failure, and did not support a service life extension.

RSPA is aware of, and concerned about, the financial burden associated with limiting the service life of composite cylinders, but RSPA must weigh this burden against the safety risk of a cylinder failure to firefighters and other users. For example, a Corem, New York firefighter was killed earlier this year by the rupture of a composite cylinder which was more than 15 years old. While the cause of that rupture was neither brittle fracture nor stress rupture, it is an example of the severe consequences of a composite cylinder failure.

Based on the above information, RSPA has retained the 15-year service life limitation on composite cylinders. At a minimum, persons finding composite cylinders that are older than 15 years should remove those cylinders from service. Composite cylinders are authorized for SCBA and other services under the following exemptions:

DOT-E 7218	DOT-E 8391	DOT-E 10019
DOT-E 7235	DOT-E 8487	DOT-E 10147
DOT-E 7277	DOT-E 8718	DOT-E 10256
DOT-E 7769	DOT-E 8725	DOT-E 10345
DOT-E 8023	DOT-E 8814	DOT-E 10637
DOT-E 8059	DOT-E 8965	DOT-E 10905
DOT-E 8115	DOT-E 9634	
DOT-E 8162	DOT-E 9659	

Issued in Washington, DC on November 12, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–28432 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on November 18, 1993, in the first floor banquet room for the Airport Marriott located at 1201 NW. LeJeune Road, Miami, Florida. Below is the intended agenda.

Thursday, November 18, 1993

Agenda

Part One—Closed to the Public

12:30 p.m.

1. Technical Matters
2. Budget Matters: Radio and TV Martí

Part Two—Open to Public

2:00 p.m.

1. Approval of Minutes
2. Update on Radio Martí
3. Update on TV Martí
4. OCB Office of Program Evaluation/Focus Group Results
5. Public Testimony

Items one and two which will be discussed from 12:30 p.m. to 2 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Liz Fernández, from the directorate of the Office of Cuba Broadcasting. Ms. Fernández can be reached at (202) 401–7013.

Dated: November 10, 1993.

Joseph Duffey,

Director.

[FR Doc. 93–28361 Filed 11–17–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 221
Thursday, November 18, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 18, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: November 12, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–28545 Filed 11–16–93; 2:16 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice to be published in the **Federal Register** on November 16, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, November 22, 1993.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: International banking matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28468 Filed 11–16–93; 10:54 am]

BILLING CODE 6210–01–P

federal register

Thursday
November 18, 1993

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2090 and 2200

Exchanges—General Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2200

[AA–260–4212–02 24 1A; Circular No. 2653]

RIN 1004–AB28

Exchanges—General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements primarily the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of August 20, 1988. Also, the rule implements other authorities and procedural requirements that are applicable to Federal Land Policy and Management Act land exchanges. The principal provisions in the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

EFFECTIVE DATE: December 17, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Don Simpson or Dave Cavanaugh, (202) 653–9215.

SUPPLEMENTARY INFORMATION: The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (Pub.L. 100–409)(hereafter referred to as the Act), is to facilitate and expedite certain land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate land ownership for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

On October 2, 1991, the Bureau of Land Management (BLM) and the Forest Service published separate proposed rules in the **Federal Register** (56 FR 49948–49977), with 60-day comment periods. The proposed rules were intended to implement the amendments made by the Act to section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716)(FLPMA), and to incorporate other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

The BLM and Forest Service received comments from 58 sources, including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the BLM and Forest Service. The analysis of comments pertaining to the BLM rule, and the corresponding responses and changes, are discussed as follows. Editorial and grammatical corrections also have been made as necessary.

General Comments

Two commenters stated that the time frames in the rule are too lengthy, particularly those related to the initiation and review process. The time periods specified in various sections of the rule were either imposed by the Act or administratively required to comply with BLM's public participation and environmental analysis procedures. Additionally, the BLM and the Forest Service have made further adjustments in their scheduling requirements to develop more uniform regulations and reduce the time periods wherever possible.

A respondent felt that streamlining the process to expedite the processing of exchanges may promote rapid disposal of Federal holdings in urbanized areas and forgo revenue-making opportunities on those properties. It was further suggested that a process for mid-course review at the highest departmental levels be built into the regulations. Land management agencies generally do not administer lands for intense development in urban areas. However, each exchange opportunity must be analyzed on an individual basis. Certain high-value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay.

A commenter expressed concern that the appraisal provisions did not lend themselves to land exchanges involving mineral interests, particularly those exchanges in Alaska. It was suggested that there be sufficient discretion in the rules to permit land exchanges where there has been insufficient exploration data to permit valuation by standard appraisal methods. The standard appraisal process is less reliable when there is very little exploration data or market information available to estimate market value reliably. Consequently, § 2201.3–2(b) of the proposed and final rule gives the authorized officer discretion to use other methods when this is the case.

It was pointed out by one commenter that there is no provision in the rule for conducting public hearings. In conjunction with the written notification requirements in §§ 2201.2 and 2201.7–1 of the rule, the BLM authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings, meetings, etc. is unnecessary.

One commenter suggested the preparation of an "environmental values document" to compare relative ecological values to be exchanged. All resource values associated with the lands involved in an exchange are examined through an environmental analysis pursuant to Council on Environmental Quality regulations and Departmental and BLM directives. Therefore a separate "environmental values" document is not required.

Specific Comments

Part 2090 Special Laws and Rules

Section 2091.2–2 Opening

One respondent felt the section will restrict management of minerals by eliminating the "ability to lease minerals." The same respondent felt the value of the Federal parcel offered in the exchange would be less because of this "restriction." It does remove leasing as a management option, but only until rules are promulgated. The value of the lands is based on the highest and best use, and where mineral development is the highest and best use, the values of the mineral(s) will be reflected in the appraised value. No change was made

in the final rule in response to these comments.

Section 2091.3–1 Segregation

Two respondents suggested correcting the reference to lands administered by the Forest Service by inserting the word "Forest" between the words "National" and "System." One further suggested adding a citation of the pertinent BLM and Forest Service regulations at the end of the section. Both of these suggestions have been adopted in the final rule.

Section 2091.3–2 Opening

One commenter suggested using consistent wording regarding the segregation of reserved minerals from the mining laws in this section and § 2201.1–2. Section 2201.1–2 of the final rule has been revised to make these two sections consistent.

One comment recommended "deleting (c) of this section because the segregation and opening is by operation of law as discussed in § 2091.3–1 supra." This paragraph is deleted as suggested in the final rule.

Section 2200.0–5 Definitions

One commenter expressed concern with the use of the term "eminent domain" in the definition of "acquisition" because of the negative implications associated with condemnation and the erosion of private property rights. The definition of acquisition has been deleted from the rule.

One commenter recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. No revision to the definition was considered necessary because § 2201.1(a) and (b) of the rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the Small Tracts Act (43 U.S.C. 682a) regulation definition in 36 CFR 254.31 or that the Small Tracts Act definition be amended by these rules. The definition in the rule was revised to conform with the definition in the Small Tracts Act regulations.

One commenter recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted because § 2201.4(a)(1) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s). An appraisal will take into account all factors that might influence the value of the estate to be conveyed.

One commenter stated that the definition of "highest and best use" may be too broad and recommended that the phrase "and present use of surrounding and/or adjacent property" be added after the words "based on market evidence." Use of nearby property is always considered by the appraiser in determining the highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, no change was made to the definition in the final rule.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. Market value is an estimate of the price that lands or interests in lands would bring in a competitive market. Interests in lands, such as timber or cultural resources, are valued accordingly. Section 2201.3–2 of the final rule identifies the various interests that may be considered in estimating market value.

One commenter asked if the mineral leasing laws under the definition of "mineral laws" include the Act of March 4, 1917, involving mineral resources on Weeks Act (16 U.S.C. 480, 500 *et seq.*) lands. "Mineral laws," as used in this rule, are identified for the purposes of segregation under §§ 2201.1–2 and 2201.9(b). Since segregation applies only to those lands reserved from the public domain for National Forest purposes, mineral prospecting and leasing on acquired lands with Weeks Act status are not included in the definition of "mineral laws."

