

Subpart 2201—Exchanges— Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Bureau of Land Management or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. The preliminary estimate is generally not an appraisal but shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States and State and local governments, certifying that the party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 2201.1-3 of this part;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 2201.7-2 of this part;

(9) A grant of permission by each party to conduct a physical examination of the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 2201.1-1 of this part;

(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to § 2201.8 (c)(1)(iv) of this part;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 2201.8 (c)(1)(iv) of this part; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals, which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate an exchange may be amended by written consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is delayed or is not consummated or to anyone assisting in any way, or doing business with, any such party.

(g) The withdrawal from, and termination of, an exchange proposal, or an

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agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7-1 of this part, is not protestable or appealable under 43 CFR part 4.

§ 2201.1-1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed in the assembled land exchange up to and including the current transaction;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 3 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(4) Assembled land exchanges are subject to the value equalization and cash equalization waiver provisions of § 2201.6 of this part. Cash equalization waiver shall only be used in conjunction with the final transaction of the assembled land exchange and the termination of any ledger account used.

(f) The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1-2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation by noting the public land status records.

(c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the FEDERAL REGISTER, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

(d) The provisions of this section apply equally to proposals to exchange National Forest System lands under the authority and provisions of the Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, except that if

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a proposal is made to exchange National Forest System lands, which proposal shall be filed in compliance with 36 CFR part 254, the authorized officer may request that the appropriate BLM State Office segregate such lands by a notation on the public land records.

[46 FR 1638, Jan. 6, 1981, as amended at 63 FR 23681, Apr. 30, 1998; 65 FR 70112, Nov. 21, 2000]

§ 2201.1-3 Assumption of costs.

(a) Generally, parties to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, cure of deficiencies preventing highest and best use of the land, conduct of public hearings, assemblage of non-Federal parcels from multiple ownerships, expenses of complying with laws, regulations, and policies applicable to exchange transactions, and expenses that are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume without compensation costs ordinarily borne under local custom or practice by the non-Federal party or to compensate the non-Federal party for costs ordinarily borne under local custom or practice by the United States

but incurred by the non-Federal party, but only when it is clearly in the public interest and the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of the cost assumed or compensation is reasonable and accurately reflects the value of the goods and services received;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs incurred pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, jurisdictional State and local governments, and the congressional delegation, and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the authorized officer as to any liens, encumbrances, or

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other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 2201.3 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards set forth in §§ 2201.3-1 through 2201.3-4 of this part and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and non-Federal lands involved in an exchange.

§ 2201.3-1 Appraiser qualifications.

(a) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(b) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State does not have approved policies, practices and

procedures regulating the activities of appraisers, the Bureau of Land Management may establish appraisal qualification standards commensurate with those adopted by other States meeting the requirements of FIRREA.

§ 2201.3-2 Market value.

(a) In estimating market value, the appraiser shall:

(1) Determine the highest and best use of the property to be appraised;

(2) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(3) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market;

(4) Consider the contributory value of any interest in land such as minerals, water rights, or timber to the extent they are consistent with the highest and best use of the property; and

(5) Estimate separately, if stipulated in the agreement to initiate in accordance with § 2201.1 of this part, the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 2201.1-1 of this part. In this case, the appraiser shall estimate the value of the Federal and non-Federal properties in a similar manner.

(b) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(1) The various interests contribute their full value (pro rata) to the value of the whole; and

(2) The valuation is compatible with the highest and best use of the property.

(c) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

§ 2201.3-3 Appraisal report standards.

Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(a) A summary of facts and conclusions;

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(b) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(c) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(d) An adequate description of the physical characteristics of the lands being appraised; a statement of all encumbrances; title information, location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(e) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(f) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(g) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(h) An estimate of market value;

(i) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(j) A certification by the appraiser signing the report to the following:

(1) The appraiser personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(2) The appraiser personally examined the subject property and all comparable sale properties relied upon in the report;

(3) The appraiser has no present or prospective interest in the appraised property; and

(4) The appraiser has not, and will not, receive compensation that was

contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(k) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment that were relied upon by the appraiser to estimate value, which may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

§ 2201.3-4 Appraisal review.

(a) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 2201.3-1 of this part. Statements of value prepared by agency appraisers are not subject to this review.

(b) The review appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent, and supported by a market analysis;

(2) Complies with the standards prescribed in § 2201.3-3 of this part; and

(3) Reasonably estimates the probable market value of the lands appraised.

(c) The review appraiser shall prepare a written review report, containing at a minimum:

(1) A description of the review process used;

(2) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(3) The reviewing appraiser's statement of conclusions regarding the appraiser's estimate of market value; and

(4) A certification by the review appraiser to the following:

(i) The review appraiser has no present or prospective interest in the property that is the subject of the review report; and

(ii) The review appraiser has not, and will not, receive compensation that was contingent on the approval of the appraisal report.

§ 2201.4 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following schedule:

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(1) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values of the lands involved in an exchange. If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process to resolve the dispute over values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports. Bargaining or another process to determine values may involve one or more of the following actions:

- (i) Submission of the disputed appraisal(s) to another qualified appraiser for review;
- (ii) Request for additional appraisals;
- (iii) Involvement of an impartial third party to facilitate resolution of the value disputes; or
- (iv) Use of some other acceptable and commonly recognized practice for resolving value disputes.

Any agreement based upon bargaining shall be in writing and made part of the administrative record of the exchange. Such agreement shall contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s) may, at the option of either party, be submitted to arbitration unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the

exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands that are of approximately equal value when it is determined that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than \$150,000 as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall determine that the Federal and non-Federal lands are approximately equal in value and shall document how the determination was made.

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§ 2201.6 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree:

(1) To modify the exchange proposal by adding or excluding lands; and/or

(2) To use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 2201.1-3 of this part may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive a cash equalization payment if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or \$15,000, whichever is less. This provision shall not be applied to exchanges where the value differential is in excess of \$15,000.

(d) A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7-1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. A notice also may be published in the FEDERAL REGISTER at the discretion of the authorized officer. At a minimum, the notice shall include:

- (i) The date of decision;
- (ii) A concise description of the decision;
- (iii) The name and title of the deciding official;
- (iv) Directions for obtaining a copy of the decision; and
- (v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0-6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7-2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7-1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is

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liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to §2201.7-1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any legal obligation or right enforceable against or enjoyed by any party.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for the non-Federal lands being conveyed to the United States shall be in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in recordable form and in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisition by the United

States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to §2200.0-6(j)(1) of this title.

(c) *Title encumbrances—(1) Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the Office of the Solicitor of the Department of the Interior or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to agreed upon covenants or conditions included in the conveyance documents.

(iii) Any personal property owned by the non-Federal party that is not a part of the exchange proposal should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing

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that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States v. Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands simultaneously shall pass and be deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner shall be met. The requirements and conditions necessary for recordation at a minimum will include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands; and

(2) The issuance of title evidence as of the date and time of recordation, which conforms to the instructions and requirements of the Office of the Solicitor's preliminary title opinion.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-

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Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title.

(c) *Notice to State and local governments.* Following the transfer of title to the Federal lands involved in an exchange, notice will be given to State and local officials as prescribed in § 2200.0-6(m) of this part.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

SOURCE: 51 FR 12612, Apr. 14, 1986, unless otherwise noted.

§ 2203.0-6 Policy.

When determining whether a fee exchange of the Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management, in making the determination of public interest, shall consider the advice of the Attorney General of the United States concerning whether the exchange will create or maintain a situation inconsistent with the Federal antitrust laws.

§ 2203.0-9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 on this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish and