations become effective) until it is superseded by a resource management plan or amended by a plan amendment prepared under these regulations when they are final. In such circumstances where the plan has not been developed or amended under these regulations, the proposed action must either be specifically provided for in the plan or clearly consistent with the terms, conditions, and decisions of the approved plan. RMPs prepared under the existing regulations do not identify plan components, thus an evaluation for whether a proposed action is in conformance with the plan must use the terminology that was in place when the plan was approved.

Paragraph 1610.9(c)(2) addresses how to evaluate whether an action is in conformance with a resource

management plan issued under existing regulations after the resource management plan has been amended under this final rule. In such circumstances, the amended portions of the plan will use new terminology and identify plan components, whereas the remainder of the plan not amended will not use new terminology. A proposed action must therefore be consistent with the plan components (proposed new terminology) of the provisions of the resource management plan amended under the final rule and the terms, conditions, and decisions of the provisions of the resource management plan not amended under the final rule (existing terminology). In response to public comment, the final rule is revised to specify that the proposed action must be “clearly” consistent with the plan components. This revision brings this provision into line with the definition of “conformity or conformance” in § 1601.0–5.

The BLM received comments stating that proposed § 1610.9(c)(2) was confusing. In response to these comments, the final rule is revised to clarify that future proposed action must be clearly consistent with the provisions of the resource management plan amended under the final rule, which will have plan components, as well as the provisions of the resource management plan not amended under the final rule, which will still have terms, conditions, and decisions, consistent with the existing regulations.

Paragraph 1610.9(d) addresses resource management plans that are currently being prepared, revised, or amended when this final rule is published. If the preparation, revision, or amendment of a resource management plan was or is formally initiated by publication of a NOI in the **Federal Register** before these regulations become effective (on January 11, 2017), the BLM may complete the RMP or plan amendment under the planning regulations promulgated in 1979 (44 FR 46386) and amended in 1983 (48 FR 20364) and 2005 (55 FR 14561). This approach allows BLM offices that have initiated planning to continue with their efforts without the need to re-start or re-do steps in the planning process. This will avoid duplicative efforts, and it respects the time that the BLM, other agencies, stakeholders, and members of the public have invested in planning that will be in-progress when these regulations become effective. It also provides the BLM flexibility to incorporate provisions of the final rule into a planning process that is underway when the new regulations are final.

### III. Response to Public Comments

The BLM received 3,354 comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (<http://www.regulations.gov>). The BLM has reviewed all public comments, and has made changes, as appropriate, to the final rule based on those comments. Those changes are noted in the section-by-section discussion.

The following is a summary of significant issues raised in comments the BLM received on the proposed rule and responses to these comments. The comments highlighted in the following paragraphs fell into several categories: Comments related to sections of the proposed rule; comments related to the goals of the Planning 2.0 initiative; and comments on the rulemaking process.

A comprehensive account of public comments and detailed responses to these comments is available to the public on the BLM Web site ([www.blm.gov/plan2](http://www.blm.gov/plan2)) and is included as a supporting document in the docket for this rulemaking on [regulations.gov](http://www.regulations.gov).

#### *Objective of Resource Management Planning*

Several comments raised concern that the proposed removal of the existing phrase “maximize resource values for the public” in § 1601.0–2 represents a change in the BLM’s management of the public lands and is an effort to bias the planning process against resource extraction. Some comments similarly raised concern that proposed new language in § 1601.0–2 represents a shift in public policy by departing from FLPMA and redefining the concept of multiple use, or is weaker than the statutory language that mandates multiple-use.

The final rule does not retain existing language to “maximize resource values” and adopts proposed new language regarding the manner by which the public lands are to be managed (see § 1601.0–2). These changes do not reflect a departure from FLPMA and multiple-use management, nor do they represent a shift in public policy or an effort to bias the planning process.

The final rule adopts the proposal to remove the phrase “maximize resource values” to remove vague language and for consistency with FLPMA. FLPMA defines multiple use, in part, as “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” as well as “harmonious and coordinated management of the various resources without permanent impairment of the

productivity of the land 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” (43 U.S.C. 1702(c)). The existing rule does not define the meaning of the phrase “maximize resource values” or describe how it is to be achieved in accordance with multiple use and sustained yield, as defined in FLPMA. FLPMA’s language provides the best expression of how the BLM should consider resource values in the planning process in order to manage on the basis of multiple use and sustained yield, unless otherwise specified by law. In response to public comment, the final rule is revised to include language directly from FLPMA (43 U.S.C. 1701(a)(7)) to “manage on the basis of multiple use and sustained yield” to provide clarity on the BLM’s mandate.

The final rule also adopts the proposed new language describing the manner by which the public lands are to be managed (see § 1601.0–2). This language is from FLPMA (43 U.S.C. 1701(a)(8) and (a)(12)). Resource management plans describe how the public lands will be managed within a geographic area; therefore it is appropriate that an objective of resource management planning is to develop management direction that is consistent with statutory direction describing the manner by which public lands are to be managed. Several comments noted that the language added to this section in the proposed rule (43 U.S.C. 1701(a)(12)) omitted the reference to the Mining and Minerals Policy Act. Other comments requested this section identify additional resources or resource uses and raised concern that the proposed language would prioritize some resource values over others. The final rule does not include a reference to the Mining and Minerals Policy Act or identify additional resources or resource uses, as suggested by the comments. The objective section provides the objective for resource management planning on BLM-managed lands. The final rule includes language from FLPMA in § 1601.0–2 to provide context. In revising § 1601.0–2, we endeavored to find a balance between including those statutory provisions that provide useful context, while also maintaining concise regulations that are easy to read and understand. It is not necessary to list the Mining and Minerals Policy Act or other applicable laws in the planning regulations as the BLM must comply with these laws even if they are not

referenced in these regulations. Neither is it necessary to list all resources under BLM management in the objective section. The list of resources provided at § 1601.0–2 is not intended to be exclusive and does not preclude consideration of other resources, nor does it prioritize any single resource over other resources, including those not identified in § 1601.0–2. To the contrary, FLPMA and final § 1601.0–2 require that management be on the basis of multiple use and sustained yield; the concept of multiple use encompasses all resource values and uses applicable to the public lands. In response to public comments, the final rule is revised to include language that public lands are to be managed in a manner that recognizes that Nation’s need for “renewable and non-renewable resources” to reflect the fact that all relevant resources are considered during resource management planning.

#### *Responsibilities and Determination of Planning Areas*

The existing planning regulations establish the BLM field office as the default boundary for resource management plans and delegate the responsibility for preparing resource management plans to BLM Field Managers and approval of plans to BLM State Directors. Under the BLM’s interpretation and implementation of the existing regulations, these responsibilities can be carried out by an official at a higher level in the BLM and the BLM may select a different boundary.

The proposed planning rule would have removed the default planning area boundary and replaced references to State Directors with “deciding official” and Field Manager with “responsible official.” Many public comments supported these changes, but some opposed the changes for various reasons, including the concern that the public would not know who the default deciding official is if it is not addressed in the regulations. In response to these comments, the final rule adopts the proposed changes to “responsible official” and “deciding official,” but provides that when resource management plans do not cross state lines, the default deciding official is the BLM State Director. If the resource management plan or plan amendment crosses State boundaries, the BLM Director will determine the deciding official (§ 1601.0–4(a)). For reasons explained in the section-by-section analysis of § 1601.0–4, this is not a change from existing BLM practice or policy, and in fact clarifies the BLM’s existing process, and provides the BLM

flexibility to determine the appropriate deciding officials for planning across State boundaries or for resource management plans or plan amendments of national significance, while maintaining the State Director’s role in the process.

The proposed planning rule also would have removed the default planning area boundary and provided that the BLM Director would determine the planning area for all resource management plans. The BLM received public comments in opposition to and in support of this change. Comments expressed concerns that the BLM Director was too far removed from local concerns and management issues, and that “landscape-scale” planning areas would not respond to local concerns. Other comments supported this change, stating that the BLM should further emphasize that planning area boundaries should be more responsive to ecological and social conditions, rather than traditional field office and district boundaries.

In response to comments, the final rule is revised to provide that where a resource management plan or plan amendment is wholly within a single State’s boundaries, the deciding official, by default the BLM State Director, determines the planning area. Where the resource management plan or plan amendment does cross State boundaries, the BLM believes that it is appropriate for the BLM Director to determine the planning area boundary and this requirement is adopted in the final rule. In some situations the BLM’s State, district, or field office boundaries may be the most appropriate planning area boundary. The BLM intends that this determination will be made in consultation with the relevant BLM State Directors, District Managers, and Field Managers.

The final rule does not prescribe “landscape-scale” planning area as suggested by public comments. The final rule does not prescribe any specific planning area boundary or geographic scale for such a boundary. Rather, the final rule provides flexibility to determine the appropriate planning area boundary based on relevant landscapes and management concerns. This flexibility does not represent a substantive change from the existing regulations, as the BLM currently may determine any planning area boundary. Under the current planning rule, planning areas have been both smaller and larger than field offices, including for example, the Greater Sage-Grouse Resource Management Plan Amendments (2015), West Eugene Wetlands Resource Management Plan

(2015), and Resource Management Plans for Western Oregon (2016). Although not a substantive change in the regulations, the BLM believes that the final rule provides increased transparency to the public that the BLM intends to develop future planning area boundaries based on the relevant management concerns rather than historical administrative boundaries.

Several public comments suggested that the proposed language on the determination of a planning area did not provide adequate opportunity for public involvement or coordination with governmental entities. In response to these comments, the final rule is revised to include considerations for determining a preliminary planning area and an opportunity for public review of the preliminary planning area. A new provision in final § 1610.4(a) requires the identification of a preliminary planning area during the planning assessment. The preliminary planning area will be made available for public review prior to the publication of the NOI in the **Federal Register**. The final rule also retains the existing requirement that the BLM seek the input of Governor(s) on the definition of planning areas (see final § 1610.3–2(c)(1)).

Public comments also suggested that the proposed language on the determination of a planning area did not adequately describe how the BLM would make planning area determinations. In response to public comments, the final rule is revised to describe considerations for determining the preliminary planning area. Under the final rule, the BLM will consider scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values and management concerns identified through monitoring and evaluation, relevant landscapes based on these management concerns, the officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, and other relevant information, as appropriate. These provisions support the goal of applying landscape-scale management approaches by ensuring that the BLM considers relevant landscapes when developing a preliminary planning area. For more information on the preliminary planning area, please see the discussion for § 1610.4(a) in this preamble.

#### *High Quality Information*

The final rule adopts proposed requirements for the BLM to “use high quality information to inform the preparation, amendment, and

maintenance of resource management plans” (§ 1610.1–1(c)) and requires the responsible official to “evaluate the data and information gathered . . . to ensure the use of high quality information in the planning assessment” (§ 1610.4(c)). The rule also defines the term “high quality information” (§ 1601.0–5).

While several comments supported the proposed definition of high quality information, many comments asserted that the proposed definition is vague or suggested specific edits to the definition. Some comments objected to specific elements of the definition, such as the phrase “useful to its intended users.” Other comments suggested that this new standard may allow biased, subjective, unsubstantiated, or questionable scientific data or information to inform planning. The final rule is not revised in response to these comments. The final rule adopts the definition of “high quality information” without revisions in § 1601.0–5 of the final rule. The definition for high quality information is not vague and is consistent with the Information Quality Act (or Data Quality Act) and the related “OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication,” (OMB Guidelines) (67 FR 8452). The definition specifies high quality information is “accurate, reliable, and unbiased” and includes the “best available scientific information” and therefore does not allow biased, subjective, unsubstantiated, or questionable scientific data or information to inform planning. The final rule includes “useful to its intended users” in the definition of high quality information for consistency with the OMB Guidelines. In the guidelines, OMB defines “quality” as the “encompassing term, of which ‘utility,’ ‘objectivity,’ and ‘integrity’ are the constituents.” The guidelines further define “utility” as referring to the “usefulness of the information to its intended users, including the public.” This standard allows the BLM to focus on relevant information during resource management planning.

Several comments expressed concern that the high quality information standard is a relaxing of current data evaluation standards. The final rule is not revised in response to these comments. Although this standard is new to the planning rule, the requirement to use “high quality information” is consistent with the BLM’s current standards for NEPA analyses as set forth by Federal law and regulations.

The BLM will continue to comply with data standards set forth by Federal law and regulations and other relevant policy, such as the CEQ’s NEPA regulations regarding “high quality” information and “[a]ccurate scientific analysis” (40 CFR 1500.1(b)). Where more specific Federal standards apply to certain types of information, the BLM will conform with those Federal standards as well. For more information on the use of high quality information and consistency with other Federal information standards, see the discussion for § 1610.1–1(c) in this preamble.

Several comments asserted that there is no reason for the BLM to create a new standard for data quality because the BLM already must adhere to existing data standards and the addition of another standard is confusing. The final rule is not revised in response to these comments. The BLM believes that a requirement to use “high quality information” in the planning regulations, as well as a definition for this term, provides clarity on the relationship of existing standards for information quality to resource management planning. Further, this standard affirms the BLM’s commitment to science-based decision-making.

Several comments expressed concern about the BLM making the determination as to whether or not data or information meets the high quality standard, and suggested that third-party experts, governmental entities, or the public should be involved in this determination. Some comments suggested that the public should have an opportunity to appeal the evaluation of the data they submit. The final rule is not revised in response to these comments. It is appropriate for the BLM to make the final determination regarding information quality because the BLM is responsible for preparing resource management plans and for the management of the public lands, and the supporting environmental review under NEPA. The BLM recognizes the importance of being transparent and providing the public an opportunity for input on the information used during the planning process. The final rule provides such transparency and opportunity for input. The final rule does not provide opportunities for the public to appeal the evaluation of the data they submit. The public may, however, provide comments regarding information quality on the draft resource management plan and draft EIS, and may also submit a protest on the proposed resource management plan should they believe a plan component is in violation of Federal laws or

regulations, or the purposes, policies, and programs implementing such laws and regulations, due to information quality. The final rule also does not establish a requirement for a third party review of information quality. Such an approach would not be practical given the magnitude of information used during the preparation of a resource management plan. The BLM will evaluate the data and information it receives to ensure the use of high quality information. Statutory and regulatory requirements, policies, and strategies relating to information will guide responsible officials as they evaluate whether information is high quality information. This process may vary depending on the discipline, and therefore it is more appropriate to address through guidance.

Many comments concerned the statement in the preamble to the proposed rule that “Traditional Ecological Knowledge” (TEK) may be a type of “high quality information.” A few comments suggested that the intent and definition of the term TEK is not clear. Several comments opposed the use of TEK, some comments supported the use of TEK, and others asked for specific clarifications to the definition of TEK. The final rule is not revised in response to these comments. The proposed and final regulations do not include the term TEK. The preamble discussion of TEK was provided as an example to help illustrate the concept of high quality information; this discussion does not represent a regulatory provision regarding TEK. Under the final rule, TEK may be considered a type of high quality information so long as it is relevant to the planning effort and documented using methodologies designed to maintain accuracy and reliability, and to avoid bias, corruption, or falsification, such as ethnographic research methods. Through the disciplines of anthropology, as well as other social science disciplines, accepted scientific methodologies have been established for documenting ethnographic information and other types of social information. Such methodologies, and the information collected through these methodologies, are widely accepted by the scientific community and appropriate for consideration during resource management planning. The BLM will apply the same standards to TEK as it applies to other types of information.

Several comments expressed concern over the use of citizen science during resource management planning. Some comments asserted that citizen science falls short of a “best available science”

threshold. The final rule is not revised in response to these comments. The final rule defines high quality information as “any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users” (see § 1610.0–5). This standard applies to all information used in resource management planning, including citizen science. It does not preclude the use of citizen science, so long as the information meets this standard. On September 30, 2015, the Director of the Office of Science and Technology Policy issued a memorandum titled “Addressing Societal and Scientific Challenges through Citizen Science and Crowdsourcing.” This memo outlined principles for effective use of citizen science by Federal agencies. In addition to standards for high quality information, the BLM will apply the principles described in this memorandum, including the concept of “fitness for use” when using citizen science to inform the preparation or amendment of a resource management plan.