It was recommended that the definition of "party" be amended to recognize States as full parties to an exchange. The definition in the proposed rule clearly recognized States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One commenter recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws. The commenter suggested adding the phrase "or by operation of law" after the word Secretary, presumably to reflect the automatic segregation of lands acquired through exchange provided by the Act. The purpose of segregation is to avoid the appropriation or long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from appropriation under both the public land laws and the mineral laws. The term "by operation of law" was not added to the final rule because the authority for segregation, and the authority to exchange for non-Federal lands that would automatically be segregated under the Act, lies with the Secretary.

A commenter indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The regulations only require the qualified appraiser to determine if the value of Federal lands exceeds $150,000; they do not require a formal appraisal report. It is expected, however, that the appraiser's analysis will meet the minimum standards contained in the USPAP.

One commenter suggested language and recommended that the definitions of "resource values" and "management objectives" be added to clarify the determination of public interest under § 2200.0–6 (b)(1) and (b)(2) of the rule. A definition of resource values has been included in the final rule; however, the term "management objectives" was not added because it is used consistent with the common definition of the two words.

It was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the exchange process. Section 2200.0–6 of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 2201.1–3 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 2200.0–6(h) of the rule requires that an environmental analysis be prepared. This analysis will ensure that environmental values such as cultural resources are not overlooked in the determination of public interest. No changes were made in the final rule in response to this comment.

Section 2200.0–6 Policy

(a) *Discretionary nature of exchanges.* One commenter recommended that this paragraph be amended to clarify that the decision of the Secretary when

determining public and State interest is subject to review. This section of the rule requires consideration of the needs of State and local residents. Section 2201.7–1(c)(1) of this rule sets forth the requirements for public notice of decisions and subsequent review. No changes were made in response to this comment.

(b) *Determination of public interest.* One commenter suggested that protection of watersheds be listed as a criterion in the determination of public interest. This suggestion was adopted.

It was suggested that the term "best served" be used instead of "well served." The same commenter pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested a list of lands most desirable. The term "well served" is retained in the final rule because it is the term used in section 206(a) of FLPMA. It would be impracticable to list types of lands that should be acquired through exchange, due to the variety of resources on involved lands. Identification of types of lands to be acquired is more appropriate during the land use planning process.

One commenter stated that the phrase "accommodation of land use authorizations" was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. The suggestion was adopted by expanding the term "authorized uses" in § 2201.1(c)(4) of the rule to include grants, permits, easements or leases.

One commenter recommended that the management and development of private lands be emphasized in this section and suggested wording for inclusion into the final rule. Additionally, two commenters recommended that this section include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. This section of the final rule was revised to read "* * * to meet the needs of State and local residents and their economies * * *" to emphasize the importance of these public interest criteria. The "notice of exchange proposal" at § 2201.2 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns it may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal will be considered in the development of an environmental analysis. The environmental analysis and related studies will serve as the basis for the "notice of decision" at § 2201.7–1 of the rule. This decision and all supporting documents will be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality or other resources. No change was made in response to this suggestion since potential impacts must be considered in the environmental analysis pursuant to § 2200.0–6(h) of the rule and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government respondent stated that Regional Coal Teams should be provided the opportunity for full participation in reviewing any exchange proposal. When processing exchanges involving coal, the appropriate Regional Coal Team shall have a major role in reviewing the exchange. However, it is impracticable to list in the rule all of the entities that should be given review opportunities.

One respondent suggested that the provision that provides that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be removed or limited to those uses of conveyed Federal lands that conflict with management objectives of "adjoining" Indian Trust lands that were established formally prior to that exchange proposal. This suggestion has been partially adopted by inserting the words "significantly conflict with established" before "management objectives" in § 2200.0–6(b)(2).

A local government respondent suggested that as a condition of exchange the Federal lands that may be used for landfills that may affect air quality use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). Rather than prescribing specific technologies in this rule, appropriate methods of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods.

In order to meet the needs of State and local residents, wording was suggested that would require a determination regarding the consistency of the intended use of conveyed Federal lands with local government zoning and other land use plans for adjacent non-Federal lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in § 2200.0–6(i) of the rule. Therefore, no change has been made in response to this suggestion.

Five commenters felt that the requirement that the land exchanged into non-Federal ownership be used or managed to conform to or enhance adjacent Federal land uses was costly, inequitable, unfair or may otherwise limit exchange opportunities. It would not be in the public interest to convey lands out of Federal ownership if the intended use were to create substantial management conflicts with adjacent Federal lands; therefore, this provision is retained in the final rule. The language of § 2200.0–6(b)(2) of the rule does not imply control over future uses or place any requirement on the management of the Federal land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to § 2200.0–6(i) of the rule. This section simply requires the authorized officer to consider the intended use in making the public interest determination.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis not be placed on noncommodity resources. Section 2200.0–6(b) is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 2200.0–5 of the rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. Cultural resources is specified as a resource to consider in reaching a public interest determination. No change in the final rule is necessary.

Another suggested the words "promotion of" be changed to "continuation of." The language of the proposed rule has been retained because

section 2(a)(1) of the Act found that land exchanges are an important tool for "the promotion of multiple-use values."

Concern was expressed that the regulation "* * * guts the entire public interest test set forth in FLPMA," and a recommendation was made to delete the section. The Department disagrees. Section 206(a) of FLPMA provides a listing of considerations to be "included" in any public interest determination. That listing also includes "better Federal land management and the needs of State and local people." Section 2(a)(1) of the Federal Land Exchange Facilitation Act further states the findings and declaration of Congress, from which were drawn most of the public interest criteria of § 2200.0–6(b) of the rule.

(c) *Equal Value Exchanges.* One commenter recommended that this paragraph be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the ANILCA (Alaska National Interests Lands Conservation Act) (16 U.S.C. 3192)." This suggestion cannot be adopted. Section 206(b) of FLPMA requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

It was suggested that a cross reference to the provisions for approximately equal value exchanges in § 2201.5 be included in this section. This suggestion was adopted.

(d) *Same State Exchanges.* Four commenters recommended that this paragraph be amended to allow for interstate exchanges. This suggestion cannot be adopted because section 206(b) of FLPMA requires that the Federal and non-Federal lands involved in an exchange be located in the same state.

(e) *O & C Land Exchanges.* One commenter suggested an amendment to this paragraph to clarify that non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be located in "any one of the 18 counties" in which the original grants were made. This suggestion was adopted.

(f) *Congressional Designations.* One respondent felt it was unclear if these regulations considered those areas outside the California Desert Conservation Area that have been created by statute but are not National Conservation Areas or National Recreation Areas. No change has been made in response to this comment. The listing of systems and areas in this section was taken directly from the Act. Lands acquired within areas created by statute but not listed in the Act will not become part of the unit or area under this rule.

It was suggested that in line 2 the words "United States" be deleted and replaced with "authorized officer." Title is accepted by the authorized officer on behalf of and in the name of the United States. No change has been made in the final rule in response to this comment.

(g) *Land and Resource Management Planning.* Several commenters felt the rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. Agency plans can be amended to recognize new information or changes in conditions. The reference in the rule to land use plans includes plans that have been amended in response to new information or changes in conditions that may surface in conjunction with or following an exchange proposal.

Another respondent felt that the regulations should not require that land use plans specifically authorize an exchange of Federal land, stating that the land use plan could not foresee all exchange proposals. The rule does not require that a land use plan specifically authorize an exchange, but only that an exchange proposal be consistent with the goals and objectives of the plan. No change was made in the final rule.

Concern was expressed that there were no provisions for identifying non-Federal lands for exchange and initiating contact with the private landowner. This suggestion was not incorporated in the final rule because land use plans identify areas or specific tracts of non-Federal lands that the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to exchange lands. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

One commenter questioned whether BLM lands suitable for exchange to benefit the Forest Service are identified in BLM planning or in Forest Service planning and, if it is BLM's responsibility, how BLM proposes to determine public interest. It was suggested that it be identified in the BLM planning process. The Forest Plans do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiations between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using criteria specified in § 2200.0–6(b). No change was made in the final rule in response to this comment.

