

from an applicant other than a preferred operator is determined to be the best application (and no preferred operator submits a responsive application that is substantially equal to it), the preferred operator who submitted the best application from among the applications submitted by preferred operators shall be given the opportunity, by amending its application, to meet the terms and conditions of the best application received. If the amended application of that preferred operator is considered by the authorized officer to be at least substantially equal to the best application, the preferred operator shall be issued the visitor service authorization. If a preferred operator does not amend its application to meet the terms and conditions of the best application, the authorized officer shall issue the visitor service authorization to the applicant who submitted the best application in response to the prospectus.

**§ 251.125 Preferred operator privileges and limitations.**

(a) A preferred operator has no preference within a National Forest in Alaska beyond that authorized by section 1307 of ANILCA (16 U.S.C. 1397) and by § 251.124 of this subpart.

(b) Local residents and most directly affected Native Corporations have equal priority for consideration in providing visitor services pursuant to § 251.124 of this subpart.

(c) Nothing in this subpart shall prohibit the authorized officer from issuing special use authorizations to other applicants within the CSU, as long as the requirements of § 251.124 are met.

(d) If an operator qualifies as a local resident for any part of an area designated in the solicitation for a specific visitor service, in matters related solely to that solicitation, the operator shall be treated as a local resident for the entire area covered by that solicitation.

(e) The preferences described in this section may not be sold, assigned, transferred, or devised, either directly or indirectly, in whole or in part.

**§ 251.126 Appeals.**

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service under this subpart or related to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

**PART 254—LANDOWNERSHIP ADJUSTMENTS**

**Subpart A—Land Exchanges**

- Sec.
- 254.1 Scope and applicability.
  - 254.2 Definitions.
  - 254.3 Requirements.
  - 254.4 Agreement to initiate an exchange.
  - 254.5 Assembled land exchanges.
  - 254.6 Segregative effect.
  - 254.7 Assumption of costs.
  - 254.8 Notice of exchange proposal.
  - 254.9 Appraisals.
  - 254.10 Bargaining; arbitration.
  - 254.11 Exchanges at approximately equal value.
  - 254.12 Value equalization; cash equalization waiver.
  - 254.13 Approval of exchanges; notice of decision.
  - 254.14 Exchange agreement.
  - 254.15 Title standards.
  - 254.16 Case closing.
  - 254.17 Information requirements.

**Subpart B—National Forest Townsites**

- 254.20 Purpose and scope.
- 254.21 Applications.
- 254.22 Designation and public notice.
- 254.23 Studies, assessments, and approval.
- 254.24 Conveyance.
- 254.25 Survey.
- 254.26 Appraisal.

**Subpart C—Conveyance of Small Tracts**

- 254.30 Purpose.
- 254.31 Definitions.
- 254.32 Encroachments.
- 254.33 Road rights-of-way.
- 254.34 Mineral survey fractions.
- 254.35 Limitations.
- 254.36 Determining public interest.
- 254.37–254.39 [Reserved]
- 254.40 Applications.
- 254.41 Public sale or exchange in absence of application.
- 254.42 Valuation of tracts.
- 254.43 Surveys.
- 254.44 Document of conveyance.

### Subpart A—Land Exchanges

AUTHORITY: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, 1716, and 1740; and other applicable laws.

SOURCE: 59 FR 10867, Mar. 8, 1994, unless otherwise noted.

#### § 254.1 Scope and applicability.

(a) These rules set forth the procedures for conducting exchanges of National Forest System lands. The procedures in these rules may be supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

(b) These rules apply to all National Forest System exchanges of land or interests in land, including but not limited to minerals, water rights, and timber, except those exchanges made under the authority of Small Tracts Act of January 12, 1983 (16 U.S.C. 521c-521i) (36 CFR part 254, subpart C), and as otherwise noted. These rules also apply to other methods of acquisition, where indicated.

(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 which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which the parties have agreed in writing to initiate prior to April 7, 1994, will proceed in accordance with the rules and regulations in effect at the time of the agreement.

(e) Except for exchanges requiring cash equalization payments made available through the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460[1]9), the boundaries of a national forest are automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), provided the acquired lands are contiguous to existing national forest boundaries and total no more than 3,000 acres in each exchange.