#### Plan Components

Several comments stated that the proposed rule fails to identify why the existing planning framework is inadequate and why a change is warranted. Comments specifically identified that the removal of existing land use plan elements in the existing regulations and their replacement with plan components and implementation strategies has the potential to dramatically increase agency discretion while disenfranchising the public, State and local governments, and stakeholders from involvement in important aspects of planning (*i.e.*, the development of implementation strategies). Other comments supported the proposed framework for plan components and implementation strategies. In response to public comments, the final rule adopts the concept of plan components (§ 1610.1–2), but does not adopt the concept of implementation strategies (proposed § 1610.1–3). This preamble provides a rationale for the need to revise the planning rule in the “Background” discussion. The preamble discussion of § 1610.1–2 also provides a detailed rationale for the removal of existing planning elements and the addition of each plan component. The final rule does not disenfranchise the public and stakeholders from involvement, nor does it dramatically increase or decrease

the BLM’s discretion, as suggested by public comments. Rather, the final rule provides for extensive public involvement in the development of plan components, as these represent planning level management direction; the BLM will also provide for public involvement related to future implementation decisions, consistent with NEPA requirements.

A few comments asserted that the definition of “goal” provided at § 1610.1–2(a)(1), which includes “resource, environmental, ecological, social, or economic characteristics,” exceeds the BLM’s management authority under FLPMA because the BLM’s authority is limited to goals related to renewable resources on BLM lands. The final rule is not revised in response to these comments. The definition of “goal” is consistent with FLPMA. FLPMA directs the BLM to use and observe the principles of multiple use and sustained yield when developing resource management plans. Multiple use, as defined in FLPMA (43 U.S.C. 1702(c)), means, in part, the management of the public lands so they are utilized in the combination that best meet the needs of the American people; multiple use takes into account the long term needs of future generations for renewable and non-renewable resources. The “needs of the American people,” including future generations, are reflected in the goals of a resource management plan. These needs may address a broad range of desired outcomes related to resource, environmental, ecological, social, or economic characteristics.

A comment requested the BLM add “cultural” to the list “resource, environmental, ecological, social, or economic characteristics” at §§ 1610.1–2(a)(1) and 1610.1–2(a)(2)(ii). The final rule is not revised in response to this comment. This change is not necessary because cultural characteristics are encompassed by the term “resource characteristics,” and thus must be considered.

A few comments raised concerns regarding how the BLM plans to meet objectives as defined in the proposed rule at § 1610.1–2(a)(2). Comments also asserted that including a requirement for objectives to have “established time-frames” (§ 1610.1–2(a)(2)) would expose the BLM to litigation challenging its failure to meet these self-imposed timelines. The final rule is not revised in response to these comments. Objectives are intended to guide progress towards the achievement of one or more goals. The inclusion of time-frames in a resource management plan is discretionary. In some situations

the inclusion of time-frames may be appropriate. In other situations, time-frames may not be relevant or appropriate. The forthcoming revision of the Land Use Planning Handbook will include additional guidance on setting objectives. The BLM cannot guarantee achievement of the objectives, particularly with regard to factors that are outside of the agency’s control, such as future available budgets and environmental factors such as drought or wildfires, but the BLM must make resource management decisions that are consistent with the achievement of the objectives (see the definition for “conformance” at § 1601.0–5). The resource management plan objectives describe the desired resource conditions that the agency will aim to achieve through future implementation decisions.

Several comments stated support for the identification of attributes and indicators as an important way to relate current conditions with habitat standards and adaptive management. Comments recommend revising the final rule to require and define these attributes and indicators. In response to public comment, the final rule establishes an additional requirement (final § 1610.1–2(a)(2)(iii)) that, as appropriate, objectives should identify indicators for evaluating progress towards achievement of the objective. The purpose of this new provision is to provide clear direction in the resource management plan on how the BLM intends to measure the objective. The indicators described in the objectives should be the same as the indicators described in the monitoring and evaluation standards. This approach will ensure that the BLM is able to determine if the plan objective is being met through monitoring and evaluation. The final rule does not include specific language regarding “attributes.” The BLM believes that this concept is more appropriately described through guidance, such as the forthcoming revision of the Land Use Planning Handbook.

The final rule adopts proposed language that objectives should identify standards to mitigate undesirable impacts to resource conditions (§ 1610.1–2(a)(2)(i)). Several comments raised concerns regarding these mitigation standards and questioned the BLM’s authority to require mitigation. Some comments supported the proposed mitigation standards and suggested they should always be required and not “to the extent practical.” Other comments recommended the BLM incorporate language in the final rule to state that

resource management plans would be required to contain applicable mitigation strategies or identify mitigation sites.

The final rule is not revised in response to these comments. The planning rule establishes the procedural framework for preparing and amending resource management plans, but does not develop comprehensive policy related to mitigation, nor does it explicitly require mitigation. Rather, it provides a method to establish standards for resource conditions that will help guide future mitigation consistent with the plan objectives. Mitigation standards will be developed as appropriate. Mitigation standards do not prescribe specific mitigation practices. Although the final rule does not explicitly require mitigation, it is important to note that the BLM has the authority under FLPMA to require mitigation for land use authorizations or permits. Specific mitigation measures are applied when a land use authorization is granted, based on the environmental review of that authorization and the statutes and regulations under which that authorization is granted.

Several comments stated support for the inclusion of planning designations as plan components. Some comments requested the final rule identify specific types of planning designations. Some comments raised concerns about the lack of a requirement to explicitly connect priorities identified through designations with resource use determinations or other steps to ensure that values prioritized through designations are in fact protected. Some comments opposed the inclusion of planning designations. One comment stated that planning designations demonstrate that the proposed planning rule attempts a fundamental policy shift away from traditional public land uses identified in FLPMA.

The final rule adopts “designations” as a plan component (§ 1610.1–2(b)(1)). The final rule identifies ACECs as an example of a planning designation; however, this is not intended to be an exhaustive list, rather it provides an example to illustrate the concept. The final rule is not revised to list other examples of planning designations as it is not necessary or practical to list all planning designations. In response to public comments, the final rule adds language to § 1610.1–2(b)(1)(i) stating that “resource use determinations shall be consistent with or support the management priorities identified through designations.” This language is intended to connect priorities identified through designations with resource use

determinations. The concept of planning designations is consistent with FLPMA, as they are a tool to identify management for areas with specific resources or values, and does not represent a policy shift away from traditional public land uses identified in FLPMA. In response to public comments, § 1610.1–2(b)(1) is revised to clarify that designations may identify priority “resource uses” in addition to resource values.

Several comments raised concerns that plan components, such as resource use determinations, would remove lands from operation of the Mining Law of 1872, noting that such an action can only be accomplished through withdrawals taken under section 204 of the FLPMA. Several comments expressed concern that the proposed rule would allow for the development of plan components that would conflict with or restrain the exercise of valid existing rights.

The BLM must comply with all applicable Federal laws in developing plan components. The BLM agrees that FLPMA prohibits it from removing lands from the operation of the Mining Law of 1872 in the land use planning process (43 U.S.C. 1712(e)(3)) and the rule does not and could not provide otherwise. The BLM does, however, have the authority through land use planning to identify lands as recommended for withdrawal from operation of the Mining Law of 1872 where such recommendation is determined appropriate to meet plan goals and objectives to protect resource values. In response to public comments, final § 1610.1–2(b)(2) is revised to clarify that resource use determinations are subject to valid existing rights. FLPMA requires that all plan components and other types of management decisions be subject to valid existing rights. Although the final rule cannot change this requirement, the BLM decided to include this language specifically in § 1610.1–2(b)(2) because resource use determinations describe exclusions and restrictions to use, which are directly related to valid existing rights.

Several comments suggested that the BLM should integrate “designations” (§ 1610.1–2(b)(1)) and “resource use determinations” (§ 1610.1–2(b)(2)). Comments stated that this would result in a more clearly defined set of criteria for determining whether future actions are in conformance with plan components. The final rule is not revised to combine designations and resource use determinations. After consideration of public comments, the BLM believes that the distinction

between designations and resource use determinations is appropriate. Designations are intended to establish priorities, when appropriate. Resource use determinations are intended to identify exclusions, restrictions, or allowance of use. Resource use determinations must be consistent with the priority established through designations, and the final rule is revised to include language clarifying this relationship (§ 1610.1–2(b)(2)).

Several comments expressed support for monitoring and evaluation but were concerned over the BLM’s staffing resources, stating that the BLM may not have the capacity to implement monitoring and evaluation. Some comments requested the final rule require the BLM to provide adequate personnel for monitoring and evaluation. Other comments suggested the BLM revise the final rule to revise monitoring and evaluation standards as tools available to the BLM, but not enforceable requirements of resource management plans or plan amendments. The final rule is not revised to re-define monitoring and evaluation standards as these plan components are necessary to understand whether the plan objectives are being met. The final rule is also not revised to address staffing concerns or establish personnel requirements; this would not be appropriate in regulations as the BLM cannot reasonably predict future budgets and staffing availability.

Several comments noted that the proposed rule suggests that the achievement of goals and objectives and implementation of monitoring and evaluation could be enforceable commitments under the Administrative Procedure Act and recommended the BLM revise the final rule to expressly state that goals, objectives, and monitoring measures in resource management plans do not commit the BLM to future courses of action, and that BLM actions are dependent upon appropriation of necessary funds and agency priorities, and are not intended to be enforced by third parties through legal remedies. Comments also recommend including language to state that these plan components cannot be enforced by the general public under 5 U.S.C. 706(1). The comments cited several court rulings supporting this statement. The final rule does not include the language suggested by these comments. Resource management plans provide planning level management direction intended to help the BLM prioritize available funds and to guide future management decisions, including future proposed actions. Although the BLM does not intend that plan components be discrete agency actions

that BLM is required to take and therefore enforceable under § 706(1) of the APA, they do bind the BLM to the extent that all future actions taken by the BLM must conform to them. Should, through the process of monitoring and evaluation, the BLM determine that the goals and objectives are not being met, the BLM has the discretion to identify appropriate remedies, including the option to revise or amend the resource management plan.

#### *Notice Requirements*

The proposed planning rule would have replaced several requirements to publish a notice in the **Federal Register** with a requirement to notify the public through other means, including direct email or posting a notice to the BLM Web site and at local BLM offices. Many comments requested that the BLM retain all existing **Federal Register** notice requirements. In response to these comments, the final rule will retain most existing **Federal Register** notice requirements that were proposed to be removed, including the notice of intent for plan amendments when an environmental assessment is prepared (final § 1610.2–1(f)) and notice when a draft plan or plan amendment involves possible designation of areas of critical environmental concern (final § 1610.8–2(b)(1)).

The BLM does not, however, consider a **Federal Register** notice to be appropriate or necessary for all announcements for public involvement, as some comments suggested. Although the **Federal Register** provides a record of notices and a tool for reaching a national audience, it is not necessary for every public involvement opportunity nor is it the only tool available to reach a national audience. For instance, a public meeting in a local community in the planning area to discuss a particular, individual planning issue does not need a **Federal Register** notice. Including one would cause unnecessary delays to the planning process and costs to the BLM. Additionally, when the BLM announces the start of a planning process, through a NOI, this provides the public an opportunity to request notification of future public involvement opportunities and to be added to the mailing list, as well as learning of public involvement opportunities through BLM's Web site, which also reaches a national audience. This is consistent with current BLM policy and practice.

Several comments requested that the BLM retain the existing requirement for the BLM Director to publish in the **Federal Register** the reasons for his or her determination regarding a Governor's appeal on a State Director's

decision for the Governor's consistency review (existing § 1610.3–2(e)). The final rule does not retain this existing requirement and will instead adopt the commitment that the BLM shall notify the public of this decision and make the written decision available to the public (final § 1610.3–3(b)(4)(ii)). Removing the requirement to publish a **Federal Register** notice at this step will provide for a more efficient planning process and better reflects the ready availability of Internet communications. In locations where internet is not readily available, the responsible official will identify additional forms of notification to reach local communities within the planning area (§ 1610.2–1(c)). Moreover, interested parties already will have had the opportunity to be added to the mailing list to receive notifications (§ 1610.2–1(d)).

#### *Public Comment Periods*

The proposed rule would have reduced the minimum length of formal public comment periods on draft resource management plans from 90 days to 60 days. Many comments opposed that proposed change, stating various reasons, including that resource management plans were complex documents and shortening the comment period would reduce opportunities for meaningful public input. Some comments stated that additional, early opportunities for public involvement, such as the planning assessment and review of preliminary alternatives, were adequate substitutions for formal comment periods on the draft resource management plan. In response to these comments, the final rule will expand the comment period for draft resource management plans to a minimum of 100 days, which is 10 days longer than the existing minimum comment period of 90 days (§ 1610.2–2(c)). The proposed rule also would have reduced the minimum public comment period for plan amendments when an environmental impact statement (EIS) is prepared from 90 days to 45 days. Many comments opposed that change as well, for similar reasons. In response to these comments, the final rule will change the comment period for draft EIS-level plan amendments to a minimum of 60 days (§ 1610.2–2(b)), which is longer than the length of the proposed comment period, but shorter than the length of the existing comment period. The scope and complexity of EIS-level plan amendments varies considerably, and the 60-day period will be appropriate as a minimum for EIS-level plan amendments. The BLM retains the discretion to extend the length of public comment periods or to initially offer a

longer public comment period, as appropriate.

A number of comments requested a provision in the rule providing an opportunity to request a comment period extension, or a requirement of an automatic extension when a plan was particularly long or complex. The BLM has the discretion to extend the length of the minimum public comment periods; however, due to the variation in issues, geographic scope, and complexity, it is not appropriate to adopt a single standard for comment period extensions in the final rule.

The BLM received several comments requesting that all opportunities for public involvement, including the planning assessment, review of preliminary alternatives, and the basis for analysis, be subject to a formal comment period, and require the BLM to provide a formal comment response. Some comments expressed concern that without formal comment responses, it would not be clear to the public that the BLM considered public comment during these steps. The final rule does not adopt these recommendations. Although public involvement must meet the requirements of § 1610.2, the BLM recognizes that resource management plans and plan amendments will vary based on factors such as complexity, geographic scale, and budgets. Public notification and review will provide additional transparency and an opportunity for the public to provide feedback, but it is not appropriate to require a formal comment period for each public involvement opportunity. The BLM generally provides a formal comment period at steps when there is a complete document available for review, such as a draft resource management plan. The final rule adds opportunities for public involvement in the development of these documents, which may take several forms, such as public workshops or posting information on the web and inviting the public to provide additional information. This will inform the development of the draft resource management plan, and it will be made available for a formal comment period. Section 1610.2(b) requires the BLM to document public involvement activities by either a record or summary of principle issues discussed and comments made, and make that record or summary available to the public.

#### *Consultation With Indian Tribes*

The BLM received comments noting that the proposed rule did not recognize the sovereign status of Indian tribes or address government-to-government consultation with Indian tribes during

planning. Other comments raised concerns that a larger planning area under the new rule could mean less meaningful tribal consultation and potentially less influence by Indian tribes over BLM planning decisions. Some comments raised concern that the BLM would no longer consult with tribes in person and electronic means would replace the current process.

In response to comments, the final rule is revised to include a new section on tribal consultation (final § 1610.3–1). This section provides that the BLM will initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. This section is added to the final rule to reflect the fact that the BLM is required to initiate consultation with affected Indian tribes during the planning process, and will consult with any Indian tribes that choose to accept the BLM's request for consultation, but the BLM cannot guarantee that an Indian tribe will agree to consultation. This government-to-government consultation shall be initiated regardless of an Indian tribe's status as a cooperating agency or any on-going coordination with the Indian tribe. Should an Indian tribe choose to participate as a cooperating agency or to coordinate with the BLM, the BLM is still required to initiate government-to-government consultation.