(h) *Environmental Analysis.* One respondent noted that this paragraph does not invite the public to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*)(NEPA) and BLM policy and procedures referenced in paragraph (h) already address public notice and comment on environmental documents; therefore, it is not necessary to restate the specific requirements in the final rule. In addition, § 2201.2 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments that shall be considered in the environmental analysis of the proposed exchange.

A concern was expressed that compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 469–470) is not mentioned under this section of the rule. Cultural resources is only one of the many significant resources that must be considered. This rule does not limit or exclude any resources from consideration.

(i) *Reservations or restrictions made in the public interest.* Several commenters questioned the need and authority for reservations or restrictions in the conveyance of Federal land. Two commenters suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another commenter suggested conveying partial interests to third parties in lieu of reservations or restrictions. Two commenters were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. Identification of the need for reservations or restrictions begins with the agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest and, if so, confirm what reservations or restrictions are needed. The rule allows alternative methods of protection such as third party participation. Although reservations or restrictions may place burdens on the Federal and non-Federal parties, the effect of reservations or restrictions will be considered by each party prior to a decision to proceed. Section 206 of FLPMA and other authorities provide for the use of reservations or restrictions.

A major utility expressed the thought that the United States could retain title to, or administration of, lands involved in the exchange that are subject to rights-of-way. This is correct; the authority to reserve and retain any rights and interest, including rights-of-way, easements, or grants, when it is in the public interest, is provided in § 2200.0–6(i) of the rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies, including the State Historic Preservation Office. Covenants and restrictions may be developed to protect any number of public interests, including cultural resources, and consultation with appropriate Federal and State agencies will occur as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

Three commenters suggested the United States retain an interest in the stream of mineral royalties when exchanging Federal lands. Reserving mineral interests is preferred to maintaining royalty interests for administrative reasons. Depending on the type of royalty interest reserved, the generation of revenues may be prevented or reduced as a result of mineral development decisions made by the owner of the mineral interests. By contrast, reserving the mineral estate would allow the United States to manage the development of the resources in a way that would protect Federal interests. In addition, there may be no statutory authority for reserving a royalty interest.

(j) *Hazardous substances.* The Community Environmental Response Facilitation Act (106 Stat. 2174)(CERFA) was signed into law on October 19, 1992, one year after the proposed land exchange rules were published in the **Federal Register**. No changes to the final rule have been made as a result of the new legislation. However, the procedural requirements of CERFA will be followed to the extent applicable, and consideration will be given to the need for rulemaking in connection with this new law.

One respondent suggested requiring "hold harmless" agreements when conveying Federal lands affected by hazardous substances to a "potentially responsible party." Hold harmless agreements generally are desirable; however, it is necessary to maintain flexibility in negotiating land exchanges.

One commenter identified a perceived inconsistency in the requirement of notification for private parties and the Federal government. The notice to the non-Federal party requires that "known" storage, release, or disposal of hazardous substances be identified, whereas the private party must notify the government of "known or suspected * * *." The respondent favored the broader application but suggested that in any case they should be consistent. Full disclosure of the potential existence of hazardous substances on the non-Federal lands is necessary to avoid sole future liability by the United States incurred as a result of dissolution, bankruptcy, etc., of the non-Federal party. The non-Federal party will have no such risk because the Federal government will be available for correction or mitigation should future hazardous substance issues arise.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but do not require him to do so on Federal lands, and recommended that the provisions be made consistent. Paragraph (j)(1) of the final rule has been revised to incorporate this suggestion.

Several commenters proposed that the private parties only be required to provide a broad hold harmless indemnification if the government will reciprocate. This suggestion cannot be adopted. The United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also must warrant in the conveyance document to other than a "potentially responsible party," that the United States will be responsible for any further cleanup necessary. Further, obligating Federal government expenditure via indemnification agreements made in advance of necessary appropriations would be a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)).

A respondent stated that the "hold harmless" requirement may not protect Federal interests from cleanup liability imposed by a third party. The comment is correct. However, the "hold harmless" agreement would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands or interests in lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would establish the United States as an "innocent purchaser" in every case. In many cases, it is recognized that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules Incorporated* v. *United States Environmental Protection Agency*, 938 F.2d 276, D.C. Cir. 1991) that the United States is responsible for providing notice of the storage, release or disposal of hazardous substances on Federal lands regardless of ownership at the time the substances came to be on the lands, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. The phrase has been deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of known storage, release, or disposal of hazardous substances. These regulations do not supplant the requirements of 42 U.S.C. 9620.

(k) *Legal description of properties.* One commenter said that property description by legal survey is sometimes difficult and suggested that the rule be amended to allow the use of a map as an alternative. This suggestion cannot be adopted. Department of Justice Standards and public land laws pertaining to the transfer of title to Federal lands do not permit the use of a map in lieu of legal description of lands. Maps alone generally would not provide an unambiguous description of lands being considered for exchange; however, maps may be used to supplement legal descriptions.

(l) *Unsurveyed school sections.* An agency respondent suggested that the word "mineral" be inserted between the words "all" and "rights." It is intended that States must waive all rights, including those related to minerals, to unsurveyed school sections used in an exchange. This suggestion was not adopted.

(m) *Coordination with State and local governments.* Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision requiring a consistency review by the State government. Section 2200.0–6(i) states that the Federal lands conveyed will be subject to local government laws, regulations and zoning, and § 2200.0–6(m) provides for notification 60 days before conveyance. These provisions afford State and local governments the opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on the proposed exchange. Therefore, no additional references to local plans and ordinances have been made in the final rule.

Section 2200.0–7 Scope

One respondent suggested that paragraph (b) of the rule be clarified as to whether certain existing regulations would be superseded or merely amended. Part 2200 of the existing regulation is being revised with portions amended or superseded as indicated.

Two parties commented on paragraph (c), regarding the lack of uniform applicability of the proposed rule in Alaska. One suggested separate regulations for such exchanges, similar to the Small Tracts Act regulations. The other felt the rule should allow the authorized officer to depart from this rule to a degree consistent with ANILCA. The rule provides the authorized officer the latitude allowed by law to pursue land exchanges. No changes have been made in response to this comment.

Three comments were received suggesting clarification of paragraph (d) of the proposed rule. This paragraph provided for the continuation of exchanges agreed to prior to issuance of this final rule under the laws and regulations in existence at the time the initial agreement to exchange was entered. Paragraph (d) of the proposed rule has been revised in the final rule to remove the confusion generated and to reflect the provisions of the Act more accurately.

It is the intent of the Department to follow the principles established in subsection (g) of section 206 of FLPMA, as amended. Under these principles, the Department intends that the following will apply: (1) Before this rule takes effect, pending exchanges may proceed in accordance with existing statutory law, including the applicable provisions of the Federal Land Exchange Facilitation Act (the Act) as well as the regulations that are being superseded by this rule; and nothing in the Act shall be construed so as to delay or otherwise hinder the processing or consummation of any such exchange; (2) The principles expressed above are subject to the following caveat—if the parties agreed to initiate the exchange before August 20, 1988, the date of enactment of the Act, subsections (d) through (i) of section 206 of FLPMA, as amended, shall not apply to a pending exchange, unless the parties agree otherwise; (3) After this rule takes effect, pending exchanges initiated on or after August 20, 1988, shall proceed in accordance with this rule except where, in the judgment of the authorized officer, it would be more expeditious to continue otherwise, and to do so would not be inconsistent with current statutory law, including the applicable provisions of the Act, or a binding agreement is in effect and completion of the exchange would not be inconsistent with current statutory law.

Section 2201.1 Agreement to Initiate an Exchange

A representative of an environmental group suggested a provision requiring full public input and also specifying that the NEPA process begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of section 2201.2 of the rule. These provisions require publication of a notice as soon as the agreement to initiate is entered into, but the NEPA process may be initiated before that event if the authorized officer believes it would be proper. The opportunity for public input will depend upon the level of NEPA analysis and documentation, which, in turn, depends upon the complexity of each exchange proposal.

Another respondent suggested that the agreement to initiate should detail who will be responsible for costs incurred in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with §§ 2200.0–6(a), 2201.1(f) and 2201.7–2(c) of the final rule, which provide that there are no obligations or reimbursement requirements in exchanges that are terminated short of a binding exchange agreement. The statutory authority for this rule does not provide for reimbursement of expenses outside of an exchange transaction. Compensation, or reimbursement of the non-Federal party for costs incurred, in the event an exchange is terminated would raise myriad procurement and contracting issues and, in some cases, may not be authorized. This limitation, however, is not intended to preclude payment to anyone with whom the Government has contracted directly for services that in fact have been received.

One respondent asked whether, if an exchange proponent were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of the BLM, the proponent would be required to indicate as a part of the proposal document that the offered land is covered by a Forest Service management plan showing the land is essential to the programs of the National Forest System. The proponent would not be required to show that the non-Federal land is essential to the National Forest System. In such an instance, the proposal would be submitted to the BLM authorized officer. In analyzing the proposal, the BLM would consult with the Forest Service to determine whether the public interest would be well served, to assess environmental effects, and to determine if the exchange would be consistent with agency plans.

Another respondent suggested adding language at the end of paragraph (a) of this section requiring the authorized officer and the non-Federal party to meet and discuss proposed exchanges prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe such a requirement is needed in the rule. Advance meetings and discussions are commonplace and are necessary to reach the point of entering an agreement to initiate.

A commenter suggested language requiring the prospective exchange parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to be used to evaluate the feasibility of an exchange proposal. The Department recognizes that preliminary estimates of value may be useful in evaluating exchange proposals but does not see a need to require the use of preliminary estimates in all cases.

A comment suggested that the preliminary estimate reflect the intended use of the lands, thus eliminating potential for substantial profits. In preparing any preliminary estimate, the appraiser takes into consideration all probable uses of the property, including the proposed or intended use. These uses must be legal, economically feasible, physically possible and result in the highest and best use, i.e., most profitable use, of the property. It would be improper to disregard an important element of information that may influence market value; that is, the intended use may not always be the highest and best use of the property.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. The general types of information to be included in agreements to initiate are listed in the rule. A form would be most appropriately located in a handbook, not in the regulations.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the list of lands may occur at any time during the process, identification of all lands that might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: (1) A citation of the exchange authority, (2) a statement regarding the need for segregation of the Federal lands once the exchange is started, and (3) identification of the status that the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate United States officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of an exchange upon which agreement must be reached. Therefore, these suggestions were not included in the final rule.

Two parties suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion was not adopted because such requirements would go far beyond the legal authority to identify the party with whom the agency is exchanging land, their citizenship, or corporate standing.

One industry representative suggested that all known uses be identified in the agreement to initiate, and that right-of-way grants be specifically identified as an authorized use. Section 2201.1(c)(4) of the rule was amended to adopt this recommendation. Identification of uses known to the Federal and non-Federal parties will ensure proper consideration of these uses in the analysis of the exchange proposal.

Another industry respondent pointed out that paragraph (c)(7) requires documentation of any agreed upon compensation of assumed costs normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 2201.1–3 of the rule gives a partial listing of costs for which compensation may be made, but the assignment of these costs is best made by the authorized officer in accordance with accepted real estate practices in the vicinity of the lands to be exchanged. No changes were made to paragraph (c)(7) in the final rule in response to this comment, but reference to compensating for costs ordinarily borne by the other party under local custom or practice was added to § 2201.1–3.

Another respondent suggested that the requirement of paragraph (c)(11), regarding relocation of tenants on the non-Federal lands, apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4626) only applies to qualified displaced parties on acquired non-Federal land. Section 2201.8(c)(2) of the rule specifies the measures required to protect authorized occupants of the Federal lands.

Two parties asked that paragraph (d) also be used to establish the sequence and time lines for other required reports and/or clearances. The requirement that the agreement provide a time line is already specified in paragraph (c)(5) and is retained in the final rule. The sequence of preparing or approving required reports is subject to negotiation and agency administrative procedure.

Another respondent recommended deleting the entire second sentence of paragraph (d) relating to estimating value in the absence of current market information. By way of explanation, the respondent said that it is "inconsistent with" and would "eviscerate" the section on appraisals (2201.3 through 2201.3–3). To the contrary, the provisions of this paragraph are consistent with the provision of § 2201.3–2(b). No change in the final rule is needed.

Several comments on paragraph (g) questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal. One of the parties recommended deleting this paragraph. Another felt there should be no appeal opportunity if the non-Federal party withdraws. Only decisions of the authorized officer are appealable through the Interior Board of Land Appeals; the Department has no jurisdiction over decisions of non-Federal parties. In the case of land exchanges, the decision is made and documented through the final Notice of Decision. Section 2201.7–1 of the final rule establishes the provisions for appeal of this decision.

Section 2201.1–1 Assembled Land Exchanges

Most comments on this section centered on the appraisal methods to be employed when processing assembled land exchanges. Several commenters suggested relaxing the safeguards for dealing with certain assembled land exchanges. A detailed explanation of assembled land exchanges is provided below to assist in responding to these comments and in interpreting the rule.

Assembled land exchanges provide the opportunity to package multiple parcels of Federal and/or non-Federal land. There are two types of assembled exchanges provided for in the rule: (1) Single transaction exchanges, and (2) multiple transaction exchanges using a running ledger account to track value differentials for each of the transactions. Single transaction assembled exchanges result in one closing for a collection of parcels. Multiple transaction exchanges involve two or more closings and are intended to facilitate processing of large acreages. Assembled land exchanges are subject to all of the general provisions of this rule in addition to the specific requirements of section 2201.1–1.

Section 2201.1–1 of the rule will require establishing the terms of any assembled land exchange in the agreement to initiate an exchange. For multiple transaction exchanges, the rule will restrict running ledger value differences to no more than 25 percent of the value of the conveyed Federal lands, require balancing values of the Federal and non-Federal lands conveyed with land or money at least every three years, and authorize the authorized officer to require deposits of cash, bonds or other sureties to offset temporary balances owed to the Federal government.

An example of a multiple transaction exchange would be where a State government offers $100,000 worth of land in exchange for an equal value of Federal land. In the agreement to initiate an exchange, it is agreed to use a ledger account and two transactions. The offered and selected lands are identified in the agreement, and all necessary analyses and clearances are conducted. The first transaction results in the conveyance of $50,000 of State land to the United States and the conveyance of $40,000 of Federal land to the State. The difference of $10,000

is noted to the ledger as a credit to the State. The second transaction involves $60,000 of Federal land being transferred to the State and $50,000 of State land being conveyed to the United States. The second transaction erases the $10,000 outstanding balance owed to the State and concludes the exchange.

One respondent felt that it would be useful to allow the Federal or non-Federal party to waive the 25 percent limit. The commenter felt that given that the values are to be balanced at least every two years, the risks of exceeding the 25 percent limit are minimal. The Federal Land Policy and Management Act requires that exchanges be limited to values within 25 percent of the involved public land value. Where ledger accounts are used, the limit will be 25 percent of the sum of the values of the Federal land conveyed in the current transaction and all previous transactions. This limitation provides protection for the Federal government and exchange proponents.

Another respondent noted that "* * * most beneficial exchanges, when a ledger account is established, would easily take longer to complete * * * than the 2-year balancing requirement * * *" This respondent suggested a period longer than two years. This suggestion has been adopted, the two-year balancing requirement has been extended to three years. However, the Department intends that the duration of the period(s) over which there is an outstanding ledger balance be minimized.

Several States expressed concern that under the proposed regulations, States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values of the State lands when compared with assembled multiple ownership exchanges. Section 2201.3–2 of the rule discusses values of the lands assembled from multiple ownerships by any non-Federal party. This section also provides that Federal and non-Federal lands be appraised in a similar manner.

For paragraph (f), it was suggested that termination of the assembled exchange arrangement be effective after 30 days written notice to the other party. Requirements for advance notice of termination should be addressed in the agreement to initiate an exchange. A critical requirement, however, is that values must be equalized, pursuant to § 2201.6 of this rule, prior to termination. Also, it is intended that multiple transaction exchanges otherwise be arranged in a manner that will reasonably protect the public interest throughout each phase of the exchange should the decision be made by either party to terminate the agreement.

Section 2201.1–2 Segregative Effect

This section of the proposed rule provided for the temporary segregation of Federal lands from entry under the public land and mineral laws for up to five years when a proposal is made to exchange Federal lands.

One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." Regarding the first comment, the commenter is referred to the definition of segregation in § 2200.0–5(v). It states the purpose of segregation is "to allow for the orderly administration of the Federal lands." As to the second comment, the commenter is correct. However, due to the purpose stated above, the rule has been expanded to include segregation from the "public land laws" and the "mineral laws." It is well established that the Secretary of the Interior may exercise his rulemaking authority in order to segregate lands temporarily to allow for the orderly administration of the lands under his care and supervision (see, e.g., *Byron* v. *United States*, 259 F. 371, 377 (9th Cir. 1919); *Hopkins* v. *United States*, 414 F.2d 464, 473 (9th Cir. 1969); *Marion Q. Kaiser*, 65 I.D. 485, 488–89 (1958)). Although a two-year segregation from public land laws has been used in other Department rules, this final rule provides for a five-year segregation from the public land laws to be consistent with the five-year segregation from the mineral laws provided by the Act.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt that the holder of a right-of-way should have the ability to renew during the period of segregation. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 2200.0–5(s) deal with the disposal in fee of public lands. Normally rights-of-way are not fee interests, and therefore, would not be affected by the segregation. The discretionary renewal of a right-of-way during the period of segregation likewise would not be precluded.

Several comments were received regarding paragraph (d) pertaining to the 90-day segregation of lands acquired by the United States. That provision has been moved to § 2201.9 of the rule.

Section 2201.1–3 Assumption of Costs

Thirty-one comments were received on this section. The major concern of the respondents related to the requirement to meet the criteria to qualify for compensation of costs. They believed this requirement places unwarranted limitations on the exercise of the cost compensation authority. The Act requires the Secretary to determine when it is in the public interest to make adjustments to values compensating the non-Federal party for assuming certain costs. The requirement to meet the criteria is necessary to ensure that compensation for costs assumed is in the public interest and has been retained in the final rule.

A concern was expressed that the cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Funding arrangements will be dealt with outside of the rulemaking process.

Although § 2200.1–3(b) sets criteria for when costs may be compensated, it appeared to one respondent that there are no such restrictions on the adjustment of relative values as a way of providing compensation, other than the 25 percent cap. The Act states that these amounts be reasonable and accurately reflect the value of the cost and service. This wording is incorporated in § 2201.1–3 of the rule as one of the five criteria that must be met before compensation can be made. Each exchange presents unique circumstances so anything beyond general restrictions may lead to impediments to exchange. The five criteria contained in § 2201.1–3(b), along with the 25 percent limitation, offer the authorized officer reasonable parameters for ensuring that Federal assumption of or compensation for costs assumed by other parties is in the public interest.

A suggestion was made to state which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 2201.1(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two comments stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. Section 2201.1(c)(6) requires an assignment of responsibility for performance of required functions and for costs associated with processing

an exchange in the agreement to initiate. Documentation of environmental analysis is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to confirm that the costs associated with the cultural resources survey, mitigation (including excavation), reports, and coordination with the State Historic Preservation Officer are considered. Section 2201.1–3(a)(2) of the proposed rule states that parties may agree to make adjustments in relative value for a variety of costs, including cultural resource surveys and mitigation. This paragraph has been retained in the final rule.

It was suggested that the term "in the public interest" be defined. Public interest, as used in § 2201.1–3, involves many factors and is best left as a determination based on national and regional concerns as well as Federal, State and local issues and values in the area of the Federal land.

One commenter suggested clarifying § 2201.1–3 as it applies to discussing the assumption of costs with or without compensation in agreements to initiate an exchange under paragraph (a). Paragraph (a) merely states that either party may agree to assume, with or without compensation, the costs that would ordinarily be borne by the other party. Paragraph (b) establishes the criteria for compensation or assumption of costs by the Federal party. No change was made in the final rule in response to this suggestion.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that "section (b) attempts to combine compensation to the non-Federal party with compensation for Federal costs and becomes vague." Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be inappropriate to require compensation of the non-Federal party as a standard practice. Paragraph (b) of the final rule specifically describes the conditions that must be met and documented: (1) To assume non-Federal costs without compensation, or (2) to compensate the non-Federal party for assuming Federal costs.

Section 2201.2 Notice of Exchange Proposal

Several respondents requested that the State government be notified at this stage rather than waiting until the Notice of Decision stage. One of these also requested that the Congressional delegation be included in this notice of exchange proposal. These recommendations have been adopted, but the requirement for notifying State and local governments was retained in the Notice of Decision section of the rule.

An existing right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice of all authorized users, including right-of-way holders, is implied in § 2201.2(a) of the rule. No change was made in the final rule in response to this comment.

One commenter questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in each of the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers or a single newspaper that covers several counties, as needed to notify the public.

A respondent suggested that minor modifications to the Notice of Exchange, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages, or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values will require publication. No change was made in response to this comment.

One respondent suggested that paragraph (a)(4) be revised to clarify that public comments regarding the environmental impacts of the proposed exchange are sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of this section has been revised in the final rule to make it clear that public comments on exchange proposals are sought and that timely comments will be considered in the environmental analysis of the proposal. A primary purpose of the notice of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate this notification the properties must be described legally. However, the authorized officer may include additional descriptions as appropriate. Information regarding uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified of a proposed exchange when the parties enter into an agreement to initiate, and again when a decision is reached. The first notice seeks information and opinion and the second conveys the decision. No changes were made in the final rule in response to these comments.

Two respondents suggested that the notice to authorized users should be by certified mail. The authorized officer may choose to notify authorized users by certified mail or any other means deemed appropriate or necessary. Although certified mail will likely be the most frequently used method of notification, the Department does not feel this should be made a requirement of the rule in order to preserve other options for notification.

A State government official requested that notice be placed in the **Federal Register**. Although **Federal Register** notice would reach groups and other members of the public on a national scale, newspaper publication ordinarily is a more effective way to reach interested and potentially affected persons and groups. The authorized officer, however, has discretion to publish in the **Federal Register** should that official deem it necessary or appropriate to do so.

One respondent expressed confusion as to how the notice of exchange proposal relates to land use planning notices. Unless the proposed exchange requires a plan amendment, this notice of exchange proposal has no relationship to land use planning.

Section 2201.3 Appraisals

A commenter expressed concern with the reference to the Uniform Appraisal Standards for Federal Acquisitions, since it is focused on acquisition under threat of condemnation, and recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. The Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Acquisitions," to the extent practicable. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Appraisal Institute's Standards of Professional

Practice have also been incorporated in this rule.

Section 2201.3–1 Appraiser Qualifications

Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two commenters believed requiring all appraisers to be State certified or licensed was impractical. One of the two suggested that it should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision. Agency compliance will depend upon the applicability of State laws. Seventeen States, as of January 22, 1993, require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for federally regulated financial agencies to be certified or licensed. In some States, appraisers not involved in federally related financial transactions may voluntarily become certified or licensed. Therefore, appraisers should comply with State appraisal certification or licensing requirements.

