

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