The final rule does not explicitly prescribe larger planning areas; should future planning areas increase in size, however, the BLM will continue to conduct meaningful consultation with Indian tribes, including in person meetings. The BLM does not intend for electronic means to replace current processes for consultation. The BLM recognizes, however, that some Indian tribes may prefer electronic communication such as email correspondence, and the BLM will employ such communication techniques where they are helpful and appropriate.

#### *Coordination With State, Tribal and Local Governments*

The BLM received many comments regarding coordination with other Federal agencies, State and local governments, and Indian tribes, as provided in section 202(c)(9) of FLPMA, as well as cooperating agency status under NEPA.

Several comments expressed that the definition of and provisions for cooperating agencies inappropriately restrict eligibility by saying that cooperating agencies will participate “as feasible and appropriate given the scope of their expertise and constraints of

their resources” (proposed §§ 1601.0–5 and 1610.3–1(b)(2)). In response to these comments, this language is removed from the definition of cooperating agencies, and proposed § 1610.3–1(b)(2) is revised to state that “[t]he responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise.” These changes are consistent with the DOI NEPA regulations which provide “the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise” (43 CFR 46.230). Cooperating agencies must meet the requirements defined in DOI's NEPA implementation regulations, 43 CFR 46.225(a), which includes special expertise or jurisdiction by law. That section references the Council on Environmental Quality's NEPA implementation regulations' definition of special expertise (40 CFR 1508.26) and jurisdiction by law (40 CFR 1508.15). These requirements apply to both Federal and non-Federal governments, such as State, local, and tribal governments. The BLM will continue to use these definitions to determine eligibility for cooperating agencies. Eligible governmental entities are not required to be cooperating agencies if they do not have sufficient resources; therefore, the reference to “constraints of their resources” is not appropriate.

Comments raised the concern that including the term “eligible governmental entity” in the definition of “cooperating agency” in § 1601.0–5 will lead to confusion and potentially exclude some government entities. The final rule is not revised in response to these comments. The use of this term does not represent a change from existing regulations. The term “eligible governmental entity” is used in the existing definition of cooperating agencies and is defined in the DOI NEPA regulations (§ 46.225(a)). The final rule adds a reference to this definition in the DOI NEPA regulations to improve clarity and understanding of this term. The BLM believes it is appropriate for the planning regulations to use similar terminology as the DOI NEPA regulations when defining cooperating agencies. Hence the term “eligible governmental entity” is used in the final definition of “cooperating agency” in § 1601.0–5 and when describing what entities can participate as cooperating agencies in final § 1610.3–2(b) of the final rule.

Several comments objected to the removal of the existing requirement that

field managers must inform the State Director of any denials of a request to be a cooperating agency and requested that the final rule retain the State Director's review. In response to these public comments, the final rule includes a new paragraph requiring the responsible official to consider a request by an eligible governmental entity to participate as a cooperating agency and to inform the deciding official of any denials. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the environmental impact statement (see § 1610.3–2(b)(1)).

Several comments requested that the planning rule clarify requirements for consultation with Indian tribes. Some comments requested the BLM identify specific offices eligible for consultation, such as Tribal Historic Preservation Officers. In response to these comments, the final rule includes a new section titled “[c]onsultation with Indian tribes” (§ 1610.3–1). This section states that the BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans. The final rule does not define consultation because that term is defined in other regulations and guidance. These other sources also outline the types of processes, how consultation may inform decision making, and what information should be exchanged in consultation. The methods of consultation and its content may vary by particular circumstances. The rule also does not list all the types of offices that are included under the consultation provisions because this level of detail is not necessary in regulations. The BLM will continue to consult with Tribal Historic Preservation Officers as required under the National Historic Preservation Act.

Further, tribes are considered an “eligible governmental entity” under 43 CFR 46.225(a), and will be invited to participate as cooperating agencies in the planning process in accordance with final § 1610.3–2(b). While a tribe may elect not to participate as a cooperating agency, the BLM is still required to appropriately consult and coordinate with tribes during the planning process in accordance with §§ 1610.3–1 and 1610.3–2, respectively.

The final rule does not affect implementation of the “Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations” (2012). The BLM will continue to consult with ANCSA corporations during the preparation and amendment of resource

management plans, consistent with DOI policy.

Many comments included support for the proposed requirement of a memorandum of understanding (MOU), including its commitment to confidentiality. These comments noted that confidential review affords agencies the opportunity to identify and resolve conflicts without creating public worry or confusion. The final rule adopts these provisions with minor modifications (see proposed § 1610.3–1(b)(1) and final § 1610.3–2(b)(2)). Some comments recommended a requirement to establish a separate MOU for the planning assessment. The final rule does not adopt this recommendation because it is not necessary. Final § 1610.3–2(b)(3) does not specify the length or scope of the MOU for a cooperating agency relationship and includes sufficient flexibility for the BLM and cooperating agencies to establish multiple MOUs, if necessary, or to enter into an MOU that includes only the planning assessment. The final rule does not address the status of information provided to the BLM by cooperating agencies, because this will be a case-by-case determination based on the MOU agreement and any applicable State and Federal requirements, such as the Freedom of Information Act.

Some comments suggested the BLM publish a **Federal Register** notice inviting cooperating agencies to participate in the preparation of a resource management plan. In response to public comments, the BLM will publish a NOI in the **Federal Register** for all resource management plans and plan amendments as described in final § 1610.2–1(f), but does not adopt the recommendation to publish a **Federal Register** notice inviting cooperating agencies. The NOI will include the kind and extent of public involvement activities to be provided, as known at the time, as well as contact information for a BLM employee for further information, including a request to participate as a cooperating agency. The responsible official will invite cooperating agencies as provided for in § 1610.3–2(b) of the final rule. The BLM considers these two provisions to be complimentary. The BLM will collaborate with cooperating agencies as early as possible in the planning process. Section 1610.3–2(b)(3) will include the steps of the planning process for collaborating with cooperating agencies. The earliest step in this section will be the planning assessment which occurs before publication of the NOI.

Some comments recommended a requirement that a cooperating agency MOU must be in place before the commencement of the planning assessment. The final rule does not adopt this recommendation. Eligible governmental entities have the option of entering into a MOU as cooperating agencies under NEPA, but are not required to do so at any specific point in the planning process. Creating a requirement for all MOUs to be in place prior to the planning assessment would limit eligible government entities from joining as cooperating agencies later in the planning process when the scope of the planning effort is more clearly defined. The BLM does not foresee any problems working with eligible governmental entities without a MOU during the planning assessment step since this step primarily involves information gathering by the BLM. The BLM will not share confidential information with other government entities without an MOU in place to maintain confidentiality.

Many comments raised concerns that the proposed rule would limit local governments to “cooperator status” by failing to provide for “coordination status,” which the comments state is required by FLPMA, which would place an unfair burden on such governmental entities. The final rule is not revised in response to these comments because coordination requirements are already addressed in this rule. While the BLM believes that cooperating agency status is a tool to achieve coordination, the BLM recognizes that local governments may choose not to participate as cooperating agencies for a variety of reasons such as limited resources or confidentiality concerns. An eligible government entity is not required to participate as a cooperating agency and under the final rule the BLM must still coordinate with these governmental entities, whether or not they choose to participate as a cooperating agency under NEPA. The final rule includes a number of ways for governmental entities, including local governments, to meaningfully participate in the planning process outside of cooperating agency status. Local governments are able to participate in the public involvement opportunities described in § 1610.2 of the final rule. Additionally, final § 1610.3–2(c) addresses the requirements for coordination with other Federal agencies, State and local governments, and Indian tribes, and these requirements apply independently of cooperating agency status. The final rule adopts proposed changes to more clearly distinguish the cooperating

agency role from “coordination” and “consistency” requirements under FLPMA. Each of these is covered by different paragraphs in final §§ 1610.3–2 and 1610.3–3. In final § 1610.3–2, paragraph (b) covers cooperating agencies and paragraph (c) covers coordination requirements. Final § 1610.3–3 covers consistency requirements. By separating these provisions, the BLM believes that the final rule sufficiently identifies the distinction between these roles under FLPMA and NEPA.

Some comments recommended the final rule make formal coordination mandatory during the planning assessment. It is important to note that coordination is already mandatory during the planning assessment. Final § 1610.4(b)(3) requires the BLM to “[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans.” In response to public comments, the final rule includes additional language regarding coordination during the planning assessment, stating that “[t]o the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located” (§ 1610.4(b)(1)). This language is consistent with FLPMA (43 U.S.C. 1712(c)(9)).

Several comments raised concerns that individual notification requirements for State and local governments are insufficient as they only require the BLM to provide affirmative individual notification to those that have requested to be notified or that the BLM has reason to believe would be interested in the planning effort. Comments requested the final rule require notification of all affected State and local governments. The final rule is not revised in response to these comments. This provision does not represent a substantive change from existing regulations, which require the BLM to provide notice to governmental entities “that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment” (existing § 1610.3–1(e)). The final rule clarifies this requirement slightly by replacing “concerned with” with “interested in.” Interest in the

resource management plan includes “concern,” but also includes a broader range of interest. The wording of the final rule is necessary to avoid providing an unreasonable “guarantee” that the BLM will be able to identify, find contact information for, and contact all affected governmental entities. However, the BLM will continue its current practices and commitment to notifying State and local governments and will endeavor to contact all affected governmental entities to the best of our ability. Additionally, the BLM believes that public notification requirements will provide an additional opportunity for government entities to become aware of resource management plans and plan amendments.

In addition, the BLM will post a list on its Web site of the status of each resource management plan in process or scheduled to be started by the end of each fiscal year under § 1610.2(c). Interested members of the public, including governmental entities, may review that list for information on upcoming plans in advance of the BLM beginning notification for public involvement, and may request to be notified of public involvement opportunities. Additionally, in response to public comment, final § 1610.2–1(c) is revised such that the “responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.” This provision addresses concerns about local governments that may not be reached by notices in the **Federal Register** or through online notifications.

#### *Consistency With State, Tribal, and Local Government Plans*

The BLM received many comments regarding requirements under FLPMA for BLM resource management plans to be consistent with State and local government plans (43 U.S.C. 1712(c)(9)). Several comments raised concerns that the proposed rule departs from FLPMA’s coordination and consistency requirements. In response to public comments, final § 1610.3–3 is revised in several ways, as described in the following paragraphs.

Several comments raised concerns that the proposed rule would provide the BLM more discretion regarding consistency with State and local plans than is afforded by FLPMA. In response to comments, final § 1610.3–3(a) is revised to state that “resource management plans shall be consistent with officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM

finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.” Because of its obligations under FLPMA and other Federal law, the BLM cannot always ensure consistency. The BLM will achieve consistency to the maximum extent consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands and the purposes, policies and programs implementing such laws and regulations. Based on public comment, the final rule removes “practical” from the phrase “practical and consistent” in this paragraph. It is important to note that statements in the final rule that the BLM will coordinate to the extent consistent with the laws governing the administration of the public lands (e.g., final § 1610.4(b)(1)) do not preclude the BLM from satisfying its requirements for coordination and consistency under final §§ 1610.3–2 and 1610.3–3. Similarly, the final rule’s additional opportunities for public involvement in the planning process do not eliminate or alter the BLM’s obligations for coordination and consistency.

A few comments stated that proposed changes to § 1610.3–2 would omit FLPMA consistency requirements pertaining to compliance with pollution control laws, “including State and Federal air, water, noise, or other pollution standards or implementation plans. . . .” The final rule is not revised in response to these comments because this language is not necessary. Resource management plans must comply with Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. It is unnecessary to identify all relevant laws the BLM must abide by in the regulations, as the BLM is required to comply with all applicable laws and regulations. The final rule removes existing § 1610.3–2(b), which references Federal and State pollution control laws, because the BLM believes that final § 1610.3–3(a)’s requirement that resource management plans be consistent with “officially approved or adopted plans of other Federal agencies, State and local governments, and Indian tribes” includes pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards and implementation plans. Although FLPMA specifically references pollution control laws (43 U.S.C. 1712(c)(8)), the BLM believes that

such laws are appropriately encompassed by the requirements of final § 1610.3–3(a). The BLM does not intend a change to current policy or practice as a result of this change, and will continue to comply with applicable pollution control laws.

Several comments objected to language providing that consistency requirements would only apply to the “officially approved and adopted land use plans” of other Federal agencies, State and local governments, and Indian tribes (see proposed §§ 1610.0–5 and 1610.3–2). Comments stated that this language exceeds the statutory requirements of FLPMA, which refers only to “plans.” In response to public comments, the final rule does not adopt the words “land use” in this phrase. The BLM acknowledges that other types of resource-related plans, such as a State wildlife plans, are relevant to resource management planning conducted by the BLM and should be included during consistency review. The final rule also revises the definition of an “officially approved and adopted plan” to specify that these are “resource-related” plans instead of “land use” plans (§ 1610.0–5).

The term “officially approved and adopted,” however, is contained in existing regulation and is retained in the final rule. The definition of this term in the final rule describes it as a plan that is prepared and approved pursuant to and in accordance with authorization provided by Federal, State, and tribal, or local constitutions, legislation, or charters which have the force and effect of law (§ 1601.0–5). Final § 1610.3–2 provides a mechanism to address potential inconsistencies with plans and policies that are not officially approved or adopted, or plans that are under development, but not yet approved or adopted.

Similarly, several comments expressed concern that the proposed rule would inappropriately limit the BLM’s consistency requirements by removing the requirement for BLM resource management plans to be consistent with the “policies, programs, and processes” of State and local governments. In response to these comments, the final rule will instead adopt a new objective of coordination for the BLM to “keep apprised of the plans, policies and management programs of other Federal agencies, State and local governments, and Indian tribes” (see final § 1610.3–3(a)(1)). The BLM will continue to coordinate with other Federal agencies, State and local governments, and Indian tribes throughout the planning process, which will include consideration of plans, policies, and management programs.

However, the consistency requirements in final § 1610.3–3 only apply to officially approved and adopted plans. This is consistent with FLPMA, which requires that resource management plans be consistent with State and local plans to the maximum extent the Secretary finds consistent with Federal law and the purposes of the FLPMA (see 43 U.S.C. 1712(c)(9)). It would be inappropriate to establish consistency requirements for “policies and programs” because they do not constitute a formal decision regarding resource management.

Many comments expressed concern that the proposed rule would place the burden on State and local governments to notify BLM of inconsistencies. Comments expressed that it is the BLM’s responsibility to identify inconsistencies, not that of State and local governments. The final rule is not revised in response to these comments. Final § 1610.3–3(a)(2) will carry forward the existing provision that the BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by Federal agencies, State and local governments, or Indian tribes of an apparent inconsistency. This is an existing requirement, and therefore does not represent a change in policy. Although the BLM believes that the coordination and cooperation provisions of the final rule will help the BLM to identify apparent inconsistencies early in the process, and the BLM will do so to the best of its ability, we cannot guarantee that all apparent inconsistencies are identified and responded to if the BLM is not notified of inconsistencies.

The requirements for consistency contained in final § 1610.3–3, however, do not represent the only opportunity to identify and remedy inconsistencies during the planning process. The BLM believes that the opportunities for coordination will address the majority of inconsistencies prior to the publication of a proposed resource management plan. Coordination, as described in § 1610.3–2 of the final rule, provides the BLM with a way to identify and address potential inconsistencies with other Federal agencies, State and local governments, and tribes throughout the duration of the planning process. Final § 1610.3–2(a) states that the objectives of coordination include the BLM keeping apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes and assisting in resolving, to the extent practical, inconsistencies between Federal and non-Federal government

plans. In addition, as part of information gathering during the planning assessment, final § 1610.4(b)(2) requires the BLM to identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.

The Governor’s consistency review in § 1610.3–3(b) provides an additional opportunity to meet consistency requirements by affording the Governor an opportunity to identify any remaining inconsistencies with the proposed resource management plan and work with the BLM to address these inconsistencies. Several comments raised concerns that the burden of identifying inconsistencies for all State and local plans would be placed solely on the Governor. Some comments requested a similar consistency review for other governmental entities, such as local governments. The final rule is not revised in response to these comments. The burden of identifying inconsistencies is not placed solely on Governors. Through coordination, the BLM will make a good faith effort to identify and address inconsistencies throughout the planning process; this is addressed under the objectives of coordination (§ 1610.3–2(a)). Coordination and the work of identifying inconsistencies is a shared responsibility, and the final rule reflects this. For example, § 1610.3–3(b) of the final rule states that the deciding official shall submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments. In turn, the Governor may submit a written document within the 60-day consistency review period that identifies inconsistencies. Additionally, final § 1610.3–3(b)(3) states that the responsible official will collaborate, to the fullest extent possible, with all cooperating agencies throughout the planning process. Early coordination as outlined in the final rule will help to identify potential inconsistencies early in the planning process in compliance with FLPMA.

Several comments expressed that the proposed rule inappropriately limits the Governor’s consistency review to inconsistencies between BLM resource management plans and State and local plans. The final rule is not revised in response to these comments. The Governor may raise other concerns and the BLM will consider these concerns and, as appropriate, work with the Governor to seek resolution; however,

consistency requirements under FLPMA (43 U.S.C. 1712(c)(9) and this final rule (see § 1610.3–3(a)) only apply to consistency between BLM resource management plans and State and local plans.

Many comments objected to the proposed removal of the requirement that, if the Governor appeals the BLM State Director’s decision, the BLM Director must accept the Governor’s recommendations if doing so provides for an appropriate balance between State and Federal interests (see existing § 1610.3–2(e)). The final rule adopts the proposal to remove the existing language requiring the BLM Director to accept recommendations if it is determined that such recommendations “provide for a reasonable balance between the national interest and the State’s interest.” Instead, the final rule will state that the BLM Director “shall consider the Governor(s)’ comments and the consistency requirements of this section in rendering a final decision” (§ 1610.3–3(b)(4)(ii)). In response to public comments, the final rule is revised to include a requirement that the BLM Director consider “the consistency requirements of this section,” which includes the requirement that resource management plans must be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes “to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations” (§ 1610.3–3(a)).

The BLM believes the existing language is misleading in regards to BLM’s obligations and does not reflect the broader range of considerations that must apply. When considering the Governor’s recommendations, the Director must consider whether the recommendations are consistent with the purposes of FLPMA and other Federal laws and regulations. The BLM Director must also consider whether the BLM has achieved consistency “to the maximum extent,” subject to the qualifications of § 1610.3–3.

Several comments asserted that proposed § 1610.3–2(b) (final § 1610.3–3(b)) improperly bypasses local governments by attempting to satisfy consistency requirements through Governors. Final § 1610.3–3(b) does not bypass local governments, but rather provides the Governor, as the highest elected representative of the State, a final opportunity to identify, discuss, and remedy any relevant

inconsistencies between State and local plans prior to the approval of a resource management plan. Further, the Governor's consistency review does not replace the BLM's requirements for coordination and consistency under final §§ 1610.3–2 and 1610.3–3. The BLM recognizes that counties may have officially approved and adopted plans that are relevant to the planning process. Such plans would not be excluded from consistency review.

Several comments stated that the proposed rule limits opportunities to coordinate with local governments early in the planning process and recommended that the BLM provide preliminary consistency review periods at the planning assessment and draft environmental impact statement stages. The final rule does not incorporate formal consistency reviews at earlier stages of the planning process, as a formal review prior to availability of a proposed resource management plan or plan amendment would be premature. Requirements for consistency will be achieved primarily through coordination with Federal, State, local, and tribal governments throughout the planning process, as outlined in final § 1610.3–2, and detailed in the preamble discussion of that section. Finally, the final rule increases transparency and opportunities for public involvement, which will provide local governments an opportunity to participate and raise concerns related to consistency, in addition to the opportunities in final § 1610.3–2.

#### *Planning Assessment*

Many comments expressed broad support for the planning assessment. Some comments stated that the addition of the planning assessment step, if based on the best available scientific information and other high-quality information, would be a valuable tool for understanding a planning area's current baseline resource, environmental, ecological, social, and economic conditions. Several comments expressed support for new opportunities for public involvement, including early opportunities for stakeholders to provide important, relevant baseline information before the BLM identifies planning issues and formulates resource management alternatives. Other comments expressed concern or were unresponsive of the planning assessment, stating that it would represent a major policy shift from the current planning process. Some of these comments asserted that the planning assessment creates more steps and analysis for an already long and confusing process. Other comments

asserted that the planning assessment and the many factors the BLM must consider when conducting it, shift focus from resources, multiple use, and sustained yield to "value-based" decision-making.

After consideration of public comments, the final rule adopts the proposed planning assessment (§ 1610.4), with some minor modifications. Although the planning assessment does represent a new step prior to initiating the preparation of a resource management plan, this does not represent a major policy shift from the current planning process, as the planning assessment replaces the existing "analysis of the management situation" (see existing § 1610.4–4) and the BLM is required to describe the "affected environment" for a resource management plan under CEQ NEPA regulations (40 CFR 1502.15). The BLM believes that new requirements under the planning assessment, such as opportunities for public involvement, will provide valuable information for the preparation of a resource management plan, and therefore are appropriate for inclusion in the final rule. Further, the planning assessment provides baseline information on resource, environmental, ecological, social, and economic conditions, all of which are needed to support management on the basis of multiple use and sustained yield. The planning assessment does not represent a shift to "value-based decision-making" as no decisions are contemplated or made during the planning assessment.

Many comments asserted that the planning assessment phase does not allow for meaningful coordination opportunities which could lead to a lack of consistency with State and local plans. Other comments stated that the planning rule does not adequately address the FLPMA requirement for the BLM to "coordinate the land use inventory . . . with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located" (43 U.S.C. 1712(c)(9)). Some comments asserted that the planning assessment treats State and local governments as members of the public rather than as agencies with which the BLM must coordinate under FLPMA. In response to these comments, the final rule includes a new requirement that "[t]o the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and

management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located" (§ 1610.4(b)(1)). This new language highlights the existing requirement under FLPMA to coordinate inventory, and promotes a more efficient planning process by ensuring that the BLM does not duplicate data collection efforts with other governmental entities.

The final rule also adopts the proposed requirement that the BLM "[p]rovide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans" (§ 1610.4(b)(3)). This provides an important step for the BLM to coordinate with State and local governments on data and information, as well as any State and local laws, regulations, policies, guidance, strategies, or plans that are germane to the resource management plan. This coordination also provides an important early step to avoid inconsistencies between the resource management plan and State and local "plans, policies, and management programs" (see §§ 1610.3–2(a)(1) and (a)(2)).

Final § 1610.4(b)(3) also includes a requirement for the BLM to provide opportunities for the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans. This provision does not diminish the coordination requirements with State and local governments; it simply adds an opportunity for the public to identify these items. Rather, the inclusion of this requirement reflects the fact that, under NEPA, the BLM must consider substantive comments related to data and information submitted during the comment period on a draft EIS. Rather than waiting until the draft resource management plan is developed, the identification of this information upfront, whether from a government entity or the public, during the planning assessment will provide for a more efficient planning process. Further, the BLM recognizes that a member of the public may be aware of best available scientific information, such as a peer-reviewed research publication, and this information should be brought to the BLM's attention as early as possible.

A few comments noted that the planning rule does not mention economic or "commodity" resources, such as minerals, forest products, grazing, or other resource uses. One comment noted that valid existing rights are not addressed in the planning

assessment. Many comments opposed the absence of “uses” in “the various goods and services that people obtain from the planning area” (proposed § 1610.4(c)(7)). Comments asserted that the exclusion of “uses” eliminates the multiple use and “major uses” principles of FLPMA and implies an effort to avoid or minimize these uses in future resource management plans.

The final rule does not eliminate the multiple use and “major uses” principles of FLPMA and does not represent an effort to avoid or minimize these uses in future resource management plans. In response to public comments, the following revisions are made to the final rule. Final § 1610.4(d)(5) is revised to include “areas with known mineral potential” and “areas with known potential for producing forest products, including timber.” Final § 1610.4(d)(7) is revised to clarify that the responsible official will consider and document “[t]he various goods, services, and uses that people obtain from the planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.” And finally, final § 1610.4(d)(2) is revised to include “known valid existing rights.”

Many public comments objected to the provision allowing the deciding official to waive the planning assessment for minor amendments or if an existing planning assessment is determined to be adequate, for a variety of reasons. Some comments stated that the term “minor amendments” is vague. Other comments supported the waiver in some situations. In response to public comments, the final rule does not adopt the proposed language allowing for a “waiver” if an existing planning assessment is determined to be adequate. In the case when an existing assessment provides the needed information to inform the planning process, the responsible official will identify those parts of the existing assessment that are pertinent to the geographic area being identified and the issues to be addressed. This information, along with any new information, will be incorporated into the planning assessment for the plan amendment and made available for public review. The final rule retains the deciding official’s discretion to waive the requirements of this paragraph for minor amendments, however, because the BLM believes there are situations for minor amendments where a planning assessment would not add value to the planning process and these situations

need to be considered on a case-by-case basis.

In response to comments, this language is revised to provide that the responsible official may waive this requirement for “project-specific or other minor amendments.” Minor amendments are intended to mean those that are small in scope or scale. The most common type of minor amendments for which the BLM prepares an EIS are project-specific amendments, such as a solar energy development project, in which the amendment only addresses a small portion of a resource management plan or a single plan component, but the project itself requires the preparation of an EIS. In these situations, a planning assessment may not add value to the amendment process and could unnecessarily delay the amendment process; the responsible official will have the discretion to assess whether the preparation of a planning assessment is necessary in these situations. Other types of “minor amendments” will be assessed on a case-by-case basis, and this rule provides the BLM the flexibility and discretion to make such assessments.

#### *Preparation of a Resource Management Plan*

Many of the comments on the preparation of a resource management plan (§§ 1610.5 to 1610.5–5) raised concerns or expressed support for the provisions regarding public involvement and cooperation and coordination. The concerns raised in these comments are summarized in previous paragraphs.

Several comments suggested that the BLM make the preliminary statement of purpose and need available for public comment. The final rule is not revised in response to these comments. The final rule adopts the proposed requirement to make the preliminary statement of purpose and need available for public review (§ 1610.5–1(a)). The public may provide input on the statement and the BLM will consider this input when developing a draft statement of purpose and need.

Several comments stated that the BLM should accept citizen-proposed alternatives. One comment raised concerns that the BLM would develop the preliminary alternatives before the public had an opportunity to suggest alternatives. The final rule does not adopt a specific provision to solicit citizen-proposed alternatives. The final rule does not change the BLM’s requirement under the CEQ NEPA regulations to analyze a range of alternatives (40 CFR 1502.14). If a

citizen-submitted alternative meets the criteria in § 1610.5–2(a)(1), then it could be considered as an alternative or a sub-alternative, or incorporated into an existing alternative. Although the final rule does not have a specific step to solicit citizen-proposed alternatives, the public involvement opportunities early in the planning process, including as part of the planning assessment, the preliminary statement of purpose and need, identification of the planning issues, and development of preliminary alternatives, will provide the public opportunities to provide input on the range of alternatives they believe should be considered. The public will also have an opportunity to review the preliminary range of alternatives and inform the BLM if they believe a reasonable alternative is not being considered.

Several comments expressed support for the preliminary alternatives, as this step creates greater transparency. Some public comments requested that the BLM provide notices and disclose changes made to the preliminary alternatives, the preliminary rationale for alternatives, and the basis for analysis. In response to public comment, the final rule includes a requirement that a description of changes made to the preliminary alternatives, preliminary rationale for alternatives, and the basis for analysis shall be made available to the public in the draft resource management plan (see § 1610.5–4). This description is not intended to identify each and every change made to these preliminary documents; rather it will summarize how the public involvement activities or other new information informed the development of the draft resource management plan.

Several comments expressed concern with the BLM’s ability to identify multiple preferred alternatives, stating that this is a departure from longstanding practice, and that it would create confusion or uncertainty, and would make public review more cumbersome. The final rule is not revised in response to these comments. The final rule language to acknowledge “one or more” preferred alternatives is adopted to make the planning regulations more consistent with the DOI NEPA regulations (43 CFR 46.425(a)). The BLM anticipates that selecting more than one preferred alternatives will not be the norm for resource management planning, and the BLM will have the discretion to extend public comment periods on a case-by-case basis if it is determined that the extension will benefit the resource management planning process.

*Resource Management Plan Approval, Implementation and Modification*

The BLM received comments in support of, and opposed to the proposed revision to allow the BLM to accept protests electronically. A few comments supported the proposal to make protests and responses available to the public and suggested that the BLM promptly post all protests and related responses, whether requested or not, on its Web site for public access. While the BLM expects to post protests to its Web site, the final rule is not revised to require the BLM to post all protests. Such a requirement would not be practical to implement if the BLM were to receive a substantial number of hard-copy protest submissions. The final rule instead provides the BLM flexibility to determine the best timing and methods to share protest information.

A few comments requested revisions to proposed § 1610.6–2(a)(4) to allow the BLM to withhold certain private and confidential information submitted in a protest that is, or could be, exempt from disclosure under other laws or regulations. In response to these comments, the final rule is revised to include language stating that the BLM Director will withhold any protected information that is exempt from disclosure under applicable laws or regulations.

A few comments requested that the BLM expand the eligibility requirements for protest submissions by accepting protests from members of the public who may not have participated previously in the planning process due to the fact that several years may pass between the release of a draft resource management plan and the proposed resource management plan. Several other comments expressed concern that the requirement that a protest identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment would preclude protests on issues that were not disclosed to the public until the publication of the proposed resource management plan. The BLM recognizes that changes may occur between the release of the draft resource management plan and the proposed resource management plan. However, the final rule is not revised to accept this recommendation, as the current standing requirement is written to ensure that individuals do not use the protest process to raise issues that could have been raised during previous public involvement opportunities, and to recognize that the protest period is not a public comment period. However, in recognition of the potential for changes

between the draft and proposed resource management plan, final § 1610.6–2(a) is revised to include new language stating that a protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment “unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.” This change in the final rule is made throughout the subparagraphs of § 1610.6–2(a) and clarifies that if an issue arises after the close of the formal public comment period on a draft resource management plan, the public may submit a protest regarding that issue. This exclusion only applies to issues that did not exist when the draft resource management plan was available for public comment, and therefore the public could not comment on the issue.

Many comments asserted that the proposed rule limited the ability to protest by imposing tedious formatting requirements and narrowing protest criteria to “component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs of such laws and regulations.” The final rule is not revised in response to these comments. Protest criteria identified in final § 1610.6–2(a)(3)(iii) are consistent with other adopted changes in the final rule, such as the adoption of planning components in § 1610.1–2, and focus protests on potential inconsistencies with Federal laws or regulations or the purposes, policies, and programs implementing such laws and regulations. The protest period is not intended as a second public comment period; rather, it is intended to remedy inconsistencies with Federal laws and regulations prior to the approval of the resource management plan or plan amendment. The BLM does not believe that the required information represents a barrier to protest, rather, it ensures that the BLM has adequate information to make a decision on protests.

One comment stated that the explicit authority of the Director to approve portions of a resource management plan not subject to a protest during protest resolution should be made more clear in the final planning rule. In response to this comment, the final rule adopts a statement at § 1610.6–2(b), stating “[a]pproval will be withheld on any portion of a resource management plan or plan amendment until final action has been completed on such protest.” Many comments stated that the final rule should require the Director to briefly explain why a protest does not

meet the requirements of § 1610.6–2. In response to this comment, final § 1610.6–2(c) has been modified to state that the Director shall notify the protesting parties of a dismissal and provide reasons for the dismissal.

A few comments requested that the protest period be extended from 30 days to 60 days. The final rule is not revised based on this request. The 30-day protest period is an existing requirement, and does not represent a change in practice or policy.