(f) Exchanges under the Weeks Act of March 1, 1911, or the General Exchange Act of March 20, 1922, may involve land-for-timber (non-Federal land exchanged for the rights to Federal timber), or timber-for-land (the exchange of the rights to non-Federal timber for Federal land), or tripartite land-for-timber (non-Federal land exchanged for the rights to Federal timber cut by a third party in behalf of the exchange parties).

(g) Land exchanges involving National Forest System lands are authorized by a number of statutes, depending upon the status (conditions of ownership) of such lands and the purpose for which an exchange is to be made. The status of National Forest System land is determined by the method by which the land or interests therein became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges assume the same status as the Federal lands conveyed.

(h) The Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701), is supplemental to all applicable exchange laws, except the cash equalization provisions of the Sisk Act of December 4, 1967, as amended (16 U.S.C. 484a).

#### § 254.2 Definitions.

For the purposes of this subpart, the following terms have the meanings set forth in this section.

*Acquisition* means the attainment of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

*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.

*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 consent of the parties or terminated at any time upon written notice by any party.

*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.

*Approximately equal value* means a comparative estimate of value of the lands involved in an exchange which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

*Arbitration* is 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.

*Assembled land exchange* means an exchange of Federal land for a package of multiple ownership parcels of non-Federal land consolidated for purposes of one land exchange transaction.

*Authorized officer* means a Forest Service line or staff officer who has been delegated the authority and responsibility to make decisions and perform the duties described in this subpart.

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

*Federal lands* means any lands or interests in lands, such as mineral and timber interests, that are owned by the United States and administered by the Secretary of Agriculture through the Chief of the Forest Service, without regard to how the United States acquired ownership.

*Hazardous substances* are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

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

*Lands* means any land and/or interests in land.

*Market value* means the most probable price in cash, or terms equivalent

to cash, which lands or interest 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.

*Mineral laws* means the mining and mineral leasing laws applicable to Federally owned lands and minerals reserved from the public domain for national forest purposes and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), but not the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

*Outstanding interests* are rights or interests in property held by an entity other than a party to an exchange.

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

*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. No Member of Congress may participate in a land exchange with an agency of the United States, as set forth in 18 U.S.C. 431-433.

*Public land laws* means that body of non-mineral land laws dealing with the disposal of National Forest System lands administered by the Secretary of Agriculture.

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

*Resource values* means any of the various commodity values or non-commodity values, such as wildlife habitat and aesthetics, contained within land interests, surface and subsurface.

*Secretary* means the Secretary of Agriculture or the individual to whom responsibility has been delegated.

*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

### § 254.3

### 36 CFR Ch. II (7–1–06 Edition)

orderly administration of the Federal lands.

*Statement of value* means a written report prepared by a qualified appraiser in conformance with the minimum standards of the Uniform Standards of Professional Appraisal Practice that states the appraiser's conclusion(s) of value.

#### § 254.3 Requirements.

(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 at any time during the exchange process.

(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.

(1) *Factors to consider.* When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, 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, and 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 existing or planned land use authorizations (§ 254.4(c)(4)); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

(2) *Findings.* To determine that an exchange well serves the public interest, the authorized officer must find that—

(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and

the public objectives served by the Federal lands to be conveyed, and

(ii) The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

(3) *Documentation.* The findings and the supporting rationale shall be documented and made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. 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), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange must be located within the same State.

(e) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by the Secretary of the Interior by exchange under the authority granted by the Federal Land Policy and Management Act of 1976, as amended, which are within the boundaries of any unit of the National Forest System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any other system established by Act of Congress; or the boundaries of any national conservation area or national recreation area established by Act of Congress, immediately are reserved for and become a part of the unit or area in which they are located, without further action by the Secretary of the Interior, and, thereafter, shall be managed in accordance with all laws, rules, regulations, and land resource management plans applicable to such unit or area.

(f) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part

219). Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

(g) *Environmental analysis.* After an agreement to initiate an exchange is signed, the authorized officer shall undertake an environmental analysis 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 Forest Service environmental policies and procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the authorized officer shall consider timely written comments received in response to the exchange notice published pursuant to § 254.8 of this subpart.

(h) *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.

(i) *Hazardous substances—(1) Federal lands.* The authorized officer shall determine whether hazardous substances are known to be present on the Federal lands involved in the exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands in the contract agreement and in the conveyance document, pursuant to 40 CFR part 373 and 42 U.S.C. 9620. For purposes of this section, the notice of hazardous substances on involved Federal lands in an agreement to initiate an exchange or an exchange agreement meets the requirements for notices es-

tablished in 40 CFR part 373. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a) and participated as an owner, or in the operation, arrangement, generation, or transportation of the hazardous substances found on the Federal land, the conveyance document from the United States must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substances remaining on the property has been taken before the date of transfer and that any additional remedial action found necessary after the transfer shall be conducted by the United States, pursuant to 42 U.S.C. 9620(h)(3). The conveyance document must also reserve to the United States the right of access to the conveyed property if remedial or corrective action is required after the date of transfer. 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 hazardous substances known to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. 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 § 254.14 of this subpart.

(j) *Legal description of properties.* All lands subject to an exchange must be properly described on the basis of either a survey executed in accordance

## § 254.4

## 36 CFR Ch. II (7-1-06 Edition)

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.

(k) *Special review.* Except as provided in this paragraph, land acquisitions of \$150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight review, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). However, minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight, provided the general concept of and basis for the acquisition remain the same.

### § 254.4 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Forest Service 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 proposed for 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. A qualified appraiser must prepare the preliminary estimate.

(c) If the authorized officer agrees to proceed with an exchange proposal, all prospective parties shall execute a non-binding agreement to initiate an exchange. At a minimum, the agreement must 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 a party, other than the United States and State and local governments, that such 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, 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 § 254.7 of this subpart;

(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 (§ 254.3(i) and § 254.14);

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 254.5 of this subpart;

(11) A statement as to the arrangements for relocation of any tenants occupying non-Federal lands pursuant to § 254.15 of this subpart;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; 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 may be amended by consent of the parties or

## Forest Service, USDA

## § 254.7

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 not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 215 or 36 CFR part 251, subpart C.

[59 FR 10867, Mar. 8, 1994, as amended at 64 FR 25822, May 13, 1999]

### § 254.5 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 ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

(c) An assembled land exchange arrangement must be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

(d) Value of the Federal and non-Federal lands involved in an assembled land exchange arrangement shall be estimated pursuant to § 254.9 of this subpart.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

### § 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management (BLM) 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 noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect terminates as follows:

(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 in the FEDERAL REGISTER by the appropriate BLM State Office, if a decision is made not to proceed with the exchange or upon removal of any lands from the exchange proposal; or

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

### § 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest as specified in paragraph (b) 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) Subject to the limitation in paragraph (c) of this section, 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

## § 254.8

land; conduct of public hearings; assemblage of non-Federal parcels from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which 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) As a condition of an agreement to initiate, the authorized officer may agree to assume without compensation costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(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 compensation of the non-Federal party; and

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

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12(b) of this subpart.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

### § 254.8 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 four 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

## 36 CFR Ch. II (7-1-06 Edition)

users, the 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 agency 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 and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must 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 legal descriptions of any lands that may be 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.

### § 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0-16-038050-2 when appraising the values of the Federal and non-Federal lands involved in an exchange.



(a) *Appraiser qualifications.* (1) 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 agreeable to all parties and 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.

(2) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may establish appraiser qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.* (1) In estimating market value, the appraiser shall:

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

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

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

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

(v) If stipulated in the agreement to initiate in accordance with §254.4 of this subpart, estimate separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to §254.5 of this subpart. In this case, the appraiser also must estimate the value of the Federal

and non-Federal properties in a similar manner.

(2) 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:

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

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

(3) 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.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes must contain the following minimum information:

(1) A summary of facts and conclusions;

(2) 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;

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

(4) An adequate description of the physical characteristics of the land 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;

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

(6) 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;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction,

## § 254.10

source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

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

(10) A certification by the appraiser to the following:

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

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

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

(iv) The appraiser has not received compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which 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.

(d) *Appraisal review.* (1) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in paragraph (a) of this section. Statements of value prepared by agency appraisers are not subject to this review.

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

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

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

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

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

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the

## 36 CFR Ch. II (7-1-06 Edition)

data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

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

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

(B) The review appraiser has not received compensation that was contingent upon approval of the appraisal report.

