

Categorical Exclusion Documentation

43 CFR part 1600

2016 Amendment

A. Background

The Bureau of Land Management (BLM) is revising existing regulations at 43 CFR part 1600 that establish the procedures used to prepare and amend land use plans pursuant to the Federal Land Policy and Management Act (FLPMA). The rulemaking does not represent a departure from past interpretation of BLM's responsibilities under FLPMA; rather, this update is intended to make the planning process more efficient, effective, and transparent. Amendments to subpart 1601 update existing definitions; introduce new definitions; and revise the sections regarding purpose, objective, responsibilities, integrating planning with National Environmental Policy Act (NEPA) compliance, and principles. Amendments to subpart 1610 describe guidance and general requirements; describe resource management plan components; update the public involvement provisions; establish a process for assessment of baseline conditions in the planning area; 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 procedures; update the process related to designating areas of critical environmental concern; and make clarifying edits. This subpart is also reorganized to improve readability. Finally, the final rule clarifies existing text, improves readability, standardizes the use of statutory terms, and reflects current style guidelines.

B. Proposed Action

The BLM is amending 43 CFR part 1600 as issued under the authority of Sections 201 and 202 of FLPMA (43 U.S.C. §§ 1711-1712); the Public Rangelands Improvement Act of 1978 (43 U.S.C. § 1901); Section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. § 201(a)); Sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 *et seq.*); and consistent with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*). Modifications are described in the Preamble to the final rule.

C. Public Involvement

The BLM conducted extensive outreach and public engagement in the development of this rule. The BLM launched an outreach initiative in May 2014 by seeking public input on how the land use planning process could be improved. The BLM developed a website for the initiative (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 on October 1, 2014, and Sacramento, California on 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. The agency also conducted extensive outreach to State, local, and tribal governments, along with various Federal Advisory Committee Act-chartered Resource Advisory Councils

(RACs). Over 6,000 groups and individuals submitted written comments in response to this outreach initiative. The BLM summarized that information in a written report, which it posted on the internet on February 3, 2015. In developing the proposed rule¹, the BLM considered that information and worked to address these needs and perspectives.

The BLM posted the proposed rule online and notified all entities on the mailing list by email eleven days before publishing the proposed rule in the Federal Register on February 25, 2016 (81 FR 9674). The 60-day comment period ended on April 25, 2016. In response to requests, the BLM extended the public comment period for an additional 30 days on April 22, 2014 (81 FR 23666), through May 25, 2016. During the public comment period, the BLM hosted a variety of public outreach events, including a webinar on March 21, 2016, and a public meeting in Denver, Colorado on March 25, 2016. The public meeting was available to remote participants through a live broadcast of the event over the internet. In response to public interest, the BLM held a second webinar on April 13, 2016, focused on frequently asked questions about the proposed rule. The webinars and meeting were led by a third-party facilitator. Summary notes and recordings of all three events were posted to the BLM's website (www.blm.gov/plan2). In addition, the BLM provided a contact email address at each event to respond to any follow-up questions from the public.

The BLM also conducted external outreach to BLM partners regarding the proposed rule, including multiple briefings for the 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. In addition, the BLM conducted government-to-government consultation with Federally recognized Indian tribes with which the Bureau normally consults regarding land use planning. The BLM held a webinar for Indian tribes on May 4, 2016, and in-person meetings with all tribes that accepted the BLM's request for government-to-government consultation and requested a meeting with the BLM.

The BLM received 3,354 public comments on the proposed rule comments on the proposed rule, which are available for viewing on the Federal e-rulemaking portal (<http://www.regulations.gov>). The preamble to the final rule includes a summary of the key issues raised in comments the BLM received on the proposed rule and responses to these comments. This includes a summary of comments on the level of NEPA analysis. A comprehensive account of public comments, including those on the preliminary categorical exclusion documentation, and responses to these comments is available to the public on the BLM website (www.blm.gov/plan2) and is included as a supporting document in the docket for this rulemaking on [regulations.gov](http://www.regulations.gov).

The BLM considered those comments, and incorporated them as appropriate, in developing the categorical exclusion documentation for the final rule.

