DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1489]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Under authority of 22 U.S.C. 4084, preemployment medical examinations of candidates for Foreign Service and their dependents are necessary before an appointment action can be made. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Medical Services.
Title of information collection—Medical History and Examination for Foreign Services.
Frequency—On occasion.
Form No.—DS-1843 (For persons 12 years and over) and DS-1622 (For children 11 years and under).
Respondents—Candidates for Foreign Service appointments and their dependents.
Estimated number of respondents—2,879.
Average hours per response—15 minutes.
Total estimated burden hours—720.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: September 20, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-23683 Filed 10-1-91; 8:45 am]

BILLING CODE 4710-43-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of noise Compatibility Program Boca Raton Airport, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Boca Raton Airport Authority, under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 20, 1991, the FAA determined that the noise exposure maps submitted by the Boca Raton Airport Authority, under part 150, were in compliance with applicable requirements. On August 19, 1991, the Administrator approved the Boca Raton Airport Noise Compatibility Program. Eleven (11) of the fifteen (15) recommendations of the program were approved. Three (3) elements were disapproved for the purposes of part 150 and one (1) element was disapproved pending the submission of additional information.

EFFECTIVE DATE: The effective date of the FAA's approval of the Boca Raton Airport Noise Compatibility Program is August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-3596, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Boca Raton Airport, effective August 19, 1991. Under section 104(a) the Aviation Safety and Noise Abatment Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government.

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control system, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The Boca Raton Airport Authority submitted to the FAA on September 25, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April, 1989, through September, 1990. The Boca Raton Aiport Noise exposure maps were determined by FAA to be in compliance with applicable requirements on

February 20, 1991. Notice of this determination was published in the **Federal Register** on March, 7, 1991.

The Boca Raton Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on February 20, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determination that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 19, 1991.

Outright approval was granted for eleven (11) of the fifteen (15) specific program elements. Three (3) elements were disapproved for the purposes of part 150 and one (1) element was disapproved pending the submission of additional information. The approval action was for the following program elements:

Measure and description	NCP pages
1. Voluntary Runway 5 noise abatement turn to 3600 to climb west of I–95. Maintain heading until reaching 1,500 ft. This procedure is currently in effect.	3–11
FAA Action: Approved	
2. Establish a voluntary Runway 23 noise abatement turn to 2550 to climb over commercial area southwest of airport. Maintain heading until reaching 1,500 ft.	3–12
FAA Action: Approved	
3. Continue left hand traffic pattern on Runway 5.	2–11
FAA Action: Approved	
4. Continue right hand traffic pattern on Runway 23.	3–12
FAA Action: Approved	
5. Recommend corporate jet pilots use of NBAA noise abatement procedures, including "close-in" departure procedures.	3–24
FAA Action: Approved	
6. Airport to leave Visual Approach Slope Indicator (VASI's) on at all times to provide pilots with guidance regarding approach slope.	5–14
FAA Action: Approved	
7. Install on-airfield noise abatement signage.	5–21
FAA Action: Approved	
8. Extend the runway 500 feet at the southwest end.	5–16
FAA Action: Disapproved for the purposes of Part 150 in that it does not contribute to noise reduction. The NCP indicates that the runway extension would be for capacity enhancement and may be considered as an airport development action outside the Part 150 process.	
COMPLEMENTARY ACTIONS	
9. Establish a localizer approach to Runway 5.	5–15
FAA Action: Disapproved for the purposes of Part 150. There is no information in the NCP supporting this measure for noise compatibility purposes. This disapproval is limited to part 150 and should not be construed as a disapproval outside of the part 150 process relative to the potential capacity enhancement benefits of this measure.	
10. Establish a circling approach to either runway end (5/23) from the Palm Beach International (PBI) VOR.	5–16
FAA Action: Disapproved for the purposes of Part 150 in that it does not contribute to noise reduction. This disapproval is limited to part 150 and should not be construed as a disapproval outside of the part 150 process relative to the potential capacity enhancement benefits of this measure.	
LAND USE STRATEGIES	
11. Revised Zoning and Land Use Ordinances. Local jurisdictions should use the part 150 criteria as a minimum and apply more stringent land use controls which would restrict the future development of residential units within the 60 DNL contour and above.	9–3
FAA Action: Approved	
12. Revised Building Codes. Revise the building codes to require that adequate materials and techniques be used in achieving proper noise insulation in new construction.	9–4
FAA Action: Approved	
13. Enactment of Environmental Review Process. This program should establish a threshold to trigger an environmental review of existing or proposed development potentially located within the sensitive noise contours.	9–4
FAA Action: Approved	
14. Incorporation of Study Findings in Comprehensive Plans. The comprehensive plans for the City of Boca Raton and Palm Beach County should fully address the issue of aircraft noise on existing and proposed land use.	9–5
FAA Action: Approved	
15. Fee Simple Acquisition of residential zoned land in 65 and 70 DNL contours after implementation of other strategies.	9–5
FAA Action: Disapproved pending submission of additional information. The noise exposure maps do not depict residential uses within the 65 and 70 DNL contours either presently or in 1994. In addition, they do not establish a clear threat to the lands which are zoned but not yet developed as residential.	

