

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 re-vested 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

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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) The rules contained in this part apply to all land exchanges, made under the authority of the Secretary, involving Federal lands, as defined in 43 CFR 2200.0-5(i). Apart from the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. 1701 *et seq.*, there are a variety of statutes, administered by the Secretary, that authorize land trades which may include Federal lands, as for example, certain National Wildlife Refuge System and National Park System exchange acts. The procedures and requirements associated with or imposed by any one of these other statutes may not be entirely consistent with the rules in this part, as the rules in this part are intended primarily to implement the FLPMA land exchange provisions. If there is any such inconsistency, and if Federal lands are involved, the inconsistent procedures or statutory requirements will prevail. Otherwise, the regulations in this part will be followed. The rules in this part 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.

[46 FR 1638, Jan. 6, 1981, as amended at 63 FR 52617, Oct. 1, 1998]

### § 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.