### § 254.10 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:

(1)(i) 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 or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must 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), at the initiative of either party, must 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 must 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 must 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 is limited to the value estimate(s) of the contested appraisal(s). An arbitrator may not include in an award decision recommendations regarding the terms of a proposed exchange, nor may an arbitrator's award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

**§ 254.11 Exchanges at approximately equal value.**

(a) The authorized officer may exchange lands which are of approximately equal value upon a determination 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 accepted by an 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, not the non-Federal party, determines whether the Federal and non-Federal lands are approximately equal in value and must document how the determination was made.

**§ 254.12 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 to:

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

(2) Use cash equalization, after making all reasonable efforts to equalize values by adding or deleting lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 254.7 of this subpart may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The Secretary of Agriculture may not waive cash equalization payment due the United States, but the parties may agree to waive cash equalization payment due the non-Federal party. The amount to be waived may not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or \$15,000, whichever is less.

(d) A cash equalization payment may be waived only after the authorized officer certifies, in writing, that the waiver will expedite the exchange and that the public interest will be best served by the waiver.

## § 254.13

## 36 CFR Ch. II (7-1-06 Edition)

### § 254.13 Approval of exchanges; 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. At a minimum, the notice must 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 appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, and 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, the decision shall be subject to appeal as provided under 36 CFR part 215 or, for eligible parties, under 36 CFR part 251, subpart C.

[59 FR 10867, Mar. 8, 1994, as amended at 64 FR 25822, May 13, 1999]

### § 254.14 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 § 254.13 of this subpart. Such an agreement is required if hazardous substances are present on

the non-Federal lands. An exchange agreement must contain the following:

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

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

(3) The agreed upon values of the involved lands, until consummation of the land exchange.

(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) The exchange proposal receives any required Secretarial approval;
- (5) No objections are raised during any required congressional oversight;
- (6) In the event of an appeal under 36 CFR part 215 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and
- (7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but 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, curing deficiencies preventing highest and best use of the land, and any other expenses incurred

in processing the proposed land exchange.

(d) Absent an executed exchange agreement, an action taken by the parties prior to consummation of an exchange does not create any contractual or other binding obligations or rights enforceable against any party.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994, as amended at 64 FR 25822, May 13, 1999]

**§ 254.15 Title standards.**

(a) *Title evidence.* (1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and 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 USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance 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) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(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 USDA Office of the General Counsel 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 the 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 the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which 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 relocation 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

## § 254.16

shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

### § 254.16 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 pass simultaneously and are 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 must be met. The minimum requirements and conditions necessary for recordation 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;

(2) The issuance of title evidence as of the date of recordation which conforms to the instructions and requirements of the USDA Office of the General Counsel's preliminary title opinion; and

(3) Continuation searches disclosing no matters of record that would require any change in the aforementioned title evidence as issued.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically are 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 must be noted accordingly. Thereafter, the lands will be open automatically to operation of the public land laws and mineral laws, except to the extent otherwise provided by law, unless action is taken pursuant to 43 CFR part 2300 to initiate a withdrawal within the 90-day period.

## 36 CFR Ch. II (7-1-06 Edition)

### § 254.17 Information requirements.

The requirements governing the preparation of an agreement to initiate in § 254.4 of this subpart and an exchange agreement in § 254.14 of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been approved for use pursuant to 5 CFR part 1320 and assigned OMB Control Number 0596-0105.

[59 FR 10867, Mar. 8, 1994; 59 FR 15501, Apr. 1, 1994]

## Subpart B—National Forest Townsites

AUTHORITY: Pub. L. 85-569; 72 Stat. 438; 16 U.S.C. 478a, as amended by sec. 213, Pub. L. 94-579; 90 Stat. 2743.

SOURCE: 50 FR 29673, July 22, 1985, unless otherwise noted.

### § 254.20 Purpose and scope.

(a) A Forest Service official may, upon application, set aside and designate for townsite purposes up to 640 acres of National Forest System lands adjacent to or contiguous to an established community in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) National Forest System lands, needed by a community, may be sold under the Townsite Act, for fair market value if those lands would serve indigenous community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership. Indigenous community objectives may include space for housing and for service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other recreation areas for local citizens, but would exclude such uses as commercial enterprises or new industries and housing projects that would change the character of the local community.

### § 254.21 Applications.

(a) An application to purchase National Forest System lands—

(1) Must be made by designated officials) authorized to do business in the