¹ As part of the Planning 2.0 effort, the BLM is also revising its Land Use Planning Handbook. Information gathered through this public outreach will also inform that revision.

D. Compliance with the National Environmental Policy Act

Categorical exclusions are categories of actions that Federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. A categorical exclusion is a form of NEPA compliance.

This action is categorically excluded from further documentation under the NEPA in accordance with 43 C.F.R. § 46.210, which provides:

The following actions are categorically excluded under paragraph 46.205(b), unless any of the extraordinary circumstances in section 46.215 apply: ... (i) Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

This policy provides that the proposed action must be either (a) administrative, financial, legal, technical, or procedural in nature, or (b) of any type, but with environmental effects that are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. (Use of Departmental Categorical Exclusion for Policies, Directives, Regulations, and Guidelines, Environmental Statement Memorandum No. ESM 13-4 (Jan. 7, 2013)).

The categorical exclusion is applicable here for the following reasons.

The existing planning rule, which implements Section 202 of FLPMA, is entirely procedural in nature. It establishes the procedures the BLM uses to prepare, revise, or amend land use plans pursuant to FLPMA. That is, it describes the manner in which the BLM engages in planning: it describes the steps, timeframe, and how the BLM complies with certain applicable laws (including NEPA) and coordinates with other governmental entities. Likewise, the amendment of this rule is entirely procedural. It updates existing provisions for public involvement in the planning process, including new opportunities for public involvement through development of a planning assessment prior to scoping. It also updates procedures for coordinating with State, local and tribal governments. 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, amend any land use plans; any future revisions, plans, or amendments will be subject to NEPA analysis before any decision affecting the management of the public lands is made. This final rule is thus entirely procedural in nature and not substantive.

Although the BLM believes that the final rule is procedural, if there were any effects, those effects would be too broad to be analyzed at this juncture and too speculative to be reasonably foreseeable. Any future decisions reached through the planning process pursuant to the procedures outlined in the final rule necessarily are subject to compliance with NEPA. Specifically, the final rule leaves in place the requirement that the BLM prepare an

Environmental Impact Statement (EIS) to disclose environmental effects associated with proposed new and revised land use plans, and prepare either an EIS or an Environmental Assessment (EA) to evaluate proposed land use plan amendments. Although the BLM believes that this final rule will improve the planning process and meet the goals of Planning 2.0, the outcome of that process in any individual planning effort is not reasonably foreseeable.

As discussed below, in the “Review of Extraordinary Circumstances,” the BLM has determined that there are no extraordinary circumstances that would preclude the use of a categorical exclusion.

For those reasons, the BLM’s reliance upon this categorical exclusion is appropriate.

E. List of Preparers

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Review of Extraordinary Circumstances

The Department of the Interior's regulations require review of the following "extraordinary circumstances" to determine if an otherwise categorically excluded action requires additional analysis under NEPA. *See* 43 C.F.R. § 46.205(c)(1); 43 C.F.R. § 46.215.

1) *Does the proposed action have significant impacts on public health or safety?*

Yes No

Comments: The final rule does not have any impacts on public health and safety because it is purely procedural. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA), and will be subject to all applicable laws, including those in place to protect public health and safety. The BLM will continue to provide opportunities for cooperation and coordination with other Federal agencies, State and local governments, and Indian tribes, including on issues of public health and safety. Thus, any potential impacts to public health and safety from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

2) *Does the proposed action have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas?*

Yes No

Comments: Because it is procedural in nature, the final rule does not impact natural resources and unique geographic characteristics, such as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans, but does not, itself, change the current management of these resources or set or change any standards for any of these resources. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA). Thus, any potential impacts to these resources from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

3) *Does the proposed action have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E))?*

Yes No

Comments: The final rule does not have highly controversial environmental effects or involve

unresolved conflicts concerning alternative uses of available resources because it is purely procedural. For the purposes of evaluating extraordinary circumstances, “highly controversial” means disagreement about the nature of the effects, not expressions of opposition to the proposed action. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA). Thus, any highly controversial environmental effects or unresolved conflicts concerning alternative uses of available resources stemming from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

4) Does the proposed action have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

Yes No

Comments: The final rule does not have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks because it is purely procedural. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans, however, is subject to NEPA analysis (either EIS or EA). The effects of a specific resource management plan or plan amendment will depend on the specific resource issues and planning area in question. The environmental impacts of a resource management plan or plan amendment will be fully analyzed through an EIS or EA prior to the approval of the resource management plan or plan amendment.