Several comments included requests that the BLM adopt language in § 1610.6–4 requiring the BLM to adopt an adaptive management structure. The final rule is not revised in response to these comments. As explained in the preamble discussion of § 1610.1–3, the measurable objectives and use of monitoring and evaluation will guide adaptive management strategies to help manage for uncertainty. However, the specific application of adaptive management principles depends on the unique circumstances of each planning effort, and it is not appropriate to prescribe how those principles will be applied in the final rule.

Several comments suggested that § 1610.6–4 include a review of the objectives as part of monitoring and evaluation. The final rule is revised to state that monitoring and evaluation is used to determine whether the resource management plan objectives are being met; and whether there is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

Several public comments suggested that the BLM should have the discretion to rely on other agencies' resource assessments. In response to public comment, the final rule includes a new § 1610.6–8(c), which provides that another agency's resource assessment may be relied on if it is consistent with the nature, scope, and scale of the issues of concern relevant to the planning area and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment, including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. For example, the BLM could rely on an assessment developed by the United States Forest Service during the development of a land management plan, should it meet these requirements.

*Designation of Areas of Critical Environmental Concern (ACECs)*

Several comments objected to the proposed removal of the requirement to publish a **Federal Register** notice and 60-day public comment period for proposed ACECs. In response to public comment, the final rule is revised to require that when a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the **Federal Register** and request written comments on the designations under consideration. The final rule further provides that this step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see §§ 1610.2–2(d) and 1610.8–2(b)(1)). This comment period will be at least 30 days long, in accordance with § 1610.2–2(a) of the final rule, and will be longer when it is integrated with the comment period for draft EIS-level amendments (at least 60 days) and draft resource management plans (at least 100 days). Either resource management plans or plan amendments can consider potential ACECs for designation consistent with the priority established by FLPMA (43 U.S.C. 1712–(c)(3)). After careful consideration, BLM believes that a 30-day comment period will generally be adequate for EA-level plan amendments that include ACECs, such as revising the boundary of an existing ACEC after the acquisition of an adjoining parcel; however, BLM may extend the comment period if warranted.

Some comments expressed concern that language in the proposed rule would not allow identification of potential ACECs later in the process as new resources are identified, or in between planning process. Other comments objected to identifying potential ACECs during the planning assessment, or outside of the preparation of a resource management plan. The final rule is not revised in response to these comments. The final rule retains the requirement to identify potential ACECs through inventory of public lands and during the planning process (see § 1610.8–2(a)). The identification of potential ACECs is an inventory process required under FLPMA which states that an inventory of all public lands and their resources and other values, shall be prepared and maintained on a continuing basis, giving priority to ACECs (43 U.S.C. 1711(a)). The final rule establishes procedures for inventory of the public lands during the planning assessment at §§ 1610.4(b)(1) and 1610.4(d)(5)(vii), therefore it is

appropriate that an inventory of potential ACECs occur during the planning assessment. Inventory and assessment can be conducted at any point in time, however, and not just at times associated with a plan amendment or resource management plan. Potential ACECs may be identified after the planning assessment is completed, such as during public scoping, and the BLM will consider these potential ACECs for designation in the draft resource management plan. It is important to note that the identification of a potential ACEC does not constitute formal designation of an ACEC. Designation of an ACEC occurs through the approval of a resource management plan, consistent with existing regulation (see final § 1610.8–2(b)(1)). Under the final rule, an ACEC is not designated during the planning assessment.

Some commenters expressed that ACECs are inappropriately given special treatment in the rule. The final rule is not revised in response to these comments. FLPMA provides that the BLM shall give priority to the inventory, designation, and protection of ACECs (43 U.S.C. 1711(a) and 1712(c)(3)). The procedures described in final § 1610.8–2 are similar to the existing rule, but are modified slightly for clarification, to promote efficiency, and to better align with FLPMA. The final rule at § 1610.8–2 provides the process for the identification, designation and protection of ACECs through the planning process, consistent with the priority established in FLPMA.

Several comments objected to the proposed removal of language stating that an ACEC generally contains values that are of “more than local significance” (existing § 1610.7–2(a)(2)). Other comments expressed support for this proposed change. In response to public comments, the final rule removes this existing language. The BLM believes that this existing language is not appropriate in the regulations because it does not accurately describe the existing criteria for importance that an area “must have substantial significance and values.” There are many examples where an area of local significance would meet the importance criteria for substantial significance and values, including a cultural site of substantial significance to local tribes; a wetland that provides critical water filtration services to a local community; or key habitat for an endemic wildlife species. The removal of this language does not represent a substantive change in these regulations, as this language does not represent a requirement under the existing regulations; rather it

provided an example of what generally meets the “importance” criteria.

A few comments suggested that the last sentence in proposed § 1610.8–2(b) should be deleted, or the word potential removed, as this sentence suggests that the existence of a potential ACEC requires the BLM to provide special management to the area. Comments noted that FLPMA defines ACECs “as areas within the public lands where special management is required . . .” but contains no language regarding “potential” ACECs or their management. In response to these comments, the word “potential” is removed from the last sentence of § 1610.8–2(b) to clarify that only designated ACECs (not “potential” ACECs) require special management attention.

Several comments stated that the final rule should include language to give priority to ACECs in the final rule. Comments noted that FLPMA directs BLM to give priority to ACECs, and this priority is a unique directive in multiple use land management law which requires the BLM to do more than simply “consider” potential ACECs. In response to public comment, the final rule is revised at § 1610.8–2(b) to state that potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan “consistent with the priority established by FLPMA.” The BLM must comply with FLPMA, regardless of these regulations; therefore, a restatement of FLPMA is not necessary in the regulations. The BLM, however, recognizes the value in restating statutory direction in the planning regulations to provide context on the relationship between the regulations and overarching statutory direction. This does not represent a substantive change in BLM policy; rather, it provides context that the BLM must consider ACECs for designation consistent with the statutory direction provided in FLPMA.

Some comments asserted that revisions to the ACEC provisions attempt to change the process and intent of FLPMA under the guise of trying to make it more readable. Comments stated that the final rule needs to ensure the use of the ACEC designation is in accordance with FLPMA and the intent of Congress. The final rule is not revised in response to these comments. The final rule does not significantly change the process for designating ACECs or the intent of ACECs from the existing regulations. Where changes are made to the existing regulations, the changes are disclosed and a rationale provided in the discussion of § 1610.8–2 in this

preamble. The definition of an ACEC and the process for designating ACECs, as described in the final rule, are consistent with FLPMA.

Several comments requested that the BLM ensure that ACECs are not managed as a substitute for wilderness, or used as a substitute for wilderness suitability recommendations. Comments noted that BLM Manual 1613 (1988) states that “an ACEC designation will not be used as a substitute for wilderness suitability recommendations.” The final rule is not revised in response to these comments. ACECs will be identified, designated, and managed in accordance with FLPMA and applicable policy, including this final rule. Such areas may not be used as a substitute for wilderness areas or wilderness suitability recommendations.

#### *Climate Change*

Several comments suggested that the planning rule should require each resource management plan and plan amendment to analyze climate change and provide for climate adaptation. The final rule is not revised in response to these comments to prescribe specific requirements related to climate change. The BLM’s planning rule addresses the impacts of BLM decisions on climate change through the NEPA process. Section 1610.5–3(b) of the final rule provides that the estimation of effects for resource management plans shall be “guided by the basis for analysis, the planning assessment, and procedures implementing the National Environmental Policy Act.” This analysis includes implementation of current policy on climate change analysis under NEPA, as appropriate. It is not necessary to provide duplicative regulatory guidance in the planning rule.

It is also important to note that the planning regulations establish the procedural framework for preparing and amending resource management plans, but they do not prescribe specific management outcomes. The BLM, through the land use planning process, will develop plan components to address desired management outcomes within the planning area. The BLM will consider relevant resource management concerns, such as climate change and the need for climate change adaptation, when assessing the baseline condition, trend, and potential future condition and when identifying the planning issues for any given resource management plan (see § 1610.5–1). The planning issues will be informed by, among other things, the planning assessment, and will in turn inform the

development of the plan components. Final § 1610.4(b)(2) requires that, as part of the planning assessment, the BLM “identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment.” We believe that this is the appropriate place to consider relevant policies such as Federal or Departmental climate change policies.

#### *Goals of Planning 2.0*

The BLM received comments both in support of, and opposed to, the goals of Planning 2.0. The BLM also received comments stating both that the revisions to the existing rule did not support the Planning 2.0 goals, and comments stating that the revisions did support those goals.

The BLM has retained the goals of Planning 2.0 in the final rule, with minor edits. The BLM believes these goals respond to the increasing challenges that the BLM faces in managing for multiple-use and sustained yield on public lands, and to recent Executive and Secretarial direction. For more information, please see the Background discussion to this preamble.

#### *Length of Public Comment Period for the Proposed Planning Rule*

The BLM initially provided a 60-day public comment period on the proposed planning rule and made the rule available to the public two-weeks prior to the formal start of the comment period. Many comments requested that the BLM extend the comment period for up to 240 days. In response, the BLM granted a 30-day extension of the public comment period. Additional comments requested that the BLM further extend the comment period for up to 270 days. The BLM did not further extend the comment period. “Executive Order 13563—Improving Regulation and Regulatory Review,” published on January 21, 2011, directs Federal agencies to “afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days” and the BLM has provided such opportunity. Several comments also requested that the BLM hold public hearings across the western United States. The BLM held webinars on March 21, 2016, and April 13, 2016, as well as a public meeting broadcast live over the Internet on March 25, 2016. Recordings of all webinars and meetings were posted to the BLM Web site and the public was provided an email address to submit any additional

questions. The BLM did not hold public hearings on the proposed rule across the western United States because the BLM provided opportunities for remote public participation in webinars and meetings over the Internet and through email.

#### *Level of NEPA Analysis for the Planning Rule*

The BLM made a preliminary categorical exclusion available concurrent with publication of the proposed rule. The BLM received multiple comments stating that it is violating NEPA by relying on a categorical exclusion for NEPA compliance. Specifically, comments argued that the revisions to the planning rule had potentially significant impacts, and should have been analyzed through an Environmental Assessment or Environmental Impact Statement. Comments stated that the following extraordinary circumstances were present, making a categorical exclusion inappropriate:

- Significant impacts to public health and safety;
- Significant impacts on natural resources and unique geographic characteristics;
- Highly controversial environmental effects or unresolved conflicts concerning alternative uses of available resources;
- Highly uncertain and potentially significant environmental effects or involving unique or unknown environmental risks;
- Establishes a precedent for future action or represents a decision in principle for future actions; and
- Cumulatively significant impacts.

The BLM believes that the categorical exclusion is the proper form of NEPA compliance for this action under 43 CFR 46.210(i). The existing and final rules are entirely procedural in character. The actual planning decisions reached through the planning process are themselves subject to compliance with NEPA’s analytical requirements as well as the statute’s public involvement elements. Any decisions that might be reached through the planning process, as proposed for revision through this rulemaking, would be subject to compliance with NEPA. For this reason, the BLM’s reliance upon this categorical exclusion is appropriate.

The BLM has revised the categorical exclusion documentation based on public comments. However, none of the comments raised information indicating the presence of one or more of the extraordinary circumstances listed in 43 CFR 46.215.

**Procedural Matters**

*Regulatory Planning and Review  
(Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this final rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that

reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

*Regulatory Flexibility Act*

This final rule does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, which can be

found in 13 CFR 121.201. For a specific industry identified by the North American Industry Classification System (NAICS), small entities are defined by the SBA as an individual, limited partnership, or small company considered at “arm’s length” from the control of any parent company, which meet certain size standards. The size standards are expressed either in number of employees or annual receipts. The final rule could affect any entity that elects to participate in the BLM’s planning process. The industries most likely to be directly affected are listed in the table below along with the relevant SBA size standards. Other industries, such as transportation or manufacturing, may be indirectly affected and are not listed below.

Industry	Size standards in millions of dollars	Size standards in number of employees
Beef Cattle Ranching and Farming .....	0.75	.....
Forest Nurseries and Gathering of Forest Products .....	11.0	.....
Logging .....	.....	500
Oil and Gas Extraction .....	.....	500
Mining (except Oil and Gas) .....	.....	500
Drilling Oil and Gas Wells .....	.....	500
Support Activities for Oil and Gas Operations .....	38.5	.....
Support Activities for Coal Mining .....	20.5	.....
Support Activities for Metal Mining .....	20.5	.....
Support Activities for Nonmetallic Minerals (except Fuels) .....	7.5	.....
Hydroelectric Power Generation .....	.....	500
Fossil Fuel Electric Power Generation .....	.....	750
Solar, Wind, Geothermal Power Generation .....	.....	250
Electric Bulk Power Transmission and Control .....	.....	500
Electric Power Distribution .....	.....	1,000
Natural Gas Distribution .....	.....	500
Environmental Consulting Services .....	15.0	.....
Other Amusement and Recreation Industries .....	7.5	.....
Environment, Conservation and Wildlife Organizations .....	15.0	.....

These industries may include a large, though unquantifiable, number of small entities. In addition to determining whether a substantial number of small entities are likely to be affected by this rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. The final rule is largely administrative in nature and only affects internal BLM procedures. The direct impacts on the public are increased opportunities for voluntary public involvement. The magnitude of the impact on any individual or group, including small entities, is expected to be negligible. The actual impacts cannot reasonably be predicted at this stage, as they will depend on the specific context of each planning effort. However, there is no reason to expect that these changes, when implemented across all future planning efforts, place undue

burden on any specific individual or group, including small entities.

Based on the available information, we conclude that the final rule does not have a significant economic impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required. The BLM prepared an economic and threshold analysis as part of the record, which is available for review.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule is administrative in nature and affects the BLM’s resource management planning process and procedures.

This rule does not have an annual effect on the economy of \$100 million or more. The final rule revises existing procedures and requirements. Although the final rule allows the public to submit protests electronically, which was not possible under the existing regulations, it would be speculative to estimate how many protests the BLM will receive as a result of this final rule.

This rule does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There are no impacts to any prices as a result of this final rule.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule is

administrative in nature and only impacts the BLM's resource management planning process and procedures. The BLM prepared an economic and threshold analysis as part of the record, which is available for review.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. This rule is administrative in nature and only impacts the BLM's land use planning process and procedures. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (Executive Order 12630)*

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. This rule is administrative in nature and only impacts internal BLM procedures. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

A Federalism assessment is not required because the rule does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The only provisions that could possibly have a direct effect on States are the Governor's consistency review and the increased public involvement opportunities, but these provisions will only have minimal impacts, if any. In the Governor's consistency review, the final rule does not significantly impact Governors or change the existing requirements of this section. This section is revised only to clarify an existing process that has caused some confusion. The only change from existing requirements is final § 1610.3–2(b)(1)(ii), which allows the Governor to waive or reduce the 60-day period during which the Governor may identify inconsistencies. This could provide a benefit to the Governor in some situations where the timely approval of a plan or amendment is necessary.

Please see the discussion on the Governor's consistency review at the preamble for final § 1610.3–2(b)(1)(ii).

The final rule adds more opportunities for public involvement, including through the planning assessment (see § 1610.4) and the public review of the preliminary alternatives (see § 1610.5–2), which may result in more engagement with State and local governments. Neither of these instances have a significant adverse effect on State governments.

#### *Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)*

This rule complies with the requirements of Executive Order 13175 and Department of the Interior Secretarial Order 3317. Specifically, in conjunction with preparation of this final rule, the BLM initiated government-to-government consultation with federally-recognized Indian tribes with which the Bureau normally consults regarding land use planning. Each BLM State Office sent a letter notifying Indian tribes located within the jurisdictional boundary of the BLM State Office and with which the BLM State Office normally consults on proposed rules requesting government-to-government consultation. Additionally, each BLM State Office sent a follow-up notification and request for consultation; the format for follow-up requests varied across BLM State Offices. Formats included phone calls, letters, or in-person conversations at previously scheduled meetings.

To facilitate understanding of the proposed rule, the BLM held a webinar for interested Indian tribes on May 4, 2016. The webinar provided an overview of the proposed changes, discussion on topics of interest to tribal participants, and an opportunity for questions. In addition, in person meetings were held with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting with the BLM.