Federal staff appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, it is important that agency appraisers be equally qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems, we adopted language requiring qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (103 Stat. 183) (FIRREA). Consequently, the agencies will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted regulatory requirements in other States.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. The State agency suggested that the rule be revised to indicate clearly that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers must meet standards generally comparable to State training and experience qualifications as established by the BLM and the Forest Service.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., State agreement to accept certification and licenses issued by other States. The commenter felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue that cannot be resolved in this rule.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three commenters suggested this was unfair and that, instead, the parties should agree on selection of the appraiser. It was not intended that the authorized officer would unilaterally select the appraiser; however, the appraiser must be approved by the authorized officer. No change was made in response to these comments.

One commenter interpreted the first sentence in § 2201.3–1(a) of the rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the section be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

Two professional appraisal organizations suggested that the agencies adopt the Uniform Standards of Professional Appraisal Practice (USPAP) to assure consistency and quality in appraisals. The USPAP includes standards for real estate appraisal, real estate analysis, mass appraisal, personal property, and business appraisal, and are more general since they set standards for the act or process of estimating value. Since the USPAP definition of an appraisal report is different from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by the BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in section 2200.0–5 of the rule. The standards are consistent with the USPAP and incorporate Government-wide standards published by the Interagency Land Acquisition Conference and the Department of Transportation.

Section 2201.3–2 Market Value

A mining industry association suggested that § 2201.3–2(a) include a statement that appraisers disregard any increase in value to Federal lands resulting from the non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted since the appraiser must take into consideration all potential buyers and uses of the property including possible purchase by adjacent property owners. The value estimated should reflect motivational factors evident in similar transactions; e.g., sales of abutting lands.

A commenter suggested inserting "* * * in the same general location as the subject property;" at the end of § 2201.3–2(a)(3). However, this limitation would severely limit the appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic or other resource values; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in § 2201.3–2(a)(3) be expanded to include watershed and archeological values. However, the listing of resource values to be considered by the appraiser is not all inclusive. This paragraph of the rule includes a reference to "other resource values or amenities" which adequately covers these and other resources that may have value in the private competitive market, including watershed and archaeological values.

A commenter suggested that § 2201.3–2(a)(4) be revised to require the appraiser to consider water rights along with timber and mineral interests. The commenter noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." Water rights were added in the final rule to the list of contributory interests that may be considered.

Several comments were received regarding what appear to be conflicting instructions contained in § 2201.3–2(a)(5) and (6). If stipulated in the agreement to initiate, lands assembled from multiple ownerships can be appraised separately. Sections (a)(5) and (6) of this section of the proposed rule

were combined in the final rule to clarify the procedure.

Several States suggested that appraisals of individual tracts required in § 2201.3–2(a)(5) of the rule not be limited to individuals buying lands for purposes of an exchange. The States suggested that the concept be extended to State agencies conveying multiple tracts. This provision is limited to those parties who acquire lands for eventual conveyance to the United States through exchange under the terms of an agreement to initiate. A State agency, or any other party, may qualify for such treatment if it meets the test of acquiring tracts from multiple ownerships for purposes of an exchange.

Several persons commented on § 2201.3–2(a)(7) of the proposed rule that would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this section "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent added that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response to the various comments, this provision has been deleted from the final rule.

One commenter thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. The commenter suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This suggestion was already provided for in proposed paragraph (b) of the rule, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained in the final rule.

One commenter suggested the "departure" provisions of USPAP be followed. The commenter stated that this would require an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income) as required under USPAP in the appraisal report of the property. This suggestion was not adopted. The USPAP is one of several sources used to develop the appraisal standards. There is no intent to depart from these standards nor to require use of all three approaches to value, when it usually is not applicable or necessary.

Section 2201.3–3 Appraisal Report Standards

Three commenters expressed concern that language contained in § 2201.3–3(e) of the proposed rule was vague and could subject appraisers to open ended liability regarding disclosure of potentially hazardous environmental conditions. This provision has been modified to incorporate the comments. The rewritten provision will require the appraiser to disclose in the appraisal report 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.

One commenter expressed concern over the lack of sufficient safeguards to protect against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not a reliable indication that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay the land exchange. The decision to require more than one appraisal should be left to the parties involved in the exchange.

One commenter observed that parties to the exchange would be required to invest considerable time and expense in conducting studies, appraisals and title clearances before an informed decision could be made to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. We believe the provisions of § 2201.7–2(a)(3) regarding the signing of an exchange agreement fixing the agreed upon values upon such terms as the parties concur in provide sufficient protection for the exchange parties.

Another commenter suggested that § 2201.3–3(j)(2), requiring all appraisers to certify that they personally examined all comparable sales, may be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. An appraiser cannot perform an accurate comparative analysis without a personal examination of the comparable sales. Therefore, this suggestion was not adopted.

Section 2201.3–4 Appraisal Review

There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although this may be desirable, the standards set forth in § 2201.3–1(b) are adequate in that they require the appraiser to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of FIRREA.

Other comments suggested that the review appraiser be an agency employee and that the reviewer be appointed by the authorized officer. Section 2201.3–1(a) will allow reviewers to be employees or contractors to the Federal or non-Federal exchange parties. However, as a matter of policy, the Federal agencies will use qualified appraisers as review appraisers. Review appraisers are appointed through authority delegated by the Secretary.

Section 2201.4 Bargaining; Arbitration

Sixteen comments were received regarding: (1) Appointment of the arbitrator by the Secretary, (2) allowing the arbitration decision to be binding for a period not to exceed two years, (3) allowing the agency 180 days for review of the appraisal, and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments as these requirements are specific provisions of Section 3 of the Act.

One commenter expressed concern over who would pay the costs of arbitration. Issues regarding arbitration may be addressed in the agreement to initiate. Further, the Act provides that arbitration be conducted under the rules of the American Arbitration Association, which provide for the assignment of costs.

Section 2201.5 Exchanges at Approximately Equal Value

One commenter felt the $150,000 limit was too high, and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act.

Section 2201.6 Value Equalization; Cash Equalization Waiver

One respondent stated that the rule needed to provide safeguards against windfalls, asserting that proponents acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. Section 206(b) of FLPMA protects against such windfalls by limiting cash payment to 25 percent of the value of the involved Federal lands.

One respondent stated that the BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with the BLM. The Act's prohibition on waiver of cash equalization applies only to the Secretary of Agriculture. In cases where values of the Federal and non-Federal lands are close, the waiver of cash equalization may allow consummation of exchanges critical to the objectives of Federal land management. Therefore, the Department of the Interior intends to retain the option of waiving cash equalization.

It was suggested that the 25 percent limitation not be applied in Alaska and that ANILCA guidance be used instead. This is already accommodated in § 2200.0–7(c), which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act (ANCSA)(43 U.S.C. 1601–1628) or ANILCA, except to the extent that the rules conflict with the provisions of those acts.

Two respondents expressed concern about the 25 percent limitation imposed by the regulations. One felt that this limitation is not in compliance with FLPMA and the Act, and that while section 206(b) of FLPMA limits equalization to 25 percent of the value of the Federal lands, the Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting its ability to complete exchanges with this provision. That portion of the Act dealing with adjustments to relative value is an amendment of Section 206 of FLPMA. The compensation of costs is made in lieu of cash equalization payment and, therefore, is subject to the 25 percent limitation found in Section 206(b) of FLPMA.

Section 2201.7–1 Approval of Exchange; Notice of Decision

A State agency felt that notification to States will occur too late, as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposals sent to State and local governments, and others, under § 2201.2 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before appraisal(s) and environmental analysis.

One respondent requested a specific citation for information on appeals. The general reference to part 4 of Title 43 includes all applicable subparts.

In response to a reviewer who asked when the appeal period would begin, paragraphs (b) and (c) of the proposed rule were amended to make it clear that the proposed decision to approve or disapprove an exchange is subject to protest for a period of 45 days after the date of publication of the notice of availability of the decision, and the right to appeal from a protest decision may be pursued in accordance with the procedures of 43 CFR part 4.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the increased workload associated with this requirement. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. This notification provides an opportunity for the collection and submission of data that can be used in the analysis of the proposal. The second notice published at the time the final decision is issued advises the public of the outcome and affords the opportunity to protest and appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before the completion of an exchange. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which may lock in the appraised values or provide a procedure for a reappraisal and adjustment of values or an election to terminate.