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 19, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Boca Raton Airport Authority.

Issued in Orlando, Florida on September 12, 1991.

James E. Sheppard,

Manager, Orlando Airports, District Office.

[FR Doc. 91–23668 Filed 10–1–91; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

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).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 10:00 am, Wednesday, October 30, 1991.

PLACE: SD–116, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund—
   A. Review of investment policy and current portfolio
   b. Review changes to the 1992/93 scholarship program

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,
Executive Secretary,
[FR Doc. 91–23797 Filed 9–30–91; 12:40 pm]
BILLING CODE 4738–91–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, September 30, 1991.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC. 20419.

STATUS: The meeting will be closed to the public under Exemption 2 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: September 27, 1991.

Robert E. Taylor,
Clerk of the Board.
[FR Doc. 91–23773 Filed 9–30–91; 9:22 am]
BILLING CODE 7400–01–M

Corrections

Federal Register
Vol. 56, No. 191
Wednesday, October 2, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Correction

In notice document 91-23042 appearing on page 48822, in the issue of Thursday, September 26, 1991, make the following correction:

On the same page, in the second column, in the **STATUS** line "closed" should read "open".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No.5) (91-2)]

Quarterly Rail Cost Adjustment Factor

Correction

In notice document 91-6859 appearing on page 12259 in the issue of Friday, March 22, 1991, in the first column, in the file line at the end of the document, "FR Doc. 91-6359" should read "FR Doc. 91-6859".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act

Correction

In rule document 91-22446 beginning on page 47132, in the issue of Wednesday, September 18, 1991, make the following corrections:

§ 13.2 [Corrected]

1. On page 47136, in the second column, in § 13.2(b), in the definition for *Initial decision*, in the last line "reconstruction." should read "reconsideration."

§ 13.6 [Corrected]

2. On page 47137, in the third column, in § 13.6(a)(2), in the ninth line "of" should read "or".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25274]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Correction

In notice document 91-6871 beginning on page 12291 in the issue of Friday, March 22, 1991, make the following correction:

On page 12292, in the third column, in the file line at the end of the document, "FR Doc. 91-6371" should read "FR Doc. 91-6871".

BILLING CODE 1505-01-D

federal register

Wednesday
October 2, 1991

Part II

Department of Agriculture

Forest Service

Department of the Interior

Bureau of Land Management

36 CFR Part 254

43 CFR Parts 2090 and 2200

Land Exchanges; General Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596–AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716) and would update the Forest Service land exchange regulations to reflect other authorities. On August 18, 1989, the Forest Service and the Bureau of Land Management (BLM) published separate proposed rules in the **Federal Register** (54 FR 34368 and 54 FR 34380, respectively). Public comments received by the two agencies recommended a greater degree of uniformity between the two regulations. To accomplish this goal, the Forest Service and BLM have made substantial changes to their respective proposed regulations and are publishing new proposals to provide an opportunity for the public to review the changes. The new proposed regulations incorporate provisions that are intended to streamline and expedite exchanges involving Federal and non-Federal lands. The principal provisions 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. Because of the high degree of uniformity that exists between the Forest Service and BLM proposed rules, the public may submit one set of comments to either the Chief of the Forest Service or the Director of the BLM at the specified addresses. All comments received will be shared and jointly analyzed by the Forest Service and BLM.

DATES: Comments must be submitted in writing by December 2, 1991. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of the final rule.

ADDRESSES: Send comments to: Chief (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090, or Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

All comments sent to the Forest Service or BLM will be available for public review at the above BLM address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Specialist, Forest Service, USDA, (202) 205–1361.

SUPPLEMENTARY INFORMATION:

Need for Rules

The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (hereafter referred to as the Act) is to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior 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 landownership for purposes of 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.