#### *Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

##### Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This final rule contains information collection activities that require approval by OMB under the PRA.

The BLM included an information collection request in the proposed rule. OMB has approved the information collection for the final rule under control number 1004–0212.

##### Summary of Information Collection Activities

- *Title:* Resource Management Planning (43 CFR part 1600).
- *Forms:* None.
- *OMB Control Number:* 1004–0212.
- *Description of Respondents:* Participants in the BLM land use planning process (including Governors of States; individuals; households; businesses; associations; and State, local, and tribal governments).
- *Respondents' Obligation:* Required to obtain or retain a benefit.
- *Abstract:* This BLM final rule revises existing regulations on procedures used to prepare, revise, or amend land use plans in accordance with FLPMA. This information collection request includes activities that have been ongoing without a control number.
- *Frequency of Collection:* On occasion.
- *Estimated Number of Responses Annually:* 131.
- *Estimated Annual Burden Hours:* 1,965 hours.
- *Estimated Total Non-Hour Cost:* None.

##### *Discussion of Information Collection Activities*

##### Consistency (43 CFR 1610.3–3(b))

Section 202(c)(9) of FLPMA (43 U.S.C. 1712(c)(9)) requires that the Secretary of the Interior "assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans." This responsibility is delegated to the BLM Director and accomplished, in part, through the "Governor's Consistency Review"

process described in final § 1610.3–3(b). This information collection activity is necessary for this process and for compliance with section 202(c)(9) of FLPMA.

Final § 1610.3–3(b) provides an opportunity for Governors of affected States to identify possible inconsistencies between officially approved and adopted land use plans of State and local governments and proposed resource management plans (RMPs) or proposed amendments to RMPs and management framework plans (MFPs). Following receipt of a proposed resource management plan or plan amendment from the BLM, Governors will have a period of 60 days to submit to the deciding official a written document that:

- Identifies any inconsistencies with officially approved and adopted land use plans of State and local governments; and
- Recommends remedies for the identified inconsistencies.

The final rule provides that the BLM deciding official will notify the Governor in writing of his or her decision regarding these recommendations and the reasons for this decision. Within 30 days of this decision, the Governor will be authorized to appeal this decision to the BLM Director. The BLM Director will consider the Governor(s)' comments in rendering a final decision.

Protests (43 CFR 1610.6–2)

Section 202(f) of FLPMA requires that the Secretary of the Interior “allow an opportunity for public involvement and by regulation . . . establish procedures . . . to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation

of plans and programs relating to the management of public lands.” The protest process described in final § 1610.6–2 authorizes protests of proposed land use plans and plan amendments before such plans or plan amendments are approved. The collection of information assists the BLM in complying with section 202(f) of FLPMA. Final § 1610.6–2 provides an opportunity for any person who participated in the preparation of the resource management plan or plan amendment to protest the approval of proposed RMPs and proposed amendments to RMPs and MFPs to the Director of the BLM. The following information is required for submission of a valid protest:

1. The protestor’s name, mailing, address, telephone number, and email address (if available). The BLM needs this information in order to contact the protestor.
2. The protestor’s interest that may be adversely affected by the planning process. This information helps the BLM understand whether or not the protestor is eligible to submit a protest.
3. How the protestor participated in the preparation of the resource management plan or plan amendment. This information helps the BLM determine whether or not the protestor is eligible to submit a protest.
4. The plan component or components believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations. This information is necessary because the approval of a resource management plan is the final decision for the Department of the Interior. Plan components represent planning-level management direction with which all future decisions within

a planning area must be consistent, thus it is important for the BLM to know if a plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations.

5. A concise explanation of why the plan component is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies and programs of such laws and regulations and of the associated issue or issues that were raised during the preparation of the resource management plan or plan amendment. This information is essential to the BLM’s understanding of the protest and decision to grant or dismiss the protest.

6. Copies 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. This information helps the BLM to understand the protest and to reach a decision.

The BLM Director is required to render a decision on the protest before approval of any portion of the resource management plan or plan amendment being protested. The Director’s decision is the final decision of the Department of the Interior.

*Estimated Hour Burdens*

The BLM estimates 131 responses and 1,965 hours annually. The estimated hour burdens are itemized in the following table. Included in the burden estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each component of the information collection requirements.

ESTIMATES OF ANNUAL HOUR BURDENS

Type of response	Number of responses	Hours per response	Total hours (column B × column C)
A.	B.	C.	D.
Governor’s Consistency Review Requirements 43 CFR 1610.3–3(b) .....	27	15	405
Protest Procedures/Governments 43 CFR 1610.6–2 .....	16	15	240
Protest Procedures/Individuals and Households 43 CFR 1610.6–2 .....	32	15	480
Protest Procedures/Businesses and Associations 43 CFR 1610.6–) .....	56	15	840
Totals .....	131	.....	1,965

In response to the proposed rule (81 FR 9674, February 25, 2016), BLM did not receive any public comments that addressed information collection activities for this rulemaking.

*National Environmental Policy Act*

The final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and the BLM has prepared

documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is categorically excluded from

NEPA review. This rule is excluded from the requirement to prepare a detailed statement because it is entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that requires further analysis under NEPA.

Documentation of the reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this final rule.

#### *National Historic Preservation Act*

While the promulgation of the rule is an undertaking under the National Historic Preservation Act, 54 U.S.C. 306108, the BLM has determined that the rulemaking is not the type of activity that has the potential to cause effects on historic properties under 36 CFR 800.3(a)(1). This is because the final rule is entirely procedural. This final rule does not set goals, standards, or methods for how the public land is to be managed. Rather, it describes the process by which the BLM develops these for individual land use planning areas. This final rule does not approve any land use plans or plan amendments and does not authorize any particular projects or other actions that could cause effects on historic properties.

#### *Endangered Species Act*

The BLM has determined a no effect determination is appropriate under section 7 of the Endangered Species Act. The final rule is entirely procedural in nature, and it would have no effect on listed species or designated critical habitat because it does not approve any land use plans or plan amendments or authorize any particular projects or other actions that could have such effects.

#### *Effects on the Energy Supply (Executive Order 13211)*

This rule is not a significant energy action under the definition of Executive Order 13211. This rule is administrative in nature and affects the BLM's internal procedures. There are no impacts on the development of energy on public lands. A statement of Energy Effects is not required.

#### *Authors*

The principal author of this rule is Shasta Ferranto, Division of Decision Support, Planning and NEPA, BLM Washington Office; assisted by Charles Yudson, Jean Sonneman and Ian Senio, Office of Regulatory Affairs, BLM Washington Office; Elizabeth Meyer

Shields, Leah Baker, and Rebecca Moore, Division of Decision Support, Planning and NEPA, BLM Washington Office; Kathryn Kovacs, BLM Washington Office; and Nicollee Gaddis, BLM Las Vegas Field Office.

#### **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.

Dated: November 22, 2016.

**Janice M. Schneider,**

*Assistant Secretary, Land and Minerals Management.*

#### **43 CFR Chapter II**

■ For the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR by revising part 1600 to read as follows:

#### **PART 1600—PLANNING, PROGRAMMING, BUDGETING**

##### **Subpart 1601—Planning**

Sec.

- 1601.0-1 Purpose.
- 1601.0-2 Objective.
- 1601.0-3 Authority.
- 1601.0-4 Responsibilities.
- 1601.0-5 Definitions.
- 1601.0-6 Environmental impact statement policy.
- 1601.0-7 Scope.
- 1601.0-8 Principles.

##### **Subpart 1610—Resource Management Planning**

Sec.

- 1610.1 Resource management planning framework.
- 1610.1-1 Guidance and general requirements.
- 1610.1-2 Plan components.
- 1610.2 Public involvement.
- 1610.2-1 Public notice.
- 1610.2-2 Public comment periods.
- 1610.2-3 Availability of the resource management plan.
- 1610.3 Consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes.
- 1610.3-1 Consultation with Indian tribes.
- 1610.3-2 Coordination of planning efforts.
- 1610.3-3 Consistency requirements.
- 1610.4 Planning assessment.
- 1610.5 Preparation of a resource management plan.
- 1610.5-1 Identification of planning issues.
- 1610.5-2 Formulation of resource management alternatives.
- 1610.5-3 Estimation of effects of alternatives.
- 1610.5-4 Preparation of the draft resource management plan and selection of preferred alternatives.
- 1610.5-5 Selection of the proposed resource management plan.

1610.6 Resource management plan approval, implementation, and modification.

- 1610.6-1 Resource management plan approval and implementation.
- 1610.6-2 Protest procedures.
- 1610.6-3 Conformity and implementation.
- 1610.6-4 Monitoring and evaluation.
- 1610.6-5 Maintenance.
- 1610.6-6 Amendment.
- 1610.6-7 Revision.
- 1610.6-8 Situations where action can be taken based on another agency's planning documents.
- 1610.7 Management decision review by Congress.
- 1610.8 Designation of areas.
- 1610.8-1 Designation of areas unsuitable for surface mining.
- 1610.8-2 Designation of areas of critical environmental concern.
- 1610.9 Transition period.

**Authority:** 43 U.S.C. 1711–1712.

#### **Subpart 1601—Planning**

##### **§ 1601.0-1 Purpose.**

The purpose of this part is to establish in regulations a process for the development, approval, maintenance, and amendment of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management (BLM), consistent with the principles of multiple use and sustained yield, unless otherwise specified by law.

##### **§ 1601.0-2 Objective.**

The objective of resource management planning by the BLM is to manage public lands on the basis of multiple use and sustained yield, unless otherwise specified by law, provide for meaningful public involvement by the public, State and local governments, Indian tribes and Federal agencies in the preparation and amendment of resource management plans, and ensure that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy and use, and which recognizes the Nation's need for renewable and non-renewable resources including, but not limited to, domestic sources of minerals, food, timber, and fiber from the public lands.

##### **§ 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) (FLPMA); 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) The Secretary and the Director provide national level policy and procedure guidance for planning. The Director determines the deciding official and the planning area for the preparation of resource management plans and plan amendments that cross State boundaries. For other resource management plans or plan amendments, the deciding official shall be the BLM State Director, unless otherwise determined by the Director.

(b) Deciding officials provide quality control and supervisory review, including approval, for the preparation and amendment of resource management plans and related environmental impact statements or environmental assessments. The deciding official determines the responsible official for the preparation of each resource management plan or plan amendment. The deciding official also determines the planning area for resource management plans and plan amendments that do not cross State boundaries.

(c) Responsible officials prepare resource management plans and plan amendments and related environmental impact statements or environmental assessments.

#### § 1601.0–5 Definitions.

As used in this part, the term:

*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.

*Conformity or conformance* means that a resource management action shall be clearly consistent with the plan components of the approved resource management plan (see § 1610.6–3).

*Consistent with officially approved and adopted plans* means that resource management plans are compatible with the terms, conditions, and decisions of

officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes, to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal law and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations, and subject to the qualifications in § 1610.3–3.

*Cooperating agency* means an eligible governmental entity (see 43 CFR 46.225(a)) that has entered into an agreement with the BLM to participate in the development of an environmental impact statement or environmental assessment as a cooperating agency under the National Environmental Policy Act and in the planning process as described in § 1610.3–2 of this part. The BLM and the cooperating agency will work together under the terms of the agreement.

*Deciding official* means the BLM official who is delegated the authority to approve a resource management plan or plan amendment (see § 1601.0–4).

*High quality information* means any representation of knowledge such as facts or data, including the best available scientific information, which is accurate, reliable, and unbiased, is not compromised through corruption or falsification, and is useful to its intended users.

*Indian tribe* means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

*Landscape* means an area of land encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context.

*Mitigation* means the sequence of avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

*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.

*Officially approved and adopted plans* means resource-related plans prepared and approved by other Federal agencies, State and local governments, and Indian tribes pursuant to and in accordance with authorization provided by Federal, State, tribal, or local constitutions, legislation, or charters which have the force and effect of law.

*Plan amendment* means an amendment to an approved resource management plan or management framework plan to change one or more plan components (see § 1610.6–6).

*Plan components* means the elements of a resource management plan with which future management actions shall be consistent. Plan components consist of goals; objectives; designations; resource use determinations; monitoring and evaluation standards; and lands identified as available for disposal, including sales under section 203 of FLPMA, as applicable (see § 1610.1–2).

*Plan maintenance* means change(s) to an approved resource management plan to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6–5).

*Plan revision* means a revision of an approved resource management plan that affects the entire resource management plan or major portions of the resource management plan (see § 1610.6–7). Preparation or development of a resource management plan includes plan revisions.

*Planning area* means the geographic area for the preparation or amendment of a resource management plan.

*Planning assessment* means an evaluation of relevant resource, environmental, ecological, social, and economic conditions in the planning area (see § 1610.4). A planning assessment is developed to inform the preparation and, as appropriate, the implementation of a resource management plan.

*Planning issue* means disputes, controversies, or opportunities related to resource management.

*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 Federal, State, local, and Indian tribal governments.

*Public involvement* means the opportunity for participation by the public in decision making and planning with respect to the public lands.

*Public lands* means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the BLM. Public lands do not include lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

*Resource management plan* means a land use plan as described under section 202 of the FLPMA, including plan revisions. Approval of a resource management plan is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

*Responsible official* means a BLM official who is delegated the authority to prepare a resource management plan or plan amendment.

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

*Sustained yield* means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

#### **§ 1601.0–6 Environmental impact statement policy.**

The BLM shall prepare an environmental impact statement when preparing a resource management plan. The environmental analysis of alternatives and the proposed resource management plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed resource management plan shall be published in a single document with the related environmental impact statement.

#### **§ 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 shall provide for public involvement and shall be consistent with the principles described in section 202 of FLPMA. Additionally, the BLM shall consider the impacts of resource management plans on resource, environmental, ecological, social, and economic conditions at relevant scales. The BLM also shall consider the impacts of resource management plans on, and the uses of, adjacent or nearby Federal and non-Federal lands, and non-public land surface over federally-owned mineral interests.

### **Subpart 1610—Resource Management Planning**

#### **§ 1610.1 Resource management planning framework.**

##### **§ 1610.1–1 Guidance and general requirements.**

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

(1) Policy established by the President, Secretary, Director, or deciding official approved documents, so long as such policy complies with the Federal laws and regulations applicable to public lands; and

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

(b) The BLM shall use a systematic interdisciplinary approach in the preparation and amendment of resource management plans to achieve integrated consideration of physical, biological, ecological, social, economic, and other sciences. The expertise of the preparers shall be appropriate to the resource values involved, the issues identified during the issue identification and environmental impact statement scoping stage of the planning process, and the principles of multiple use and sustained yield unless otherwise specified by law. The responsible official may use any necessary combination of BLM staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

(c) The BLM shall use high quality information to inform the preparation, amendment, and maintenance of resource management plans.

#### **§ 1610.1–2 Plan components.**

(a) Plan components guide future management actions within the planning area. Resource management plans shall include the following plan components:

(1) *Goals*. A goal is a broad statement of desired outcomes addressing resource, environmental, ecological, social, or economic characteristics within the planning area, or a portion of the planning area, toward which management of the land and resources should be directed.

(2) *Objectives*. An objective is a concise statement of desired resource conditions within the planning area, or a portion of the planning area, developed to guide progress toward one or more goals. An objective is specific, measurable, and should have established time-frames for achievement. As appropriate, objectives should also:

(i) Identify standards to mitigate undesirable impacts to resource conditions;

(ii) Provide integrated consideration of resource, environmental, ecological, social, and economic factors; and

(iii) Identify indicators for evaluating progress toward achievement of the objective.

(b) Resource management plans also shall include the following plan components in order to achieve the goals and objectives of the resource management plan, or applicable legal requirements or policies, consistent with the principles of multiple use and sustained yield unless otherwise specified by law:

(1) *Designations*. A designation identifies areas of public land where management is directed toward one or more priority resource values or resource uses.