Section 2201.7–2 Exchange Agreement

One respondent suggested that appraisals could be reviewed and approved in advance of an exchange agreement. No change is needed. The necessary appraisals will be reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 2201.8 Title Standards

One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degrees of warranty. Since this rule does not change significantly established methods of conveyance, the suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as the Department of Justice Standards.

One respondent suggested that paragraph 2201.8(c)(1) be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. While the parties to an exchange are free to include general terms concerning title closing matters in the agreement to initiate, there is no requirement for addressing terms of title closing in this agreement and the agreement to initiate is not binding. The regulatory requirements for title closing are presented in § 2201.9 of this rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion was not adopted. Property acquired by the United States cannot contain reservations or interests that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated in the text of the rule. This section of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon removal of any personal property.

Several commenters felt the proposed rule did not provide sufficient protection for the continuation of currently existing third party uses of Federal land following an exchange of title. As previously noted, § 2201.1(c)(4) was revised to address authorized uses in the agreement to initiate. Further, agency policy requires recognition and protection of third party uses to an extent consistent with the use authorization.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace Federal authorizations. The land exchange party and the third party user

may agree to an easement. Presumably, authorizations with terms similar to the original authorizations, as opposed to perpetual easements, will generally be the practice. Both are within the purview of the rule.

Three comments offered by the ski industry stated that lands occupied by a permitted ski area should not be exchanged without the specific consent of the permittee. Holders of ski area permits are due the same degree of protection of rights under the terms of the permit as other types of special use authorization holders.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected, generally would not jeopardize the consummation of the exchange. However, the Department believes that third party users adversely affected by the decision should have the right to protest and appeal.

An industry respondent requested that the regulation clarify that: (1) A mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. The rule provides that holders of mineral leases, and other forms of land use authorizations, may reach agreement for disposition of current uses. The holders of Federal use authorizations are in no way required to reach agreement. Unless specifically provided for in the terms of the use authorization, there will be no terminations due to transfer of title to the Federal lands. Other alternatives, such as the issuance of patent subject to existing authorizations, will be used to protect the rights of third party interests.

Another comment from the business sector was that the regulations should permit only those reservations to be placed on the Federal land that were specified in the agreement to initiate. The agreement to initiate is the point to recognize known title issues. However, after an agreement to initiate is entered, additional rights and reservations may be identified and, therefore, should be recognized. The agreement to initiate is a nonbinding agreement. It is not intended to be all inclusive or definitive in all respects.

A commenter suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved, but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses of the involved Federal lands.

Section 2201.9 Case Closing

Much of this section was rewritten in response to comments to clarify the patent issuance process for land exchanges as affected by the Act. A key provision of the Act is the simultaneous issuance of title transfer documents as the standard closing practice. Prior to the Act, Federal title was often conveyed by a procedure that in effect precluded simultaneous title transfers.

One respondent felt that "Case closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation and notice to public officials in addition to title transfers. Therefore, the more general title of "Case closing" has been retained.

It was suggested that paragraph (a) refer to patents or "other documents of conveyance." Paragraph (a) has been changed to refer to "documents of conveyance."

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. Section 2201.9 has been revised to clarify that, unless otherwise agreed, acceptance of title occurs upon recordation of the documents of conveyance in the local land records and that the segregation period terminates at midnight of the 90th day thereafter. Title insurance policies and final binders, or other title evidence (e.g., opinions, certifications), should set forth the date and time of recordation.

A commenter suggested specifying that the date of acceptance be noted on the land records. This suggestion has been adopted. This section of the rule has been revised to clarify that, unless otherwise agreed, title acceptance by the United States occurs upon recordation in the city, county or other local land records. Notation on the official BLM land status records of the date and time of acceptance is determined by that event.

Concern was expressed that in § 2201.9(a) the word "only" reverses the meaning and intent of section 3(a) of the Act regarding the simultaneous issuance of patents or titles and should be deleted. In response to this and other comments, this section has been rewritten in the final rule.

In *United States* v. *Schurz*, 102 U.S. 378 (1880), the United States Supreme Court ruled that delivery of a patent is not required to effect a transfer of the title of the United States to the public lands under its ownership. The concept of a simultaneous transfer of title, ordinarily requiring a simultaneous delivery of title documents, is found in section 3(a) of the Act. It does not comport with the ruling in *Schurz*. For this reason, § 2201.9(a) of the final rule states, in effect, that in simultaneous transfer cases the decision of *Schurz*, to the extent that it might otherwise be applicable, is not to be followed.

It was suggested that § 2201.9(b) concerning automatic segregation include the regulatory citation for the initiation of withdrawals. A citation to the FLPMA withdrawal regulations has been added. However, if Congress enacts other withdrawal authority in special cases, that authority could also be exercised.

Two agency respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. The rule has been revised to make it clear that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process has been completed. This comment was received before 43 CFR 4.21 appeal regulations were amended to delete provisions for automatic stays pending the resolution of appeals. Appeal procedures for this rulemaking are governed by 43 CFR part 4.

A State government respondent suggested that a time constraint be placed on the Solicitor's review. This suggestion has not been implemented. Legal review of complicated title issues can be time consuming, but it is an essential step in any land exchange.

Subpart 2202 Exchanges—National Forest Exchange

One commenter recommended a wording change by deleting "the public

land laws and" from the ninth line. The reference to the public land laws must remain in order to allow the exchange proposal to be protected from other land conveyance options. Should the other conveyances have merit, the exchange should be terminated and the lands open for other filings. This process protects the investment that both parties have in processing the transaction. Therefore, no change was made in the final rule.

Subpart 2203 Exchanges Involving Fee Federal Coal Deposits

It was suggested that there be special requirements for submissions to the Attorney General where coal is involved and that the State should be formally involved earlier in the process. Section 2201.2 of the final rule has been revised to provide "authorized users, jurisdictional State and local governments and the Congressional delegation" with a copy of the Notice of Exchange Proposal. The rule still provides notification 60 days prior to title transfer (2200.0–5 (m)) to State and local jurisdictions.

The principal authors of this final rule are David Cavanaugh, Roger Taylor, Don Simpson, and Mark Stiles of the BLM Washington Office (WO), James Dear of the Forest Service Headquarters Office, and Mike Pool of the BLM New Mexico State Office. This rule was also prepared in cooperation with Paul Tittman, and Phil Bayles of the Forest Service.

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment of the impacts of the rule was conducted and a determination made that no detailed statement was required pursuant to Section 102(2)(C) of NEPA.

This rule has been reviewed under Executive Order 12866.

The Department has further determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Although small entities will benefit from the expedited exchange of lands, the effects will generally be minor. Also, implementation of the rule primarily will affect the parties voluntarily involved in an exchange.

This final rule has been considered in light of E.O. 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessments, activities that are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise taking issues. Accordingly, no further consideration of takings implications was deemed necessary in this rule.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawals, Seashores.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

For the reasons set forth in the preamble and under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716 and 1740), parts 2090 and 2200 of groups 2000 and 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 is revised to read as follows:

Authority: 16 U.S.C. 3124; 25 U.S.C. 334; 30 U.S.C. 189; 43 U.S.C. 322, 641, 869 *et seq.*, 1201, 1624, 1714, 1740; 48 U.S.C. 462 note; 72 Stat. 339–340, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–3 [Amended]

2. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read "Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*)."

§ 2091.2–1 [Amended]

3. Section 2091.2–1 is amended by removing the semicolon and the word "and" at the end of paragraph (b) and adding a period, and removing paragraph (c).

4. Section 2091.2–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 2091.2–2 Opening.

* * * * *

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

5. The heading of § 2091.3 is revised to read as follows:

§ 2091.3 Segregation and opening resulting from a proposal or application.

6. Section 2091.3–1 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1–2 and 36 CFR 254.6).

* * * * *

7. Section 2091.3–2 is revised to read as follows:

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Upon conveyance of public lands under section 206 of the Federal Land

Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(d) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days 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. (See 43 CFR 2201.9(b))

PART 2200—EXCHANGES—GENERAL PROCEDURES

8. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1716, 1740.

9. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.

2200.0–2 Objective.
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policy.
2200.0–7 Scope.
2200.0–9 Information Collection.

Subpart 2200—Exchanges—General

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of Federal lands for non-Federal lands, found to be in the public interest, in accordance with applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Director of the Bureau of Land Management has the responsibility of carrying out the functions of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) *Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

(b) *Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by the written consent of the parties or terminated at any time upon written notice by any party.

(c) *Appraisal or Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(d) *Approximately equal value* determination means a decision that the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

(e) *Arbitration* means a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

(f) *Assembled land exchange* means the consolidation of multiple parcels of Federal and/or non-Federal lands for purposes of one or more exchange transactions over a period of time.

(g) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.

(h) *Bargaining* means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

(i) *Federal lands* means any lands or interests in lands, such as mineral or timber interests, that are owned by the United States and administered by the Secretary of the Interior through the Director of the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(j) *Hazardous substances* means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

(k) *Highest and best use* means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion.

(l) *Lands* means any land and/or interests in land.

(m) *Ledger account* means an accounting mechanism that tracks the differential in dollar value of lands conveyed throughout a series of transactions. A ledger reports each transaction by date, value of Federal land, value of non-Federal land, the difference between these values upon completion of each transaction, and a cumulative balance and differential.

(n) *Market value* means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(o) *Mineral laws* means the mining laws, mineral leasing laws, and the Geothermal Steam Act, but not the Materials Sales Act, administered by the Secretary of the Interior through the Bureau of Land Management.

(p) *Outstanding interests* means rights or interests in property held by an entity other than a party to an exchange.

(q) *Party* means the United States or any person, State or local government who enters into an agreement to initiate an exchange.

(r) *Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

(s) *Public land laws* means that body of general land laws administered by the Secretary of the Interior through the Bureau of Land Management, excepting, however, the mineral laws.

(t) *Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

(u) *Resource values* means any of the various commodity values (e.g., timber or minerals) or non-commodity values (e.g., wildlife habitat or scenic vistas), indigenous to particular land areas, surface and subsurface.

(v) *Secretary* means the Secretary of the Interior or the individual to whom the authority and responsibilities of that official, as to matters considered in this part, have been delegated.

(w) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

(x) *Statement of value* means a written report prepared by a qualified

appraiser that states the appraiser's conclusion(s) of value.

§ 2200.0–6 Policy.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process, without any obligation to reimburse, or incur any liability to, any party, person or other entity.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 2201.5 of this part, lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), or through arbitration.

(d) *Same-State exchanges.* The Federal and non-Federal lands involved in an exchange authorized pursuant to the Federal Land Policy and Management Act of 1976, as amended, shall be located within the same State.

(e) *O and C land exchanges.* Non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands are required to be located within any one of the 18 counties in which the original grants were made, and, upon acquisition by the United States, automatically shall assume the same status as the lands for which they were exchanged.

(f) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by an exchange that are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress; the California Desert Conservation Area; or any national conservation or national recreation area established by Act of Congress, immediately are reserved for and become part of the unit or area within which they are located, without further action by the Secretary, and thereafter shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(g) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable. Lands acquired by an exchange within a Bureau of Land Management district shall automatically become public lands as defined in 43 U.S.C. 1702 and shall become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans and plan amendments. Lands acquired by an exchange that are located within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(h) *Environmental analysis.* After an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the environmental policies and procedures of the Department of the Interior and the Bureau of Land Management. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 2201.2 of this part.

(i) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(j) *Hazardous substances*— (1) *Federal lands.* The authorized officer shall determine whether hazardous substances may be present on the Federal lands involved in an exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands to the other parties in accordance with the provisions of 40 CFR part 373. The authorized officer shall provide this notice in the exchange agreement. The authorized officer shall also provide such notice, to the extent information is readily available, in the agreement to initiate an exchange. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a), the conveyance document from the United States shall contain a covenant in accordance with 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement, as referenced in 42 U.S.C. 9607(e), whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any known, suspected and/or reasonably ascertainable storage, release, or disposal of hazardous substances on the non-Federal land

pursuant to § 2201.1 of this part. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be included in an exchange agreement, pursuant to § 2201.7–2 of this part.

(k) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(l) *Unsurveyed school sections.* For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "non-Federal" lands and may be used by the State in an exchange with the United States. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(m) *Coordination with State and local governments.* At least 60 days prior to the conveyance of and upon issuance of the deed or patent for Federal lands, the authorized officer will notify the Governor of the State within which the Federal lands covered by the notice are located and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal lands are located.

(n) *Fee coal exchanges.* As part of the consideration of whether public interest would be served by the acquisition of fee coal through exchange, the provisions of subpart 3461 of this title shall be applied and shall be evaluated as a factor and basis for the exchange.

§ 2200.0–7 Scope.

(a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the Bureau of Land Management Manuals and Handbooks 2200 and 9310. The contents of these supplemental materials are not considered to be a part of these rules.

(b) These rules apply to all exchanges involving Federal lands, as defined herein, except to the extent they are inconsistent with the authorities listed in parts 2210, 2240, 2250, and 2270 of this title. These rules also apply to the exchange of interests in either Federal or non-Federal lands, including, but not limited to, minerals, water rights, and timber.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions that do not conflict with the provisions of these Acts.

(d) Pending exchanges initiated prior to December 17, 1993 shall proceed in accordance with this rule unless:

(1) In the judgment of the authorized officer, it would be more expeditious to continue following the procedures in effect prior to December 17, 1993; or

(2) A binding agreement to exchange was in effect prior to December 17, 1993; and

(3) To proceed as provided in paragraphs (d) (1) or (2) of this section would not be inconsistent with applicable law.

(e) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3436 of this title.

§ 2200.0–9 Information collection.

(a) The collection of information contained in part 2200 of Group 2200 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056. The information will be used to initiate and complete land exchanges with the Bureau of Land Management. Responses are required to obtain benefits in accordance with the Federal Land Policy and Management Act of 1976, as amended.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (870), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0056), Office of Management and Budget, Washington, DC 20503.

10. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

2201.1 Agreement to initiate an exchange.
2201.1–1 Assembled land exchanges.
2201.1–2 Segregative effect.
2201.1–3 Assumption of costs.
2201.2 Notice of exchange proposal.
2201.3 Appraisals.
2201.3–1 Appraiser qualifications.
2201.3–2 Market value.
2201.3–3 Appraisal report standards.
2201.3–4 Appraisal review.
2201.4 Bargaining; arbitration.
2201.5 Exchanges at approximately equal value.
2201.6 Value equalization; cash equalization waiver.
2201.7 Approval of exchanges.
2201.7–1 Notice of decision.
2201.7–2 Exchange agreement.
2201.8 Title standards.
2201.9 Case closing.

Subpart 2201—Exchange—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 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) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States, together with the right to prospect for, mine and remove the minerals, shall be removed from the operation of the mining laws pending issuance of such regulations as the Secretary may prescribe.

§ 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 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;

(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:

(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.

§ 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 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 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-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 2202—Exchanges—National Forest Exchange

11. Section 2202.1 is amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) If a proposal is made to exchange lands reserved from the public domain for National Forest System purposes, the authorized officer may request 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 record notation shall segregate the Federal lands from appropriation under the public land laws and the mineral laws as defined under § 2200.0–5 of this title for a period not to exceed 5 years from the date of notation.

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

(d) 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, 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 deletion 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.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

12. Section 2203.1 is revised to read as follows:

§ 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 distribute a notice of exchange proposal as set forth in § 2201.2 of this title.

13. Section 2203.2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

14. Section 2203.3 is amended by removing the phrase "notice of realty action" in the third line of the introductory paragraph and replacing it with "notice of decision," and in the same paragraph removing the citation "§ 2201.1(e)" and replacing it with the citation "§ 2201.7–1."

* * * * *

[FR Doc. 93–28086 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–84–P