Thus, any potentially uncertain and significant environmental effects or unique or unknown environmental risks from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

5) Does the proposed action establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?

Yes No

Comments: The final rule does not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects because it is purely procedural. This final rule does not change FLPMA’s requirement that resource management plans be consistent with the principles of multiple use and sustained yield, unless otherwise specified by law, and plans developed under this final rule will meet that requirement. This final rule does not create a new standard or precedent for resource management plans. Although the final rule amends existing regulations governing how the BLM prepares and amends resource management plans, it does not concern the substantive outcome of the planning process. In other words, the final rule does not dictate a specific outcome, just the process the BLM will use to decide an outcome.

The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA). The environmental impacts of a resource management plan or plan

amendment will be fully analyzed through an EIS or EA prior to the approval of the resource management plan or plan amendment. The BLM will be required to analyze a reasonable range of alternatives, and any potentially significant effects from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans. Both the planning process and NEPA requirements will include opportunities for interested members of the public and other Federal agencies, State and local governments, and Indian tribes to raise issues for analysis. This final rule does not preclude analysis of any significant environmental impacts, nor does it require the BLM to exclude analysis or selection of specific reasonable alternatives. Therefore, it does not establish a precedent for future actions or represent a decision in principle about the outcome of planning processes.

6) *Does the proposed action have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects?*

Yes No

Comments: The final rule does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects because it is purely procedural. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. Cumulative effects need only be analyzed if a proposed action identifies direct or indirect effects. The impacts of any future decisions made under this final rule are not reasonably foreseeable. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA). Thus, any potentially significant cumulative effects from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

7) *Does the proposed action have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office?*

Yes No

Comments: The final rule does not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office because it is purely procedural. It does not set or change any standards under the National Historic Preservation Act. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA) and applicable requirements of the National Historic Preservation Act. Thus, any potential impacts to properties listed or eligible for listing on the National Register of Historic Places stemming from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

8) *Does the proposed action have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat?*

Yes No

Comments: The final rule does not have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat because it is purely procedural. The final rule does not set standards for species protected under the Endangered Species Act. Rather, the final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis (either EIS or EA) and applicable requirements of the Endangered Species Act. Thus, any potential impacts to threatened or endangered species or critical habitat from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans. The final rule has no effect on any endangered or threatened species or critical habitat.

9) Does the proposed action violate a Federal law, or a State, local, or Tribal law or requirement imposed for the protection of the environment?

Yes No

Comments: The final rule does not violate a Federal law, or a State, local, or Tribal law or requirement imposed for the protection of the environment. Rather, the final rule implements the requirements of FLPMA and other statutes. The final rule amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis. Thus, any potential violations of Federal law, or State, local, or Tribal law or requirement imposed for the protection of the environment stemming from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

10) Does the proposed action have a disproportionately high and adverse effect on low income or minority populations (EO 12898)?

Yes No

Comments: The final rule does not have a disproportionately high and adverse effect on low income or minority populations because it is purely procedural. The final rule does not set any standards, but rather amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis and EO 12898. Thus, any disproportionately high and adverse effects on low income or minority populations from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

11) Does the proposed action limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007)?

Yes No

Comments: The final rule does not limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites because it is purely procedural. The final rule does not set any standards, but rather amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis and EO 13007. Thus, any potential limitation of access to and ceremonial use of Indian sacred sites on Federal lands or adverse effects to the physical integrity of such sites stemming from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.

12) Does the proposed action contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?

Yes No

Comments: The final rule does not contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species because it is purely procedural. The final rule does not set any standards, but rather amends existing regulations governing how the BLM prepares and amends resource management plans. The preparation and amendment of resource management plans is subject to NEPA analysis and EO 13112. Thus, any potential introduction, support of continued existence, or spread of noxious weeds and non-native species stemming from the way in which the BLM engages in land use planning will be analyzed and considered during the development or amendment of individual resource management plans.