(i) Planning designations are identified through the BLM's land use planning process in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies such as the designation of areas of critical environmental concern (ACEC) (see § 1610.8–2).

(ii) Non-discretionary designations are designated by the President, Congress, or the Secretary of the Interior pursuant to other legal authorities.

(2) *Resource use determinations*. A resource use determination identifies areas of public lands or mineral estate where, subject to valid existing rights, specific uses are excluded, restricted, or allowed, in order to achieve the goals and objectives of the resource management plan or applicable legal requirements or policies. Resource use

determinations shall be consistent with or support the management priorities identified through designations.

(3) *Monitoring and evaluation standards.* Monitoring and evaluation standards identify indicators and intervals for monitoring and evaluation to determine whether the resource management plan objectives are being met or there is relevant new information that may warrant amendment or revision of the resource management plan.

(4) Lands identified as available for disposal from BLM administration, including sales under section 203 of FLPMA, as applicable.

(c) A plan component may only be changed through a resource management plan amendment or revision, except to correct typographical or mapping errors or to reflect minor changes in mapping or data (see § 1610.6–5).

#### § 1610.2 Public involvement.

(a) The BLM shall provide the public with opportunities to become meaningfully involved in and comment on the preparation and amendment of resource management plans. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) Public involvement activities conducted by the BLM shall be documented either by a record or by a summary of the principal issues discussed and comments made. The record or summary of the principal issues discussed and comments made shall be available to the public and open for 30 days to any participant who wishes to review the record or summary.

(c) Before the close of each fiscal year, the BLM shall post the status of each resource management plan in process of preparation or scheduled to be started to the BLM's Web site.

#### § 1610.2–1 Public notice.

(a) When the BLM prepares a resource management plan or amends a resource management plan and prepares an environmental impact statement to inform the amendment, the BLM shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following points in the planning process:

(1) Preparation of the planning assessment (subject to § 1610.4);

(2) Identification of planning issues and review of the preliminary statement of purpose and need (see § 1610.5–1);

(3) Review of the preliminary resource management alternatives, preliminary rationale for alternatives, and the basis for analysis (subject to §§ 1610.5–2(c) and 1610.5–3(a)(1));

(4) Comment on the draft resource management plan (see § 1610.5–4); and

(5) Protest of the proposed resource management plan (see §§ 1610.5–5 and 1610.6–2).

(b) When the BLM amends a resource management plan and prepares an environmental assessment to inform the amendment, the BLM shall notify the public and provide opportunities for public involvement appropriate to the areas and people involved during the following points in the planning process:

(1) Identification of planning issues (see § 1610.6–6(a));

(2) Comment on the draft resource management plan amendment, as appropriate (see § 1610.6–6(a)); and

(3) Protest of the proposed resource management plan amendment (see §§ 1610.5–5 and 1610.6–2).

(c) The BLM shall announce opportunities for public involvement by posting a notice on the BLM's Web site, at all BLM offices within the planning area, and at other public locations, as appropriate. The responsible official shall identify additional forms of notification to reach local communities located within the planning area, as appropriate.

(d) Individuals or groups may request to be notified of opportunities for public involvement related to the preparation or amendment of a resource management plan. The BLM shall notify those individuals or groups through written or electronic means.

(e) The BLM shall notify the public at least 15 days before any public involvement activities where the public is invited to attend, such as a public meeting.

(f) When initiating the identification of planning issues for the preparation of a resource management plan or plan amendment, in addition to the public notification requirements of §§ 1610.2–1(c) and 1610.2–1(d), the BLM shall notify the public as follows:

(1) The BLM shall publish a notice in appropriate media, including newspapers of general circulation in the planning area. The BLM shall also publish a notice of intent in the **Federal Register**. This notice may also constitute the scoping notice required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

(2) This notice shall include the following:

(i) Description of the proposed planning action;

(ii) Identification of the planning area for which the resource management plan is to be prepared;

(iii) The general types of issues anticipated;

(iv) The expertise to be represented and used to prepare the resource management plan, in order to achieve an interdisciplinary approach (see § 1610.1–1(b));

(v) The kind and extent of public involvement opportunities to be provided, as known at the time;

(vi) The times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences, or other gatherings, as known at the time;

(vii) The name, title, address, and telephone number of the BLM official who may be contacted for further information; and

(viii) The location and availability of documents relevant to the planning process.

(g) If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is encompassed by the range of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved (see § 1610.6–1(b)).

(h) The BLM shall notify the public when a resource management plan or plan amendment has been approved.

(i) When changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make the changes available for public review at least 30 days prior to their implementation.

#### § 1610.2–2 Public comment periods.

(a) Any time the BLM requests written comments during the preparation or amendment of a resource management plan, the BLM shall notify the public and provide for at least 30 calendar days for response, unless a longer period is required by law or regulation.

(b) When requesting written comments on a draft plan amendment and an environmental impact statement is prepared to inform the amendment, the BLM shall provide at least 60 calendar days for response. The 60-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental

impact statement in the **Federal Register**.

(c) When requesting written comments on a draft resource management plan and draft environmental impact statement, the BLM shall provide at least 100 calendar days for response. The 100-day period begins when the Environmental Protection Agency publishes a notice of availability of the draft environmental impact statement in the **Federal Register**.

(d) When a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall request written comments on the designations under consideration (see § 1610.8–2).

**§ 1610.2–3 Availability of the resource management plan.**

(a) The BLM shall make copies of the draft, proposed, and approved resource management plan or plan amendment reasonably available to the public. At a minimum, the BLM shall make copies of these documents available electronically and at all BLM offices within the planning area. The BLM shall also make any scientific or technical reports the responsible official uses in the preparation of a resource management plan or plan amendment reasonably available to the public, to the extent practical and consistent with Federal law.

(b) Upon request, the BLM shall make single printed copies of the draft or proposed resource management plan or plan amendment available to individual members of the public during the public involvement process. After the BLM approves a resource management plan or plan amendment, the BLM may charge a fee for additional printed copies. Fees for reproducing requested documents beyond those used as part of the public involvement activities and other than single printed copies of the resource management plan or plan amendment may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

**§ 1610.3 Consultation with Indian tribes and coordination with other Federal agencies, State and local governments, and Indian tribes.**

**§ 1610.3–1 Consultation with Indian tribes.**

The BLM shall initiate consultation with Indian tribes on a government-to-government basis during the preparation and amendment of resource management plans.

**§ 1610.3–2 Coordination of planning efforts.**

(a) *Objectives of coordination.* In addition to the public involvement prescribed by § 1610.2, and to the extent consistent with Federal laws and regulations applicable to public lands, coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of this coordination are for the BLM to:

(1) Keep apprised of the plans, policies, and management programs of other Federal agencies, State and local governments, and Indian tribes;

(2) Assure that the BLM considers those plans, policies, and management programs that are germane in the development of resource management plans for public lands;

(3) Assist in resolving, to the extent practical, 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 Indian tribes, in the development of resource management plans, including early 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) *Cooperating agencies.* When preparing a resource management plan, the responsible official shall follow applicable regulations regarding the invitation of eligible governmental entities (see 43 CFR 46.225) to participate as cooperating agencies. The same requirement applies when the BLM amends a resource management plan and prepares an environmental impact statement to inform the amendment.

(1) The responsible official shall consider any request by an eligible governmental entity to participate as a cooperating agency. If the responsible official denies a request or determines it is inappropriate to extend an invitation to an eligible governmental entity, he or she shall inform the deciding official of the denial. The deciding official shall determine if the denial is appropriate and state the reasons for any denials in the environmental impact statement.

(2) When a cooperating agency is a non-Federal agency, a memorandum of understanding shall be used and shall include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the BLM of any

documents, including drafts (see 43 CFR 46.225(d)).

(3) The responsible official shall collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise, during the following steps in the planning process:

(i) Preparation of the planning assessment (see § 1610.4);

(ii) Identification of planning issues (see § 1610.5–1);

(iii) Formulation of resource management alternatives (see § 1610.5–2);

(iv) Estimation of effects of alternatives (see § 1610.5–3);

(v) Preparation of the draft resource management plan (see § 1610.5–4); and

(vi) Preparation of the proposed resource management plan (see § 1610.5–5).

(c) *Coordination requirements.* The BLM shall provide Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestions on issues and topics which may affect or influence other agency or other government programs.

(1) To facilitate coordination with State governments, deciding officials should seek the input of the Governor(s) on the timing, scope, and coordination of resource management planning; definition of planning areas; scheduling of public involvement activities; and multiple use and sustained yield on public lands.

(2) Deciding officials 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 deciding official shall provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the deciding official has reason to believe could affect or influence State government programs.

(3) The responsible official shall notify Federal agencies, State and local governments, and Indian tribes that have requested to be notified or that the responsible official has reason to believe would be interested in the resource management plan or plan amendment of any opportunities for public involvement in the preparation or amendment of a resource management plan. These notices shall be issued simultaneously with the public notices required under § 1610.2–1 of this part.

(4) The responsible official shall notify relevant State agencies consistent with State procedures for coordination of Federal activities for circulation among State agencies, if such procedures exist.

(5) The responsible official shall provide Federal agencies, State and local governments, and Indian tribes the time period prescribed under § 1610.2 of this part for review and comment on resource management plans and plan amendments.

(d) *Resource advisory councils.* When an advisory council has been formed under section 309 of FLPMA for the area addressed in a resource management plan or plan amendment, the responsible official shall inform that council, seek its views, and consider them throughout the planning process.

#### § 1610.3-3 Consistency requirements.

(a) Resource management plans shall be consistent with officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes to the maximum extent the BLM finds consistent with the purposes of FLPMA and other Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.

(1) The BLM shall, to the extent practical, keep apprised of officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes and give consideration to those plans that are germane in the development of resource management plans.

(2) The BLM is not required to address the consistency requirements of this section if the responsible official has not been notified, in writing, by Federal agencies, State and local governments, or Indian tribes of an apparent inconsistency.

(3) If a Federal agency, State and local government, or Indian tribe notifies the responsible official, in writing, of what they believe to be specific inconsistencies between the BLM draft resource management plan and their officially approved and adopted plans, the proposed resource management plan shall show how those inconsistencies were addressed and, if possible, resolved.

(4) Where the officially approved and adopted plans of State and local governments differ from each other, those of the higher authority will normally be followed.

(b) *Governor's consistency review.* Prior to the approval of a proposed resource management plan or plan amendment, the deciding official shall

submit to the Governor of the State(s) involved, the proposed resource management plan or plan amendment and shall identify any relevant known inconsistencies with the officially approved and adopted plans of State and local governments.

(1) The Governor(s) may submit a written document to the deciding official within 60 days after receiving the proposed resource management plan or plan amendment that:

(i) Identifies inconsistencies with officially approved and adopted land use plans of State and local governments and provides recommendations to remedy the identified inconsistencies; or

(ii) Waives or reduces the 60-day period.

(2) If the Governor(s) does not respond within the 60-day period, the resource management plan or plan amendment is presumed to be consistent.

(3) If the document submitted by the Governor(s) recommends substantive changes that were not considered during the public involvement process, the BLM shall notify the public and request written comments on these changes.

(4) The deciding official shall notify the Governor(s) in writing of his or her decision regarding these recommendations and the reasons for this decision.

(i) The Governor(s) may submit a written appeal to the Director within 30 days after receiving the deciding official's decision.

(ii) The Director shall consider the Governor(s)' appeal and the consistency requirements of this section in rendering a final decision. The Director shall notify the Governor(s) in writing of his or her decision regarding the Governor's appeal. The BLM shall notify the public of this decision and make the written decision available to the public.

#### § 1610.4 Planning assessment.

Before initiating the preparation of a resource management plan the BLM shall, consistent with the nature, scope, scale, and timing of the planning effort, complete a planning assessment.

(a) *Planning area.* The BLM shall identify a preliminary planning area for use as the basis for the planning assessment.

(1) In identifying the preliminary planning area, the BLM shall consider the following:

(i) Management concerns identified through monitoring and evaluation (see § 1610.6-4);

(ii) Relevant landscapes based on these management concerns;

(iii) Director and deciding official guidance;

(iv) Officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes; and

(v) Other relevant information, as appropriate.

(2) The responsible official shall make a description of and a rationale for the preliminary planning area available for public review prior to the publication of the notice of intent in the **Federal Register** (see § 1610.2-1(f)).

(b) *Information gathering.* The responsible official shall:

(1) Arrange for relevant resource, environmental, ecological, social, economic, and institutional data and information to be gathered, or assembled if already available, including the identification of potential ACECs (see § 1610.8-2). To the extent consistent with the laws governing the administration of the public lands and as appropriate, inventory data and information shall be gathered or assembled in coordination with the land use planning and management programs of other Federal agencies, State and local governments, and Indian tribes within which the lands are located, and in a manner that aids the planning process and avoids unnecessary data-gathering;

(2) Identify relevant national, regional, State, tribal, or local laws, regulations, policies, guidance, strategies, or plans for consideration in the planning assessment. These may include, but are not limited to, Executive or Secretarial orders, Departmental or BLM policy, Director or deciding official guidance, mitigation strategies, interagency initiatives, and State, multi-state, tribal, or local resource plans;

(3) Provide opportunities for other Federal agencies, State and local governments, Indian tribes, and the public to provide existing data and information or suggest other laws, regulations, policies, guidance, strategies, or plans described under paragraph (b)(2) of this section, for the BLM's consideration in the planning assessment; and

(4) Identify relevant public views concerning resource, environmental, ecological, social, or economic conditions of the planning area.

(c) *Information quality.* The responsible official shall evaluate the data and information gathered under paragraph (b) of this section to ensure the use of high quality information in the planning assessment and to identify any data gaps or further information needs.

(d) *Assessment.* The responsible official shall assess the resource,

environmental, ecological, social, and economic conditions of the planning area. At a minimum, the responsible official shall consider and document the following factors in this assessment when they are applicable:

- (1) Resource use and management authorized by FLPMA and other relevant authorities;
- (2) Land status and ownership, existing resource management, infrastructure, and access patterns in the planning area, including any known valid existing rights;
- (3) Current resource, environmental, ecological, social, and economic conditions, and any known trends related to these conditions;
- (4) Known resource constraints, or limitations;
- (5) Areas of potential importance within the planning area, including:
  - (i) Areas of tribal, traditional, or cultural importance;
  - (ii) Habitat for special status species, including State or federally-listed threatened and endangered species;
  - (iii) Other areas of key fish and wildlife habitat such as big game wintering and summer areas, bird nesting and feeding areas, habitat connectivity or wildlife migration corridors, and areas of large and intact habitat;
  - (iv) Areas of ecological importance, such as areas that increase the ability of terrestrial and aquatic ecosystems within the planning area to adapt to, resist, or recover from change;
  - (v) Lands with wilderness characteristics, wild and scenic study rivers, or areas of significant scientific or scenic value;
  - (vi) Areas of significant historical value, including paleontological sites;
  - (vii) Existing designations located in the planning area, such as wilderness, wilderness study areas, wild and scenic rivers, national scenic or historic trails, or ACECs;
  - (viii) Areas with potential for renewable or non-renewable energy development or energy transmission;
  - (ix) Areas with known mineral potential;
  - (x) Areas with known potential for producing forest products, including timber;
  - (xi) Areas of importance for recreation activities or access;
  - (xii) Areas of importance for public health and safety, such as abandoned mine lands or natural hazards;
- (6) Dominant ecological processes, disturbance regimes, and stressors, such as drought, wildland fire, invasive species, and climate change; and
- (7) The various goods, services, and uses that people obtain from the

planning area, such as ecological services, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production; and

- (i) The degree of local, regional, national, or international importance of these goods, services, and uses;
  - (ii) Available forecasts and analyses related to the supply and demand for these goods, services, and uses; and
  - (iii) The estimated levels of these goods, services, and uses that may be produced on a sustained yield basis.
- (e) *Planning assessment report.* The responsible official shall document the planning assessment in a report made available for public review prior to the publication of the notice of intent, which includes the identification and rationale for potential ACECs. To the extent practical, any non-sensitive geospatial information used in the planning assessment should be made available to the public on the BLM's Web site.

(f) *Plan amendments.* Before initiating the preparation of a plan amendment for which an environmental impact statement will be prepared, the BLM shall complete a planning assessment consistent with the requirements of this section for the geographic area being considered for amendment. The deciding official may waive this requirement for project-specific or other minor amendments.

#### **§ 1610.5 Preparation of a resource management plan.**

When preparing a resource management plan, or a plan amendment for which an environmental impact statement will be prepared, the BLM shall follow the process described in §§ 1610.5–1 through 1610.5–5.

#### **§ 1610.5–1 Identification of planning issues.**

(a) The responsible official shall prepare a preliminary statement of purpose and need, which briefly indicates the underlying purpose and need to which the BLM is responding (see 43 CFR 46.420). This statement shall be informed by Director and deciding official guidance (see § 1610.1–1(a)), public views (see § 1610.4(a)(4)), the planning assessment (see § 1610.4(c)), the results of any previous monitoring and evaluation within the planning area (see § 1610.6–4), Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations. The BLM shall initiate the identification of planning issues by notifying the public and making the

preliminary statement of purpose and need available for public review.

(b) The public, other Federal agencies, State and local governments, and Indian tribes shall be given an opportunity to suggest concerns, needs, opportunities, conflicts, or constraints related to resource management for consideration in the preparation of the resource management plan, including those respecting officially approved and adopted plans of other Federal agencies, State and local governments, and Indian tribes. The responsible official shall analyze those suggestions and other available data and information, such as the planning assessment (see § 1610.4–1), and determine the planning issues to be addressed during the planning process. Planning issues may be modified during the planning process to incorporate new information. The identification of planning issues should be integrated with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

#### **§ 1610.5–2 Formulation of resource management alternatives.**

(a) *Alternatives development.* The BLM shall consider all reasonable resource management alternatives (alternatives) and develop several complete alternatives for detailed study. The decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM.

(1) The alternatives developed shall be informed by the Director and deciding official guidance (see § 1610.1(a)), the planning assessment (see § 1610.4), the statement of purpose and need (see § 1610.5–1), and the planning issues (see § 1610.5–1).

(2) In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, reasonable variations may be treated as sub-alternatives.

(3) One alternative shall be for no action, which means continuation of present level or systems of resource management.

(4) The resource management plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

(b) *Rationale for alternatives.* The resource management plan shall describe the rationale for the differences between alternatives. The rationale shall include:

(1) A description of how each alternative addresses the planning issues, consistent with the principles of

multiple use and sustained yield, unless otherwise specified by law;

(2) A description of management direction that is common to all alternatives; and

(3) A description of how management direction varies across alternatives to address the planning issues.

(c) *Public review of preliminary alternatives.* The responsible official shall make the preliminary alternatives and the preliminary rationale for alternatives available for public review prior to the publication of the draft resource management plan and draft environmental impact statement, and as appropriate, prior to the publication of draft plan amendments when an environmental impact statement is prepared to inform the amendment.

(d) *Changes to preliminary alternatives.* The BLM may change the preliminary alternatives and preliminary rationale for alternatives as planning proceeds if it determines that public suggestions or other new information make such changes necessary. A description of these changes shall be made available to the public in the draft resource management plan (see § 1610.5-4).

#### **§ 1610.5-3 Estimation of effects of alternatives.**

(a) *Basis for analysis.* The responsible official shall identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of implementing each alternative considered in detail.

(1) The responsible official shall make the preliminary procedures, assumptions, and indicators available for public review prior to the publication of the draft resource management plan and draft environmental impact statement, and, as appropriate, prior to the publication of draft plan amendments when an environmental impact statement is prepared to inform the amendment.

(2) The BLM may change the procedures, assumptions, and indicators as planning proceeds if it determines that public suggestions or other new information make such changes necessary. A description of these changes shall be made available to the public in the draft resource management plan (see § 1610.5-4).

(b) *Effects analysis.* The responsible official shall estimate and display the environmental, ecological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the basis for analysis, the planning assessment, and procedures

implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

#### **§ 1610.5-4 Preparation of the draft resource management plan and selection of preferred alternatives.**

(a) The responsible official shall prepare a draft resource management plan based on Director and deciding official guidance, the planning assessment, the planning issues, and the estimation of the effects of alternatives. The draft resource management plan and draft environmental impact statement shall:

(1) Describe any changes made to the preliminary alternatives and preliminary procedures, assumptions, and indicators;

(2) Evaluate the alternatives; and

(3) Identify one or more preferred alternatives, if one or more exist, and explain the rationale for the preference or absence of a preference. The identification of one or more preferred alternatives remains the exclusive responsibility of the BLM.

(b) The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the deciding official for publication and filing with the Environmental Protection Agency.

(c) This draft resource management plan and draft environmental impact statement shall be provided for comment to the Governor(s) of the State(s) involved, and to officials of other Federal agencies, State and local governments, and Indian tribes that have requested to be notified of opportunities for public involvement or that the deciding official has reason to believe would be interested (see § 1610.3-2(c)). This action constitutes compliance with the requirements of § 3420.1-7 of this title.

#### **§ 1610.5-5 Selection of the proposed resource management plan.**

(a) After publication of the draft resource management plan and draft environmental impact statement, the responsible official shall evaluate the comments received and prepare the proposed resource management plan and final environmental impact statement.

(b) The deciding official shall publish these documents and file the final environmental impact statement with the Environmental Protection Agency.

#### **§ 1610.6 Resource management plan approval, implementation, and modification.**

##### **§ 1610.6-1 Resource management plan approval and implementation.**

(a) The deciding official may approve the resource management plan or plan amendment for which an environmental impact statement was prepared no earlier than 30 days after the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement in the **Federal Register**.

(b) Approval shall be withheld on any portion of a resource management plan or plan amendment being protested (see § 1610.6-2) until final action has been completed on such protest. If, after publication of a proposed resource management plan or plan amendment, the BLM intends to select an alternative that is within the spectrum of alternatives in the final environmental impact statement or environmental assessment, but is substantially different than the proposed resource management plan or plan amendment, the BLM shall notify the public and request written comments on the change before the resource management plan or plan amendment is approved.

(c) The approval of a resource management plan or a plan amendment for which an environmental impact statement is prepared shall be documented in a concise public record of the decision (see 40 CFR 1505.2).

##### **§ 1610.6-2 Protest procedures.**

(a) Any member of the public who participated in the preparation of the resource management plan or plan amendment and has an interest which may be adversely affected by the approval of a proposed resource management plan or plan amendment may protest such approval. A protest may raise only those issues which were submitted for the record during the preparation of the resource management plan or plan amendment (see § 1610.5), unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.

(1) *Submission.* The protest must be in writing and must be filed with the Director. The protest may be filed as a hard-copy or electronically. The responsible official shall specify protest filing procedures for each resource management plan or plan amendment, including the method the public may use to submit a protest electronically.

(2) *Timing.* For resource management plans or plan amendments for which an environmental impact statement was prepared, the protest must be filed

within 30 days after the date the Environmental Protection Agency published the notice of availability of the final environmental impact statement in the **Federal Register**. For plan amendments for which an environmental assessment was prepared, the protest must be filed within 30 days after the date that the BLM notifies the public of the availability of the amendment.

(3) *Content requirements.* The protest must:

(i) Include the name, mailing address, telephone number, email address (if available), and interest of the person filing the protest;

(ii) State how the protestor participated in the preparation of the resource management plan or plan amendment;

(iii) Identify the plan component(s) believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs implementing such laws and regulations;

(iv) Concisely explain why the plan component(s) is believed to be inconsistent with Federal laws or regulations applicable to public lands, or the purposes, policies, and programs implementing such laws and regulations and, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan, identify the associated issue or issues raised during the preparation of the resource management plan or plan amendment; and

(v) Include 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, unless the protest concerns an issue that arose after the close of the opportunity for public comment on the draft resource management plan.

(4) *Availability.* Upon request, the Director shall make protests available to the public, withholding any protected information that is exempt from disclosure under applicable laws or regulations.

(b) The Director shall render a written decision on all protests and notify protesting parties of the decision. The decision on the protest and the reasons for the decision shall be made available to the public. The decision of the Director is the final decision of the Department of the Interior. Approval will be withheld on any portion of a resource management plan or plan amendment until final action has been

completed on such protest (see § 1610.6–1(b)).

(c) The Director may dismiss any protest that does not meet the requirements of this section. The Director shall notify protesting parties of the dismissal and provide the reasons for the dismissal.

#### **§ 1610.6–3 Conformity and implementation.**

(a) All future resource management authorizations and actions, and subsequent more detailed or specific planning, shall conform to the plan components of the approved resource management plan.

(b) After a resource management plan or plan amendment is approved, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement, or other instrument of occupancy and use, the BLM 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 plan components of the approved resource management plan or plan 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 plan amendment may appeal such action pursuant to part 4, subpart E of this chapter, at the time the specific action is proposed for implementation.

(c) If a proposed action is not in conformance with a plan component, and the deciding official determines that such action warrants further consideration before a resource management plan revision is scheduled, such consideration shall be through a resource management plan amendment in accordance with § 1610.6–6 of this part.

(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: Part 3400 of this title for coal; part 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.

#### **§ 1610.6–4 Monitoring and evaluation.**

(a) The BLM shall monitor and evaluate the resource management plan in accordance with the monitoring and evaluation standards to determine whether:

(1) The resource management plan objectives are being met; and

(2) There is relevant new information or other sufficient cause to warrant consideration of amendment or revision of the resource management plan.

(b) The responsible official shall document the evaluation of the resource management plan in a report made available for public review on the BLM's Web site.

#### **§ 1610.6–5 Maintenance.**

Resource management plans may be maintained as necessary to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance shall not change a plan component of the approved resource management plan, except to correct typographical or mapping errors or to reflect minor changes in mapping or data. Maintenance is not considered a resource management plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this part or the preparation of an environmental assessment or environmental impact statement. When changes are made to an approved resource management plan through plan maintenance, the BLM shall notify the public and make the changes available for public review at least 30 days prior to their implementation.

#### **§ 1610.6–6 Amendment.**

(a) A plan component may be changed through amendment. An amendment may be initiated when the BLM determines monitoring and evaluation findings, new high quality information, new or revised policy, a proposed action, or other relevant changes in circumstances, such as changes in resource, environmental, ecological, social, or economic conditions, warrants a change to one or more of the plan components of the approved resource management plan. An amendment shall be made in conjunction with an environmental assessment of the proposed change, or an environmental impact statement, if necessary. When amending a resource management plan, the BLM shall provide for public involvement (see § 1610.2), interagency coordination, tribal consultation, consistency review (see § 1610.3), and protest (see § 1610.6–2). In all cases, the effect of the amendment on other plan components shall be evaluated. If the amendment is being considered in response to a specific proposal, the effects analysis required for the proposal and for the amendment may occur simultaneously.

(b) If the environmental assessment does not disclose significant impacts,

the responsible official may make a finding of no significant impact and then make a recommendation on the amendment to the deciding official for approval. Upon approval, the BLM 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.

(c) If the BLM amends several resource management plans simultaneously, a single programmatic environmental impact statement or environmental assessment may be prepared to address all amendments.

#### **§ 1610.6–7 Revision.**

The BLM may revise a resource management plan, as necessary, when monitoring and evaluation findings (§ 1610.6–4), new data, new or revised policy, or other relevant changes in circumstances affect the entire resource management plan or major portions of the resource management plan. Revisions shall comply with all of the requirements of this part for preparing and approving a resource management plan.

#### **§ 1610.6–8 Situations where action can be taken based on another agency's planning documents.**

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area, including mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the BLM and another Federal agency. The BLM may rely on the planning documents of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, tribal, State, or local) may be relied on 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 involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies and programs implementing such laws and regulations.

(b) After evaluation and review, the BLM may adopt another agency's plan for continued use as a resource management plan so long as the plan is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations, and an agreement is reached between the BLM and the other

agency to provide for maintenance and amendment of the plan, as necessary.

(c) Another agency's resource assessment may be relied on only if it is comprehensive and has considered the resource, environmental, ecological, social, and economic conditions in a way comparable to the manner in which these conditions would have been considered in a planning assessment (see § 1610.4), including the opportunity for public involvement, and is consistent with Federal laws and regulations applicable to public lands, and the purposes, policies, and programs implementing such laws and regulations.

(d) A land use analysis may be relied on 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 involvement as required by § 1610.2, the consultation and consistency determinations required by § 1610.3, the protest procedure prescribed by § 1610.6–2, and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of FLPMA.

#### **§ 1610.7 Management decision review by Congress.**

FLPMA requires that any BLM 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 is not required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination of use(s). 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.

#### **§ 1610.8 Designation of areas.**

##### **§ 1610.8–1 Designation of areas unsuitable for surface mining.**

(a)(1) The resource management 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 BLM 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 BLM 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 BLM, 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 BLM shall take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

##### **§ 1610.8–2 Designation and protection of areas of critical environmental concern.**

(a) Areas having potential for ACEC designation and protection shall be identified through inventory of public lands and during the planning assessment, and considered during the preparation or amendment of a resource management plan. The inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes, or natural hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria must be met:

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

(2) *Importance.* The value, resource, system, process, or natural hazard described in paragraph (a)(1) of this section must have substantial significance and values. This generally requires qualities of 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) Potential ACECs shall be considered for designation during the preparation or amendment of a resource management plan consistent with the priority established by FLPMA (43 U.S.C. 1712(c)(3)). The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands. ACECs require special management attention (when such areas are developed or used or no development is required) to protect and prevent irreparable damage to the important historic, cultural, or scenic values, fish and wildlife resources or other natural system or process, or to protect life and safety from natural hazards.

(1) When a draft resource management plan or plan amendment involves possible designation of one or more potential ACECs, the BLM shall publish a notice in the **Federal Register** and request written comments on the designations under consideration. This step may be integrated with the notice and comment period for the draft resource management plan or plan amendment (see § 1610.2–2). Any draft resource management plan or plan amendment involving a potential ACEC shall include a list of each potential ACEC and any special management attention which would occur if it were formally designated.

(2) The approval of a resource management plan or plan amendment that contains an ACEC constitutes formal designation of an ACEC. The approved plan shall include a list of all designated ACECs, and include any special management attention, such as resource use determinations (§ 1610.1–2(b)(2)), identified to protect the designated ACECs.

#### § 1610.9 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 must be in compliance with the principle of multiple use and sustained yield unless otherwise specified by law, and must have been developed with public involvement and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this part.

(2) For proposed actions a determination shall be made by the responsible official 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 with the management framework plan, it may be further considered for decision under procedures applicable to that type of action, including the regulatory provisions of the National Environmental Policy Act.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further consideration before a resource management plan is scheduled for preparation, such consideration shall be through an amendment to the management framework plan under the provisions of § 1610.6–6 of this part.

(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 or an environmental impact statement, if necessary, plus any other data and analysis deemed necessary by the BLM 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 § 1610.6–6 of this part for amending a plan.

(c)(1) When considering whether a proposed action is in conformance with a resource management plan, the BLM shall use an existing resource management plan approved prior to January 11, 2017 until it is superseded by a resource management plan or plan amendment prepared under the regulations in this part. In such circumstances, the proposed action must either be specifically provided for in the resource management plan or clearly consistent with the terms, conditions, and decisions of the approved plan.

(2) If a resource management plan is amended by a plan amendment prepared under the regulations in this part, a future proposed action must be clearly consistent with the plan components of the provisions of the approved resource management plan amended under the regulations in this part and the terms, conditions, and decisions of the provisions of the approved resource management plan that have not been amended under the regulations in this part.

(d) If the preparation, revision, or amendment of a plan was formally initiated by issuance of a notice of intent in the **Federal Register** prior to January 11, 2017, the BLM may complete and approve the resource management plan or plan amendment pursuant to the requirements of this part or to the provisions of the planning regulations in 43 CFR part 1600 in effect prior to the effective date of this rule.

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