Previous Rulemaking Efforts

A proposed rule to amend the Forest Service land exchange regulations, as contained in part 254 of title 36 of the Code of Federal Regulations (CFR), was published in the **Federal Register** on August 18, 1989 (54 FR 34368). On the same day, the Bureau of Land Management (BLM) published a proposed rule in the **Federal Register** (54 FR 34380) amending its land exchange regulations under parts 2200 and 2090 of title 43 of the CFR. Both rules were intended to reflect the amendments made by the Act to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), including the following provisions: Exchange agreements, segregation, arbitration, bargaining, appraisal standards, approximately equal value exchanges, compensation for costs assumed, value equalization, cash equalization waiver, and simultaneous transfer of title.

Those proposed rules provided the public with an initial comment period of 45 days. A 60-day extension was granted on October 23, 1989 (54 FR 43185), and that extended comment period officially ended on December 1, 1989.

On November 14 and 15, 1989, the Forest Service and BLM held separate, informal public meetings in Denver, Colorado, to discuss the proposed rules concerning land exchanges. The objectives of the meetings were to answer questions regarding the intent of the rules in relationship to the Act, clarify any parts of the proposed rules that the public found unclear, and obtain an indication of what sections of the rules might need additional attention. Each meeting was attended by approximately 35 people who represented a cross section of the various groups or individuals interested in the exchange programs of the two agencies.

Need for Uniform Regulations

Those attending the public meetings suggested that the definitions of terms, appraisal standards, procedures for resolving appraisal disputes, assembled land exchange techniques, and procedures for conveying title in the regulations for both agencies should be similar.

By the end of the extended public comment period, the agencies had received a total of 141 comments from the public including Members of Congress, business entities, associations, attorneys, individuals, Indian Tribes, State and county agencies, and offices of Federal agencies. Although the majority of comments pertained to provisions contained in the Act, agency policy, and procedural requirements for conducting land exchanges, several comments recommended a greater degree of uniformity between the regulations developed by the Forest Service and BLM.

After considering the comments received, and in the interest of developing more uniform regulations, the agencies made substantial changes to their respective proposed rules. Because of these changes, the Departments of Agriculture and the Interior have decided that it is necessary to propose new rules, under CFR titles 36 and 43 respectively, in order to provide an opportunity for the public to review the changes. The new proposed rules for both agencies are very similar with differences limited to various statutory and administrative requirements. The differences are explained in this preamble under §§ 254.1 (Scope and applicability), 254.2 (Definitions), 254.3 (Requirements), 254.5 (Assembled land exchanges), 254.7 (Assumption of costs), and 254.12 (Value equalization; cash equalization waiver). These Forest Service sections correspond respectively to BLM sections at 43 CFR 2200.0–7 (Scope), 2200.0–5 (Definitions), 2200.0–6 (Policy), 2201.1–1 (Assembled land exchanges), 2201.1–3

(Assumption of costs), and 2201.6 (Value equalization; cash equalization waiver) of the preamble for the proposed rule.

Features of the Proposed Rule

The principal features of the proposed rule are keyed to the CFR section number and summarized as follows:

Section 254.1—Scope and Applicability

This section addresses the applicability of this proposed rule to exchanges involving Federal and non-Federal lands and associated interests, such as minerals and timber, and the applicability of certain indicated provisions of this proposed rule to other methods of Forest Service land acquisitions. It also provides a cross reference to supplemental guidance set forth in the Forest Service Manual and Handbooks. It establishes the authority of the Forest Service to conduct land-for-timber exchanges, including third party land-for-timber exchanges. The proposed rule would clarify that the status of the lands (lands reserved from the public domain for national forest purposes or acquired lands) as well as the purpose of a proposed exchange determine which National Forest System land exchange authority is appropriate for conducting an exchange. This section further clarifies that the exchange provisions of the Federal Land Policy and Management Act of 1976 are supplemental to the many other exchange authorities applicable to the National Forest System land. Paragraph (c) of this section makes clear that the provisions of this proposed rule apply to Federal lands in Alaska, except where these provisions conflict with the administration of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. Paragraph (d) of this section contains an exemption clause for those exchanges formally initiated prior to promulgation of this rule. Those exchanges may proceed under the prior regulations as provided for under the Act.

Paragraph (e) of this section would provide that when a land acquisition requires a national forest boundary extension, such extension shall be automatic upon approval by an authorized officer of an acquisition under Weeks Act authority. This provision would eliminate the need for the separate, parallel actions under current procedures, to accomplish a boundary extension and accompanying land acquisition.

Differences in corresponding sections of Forest Service and BLM (43 CFR 2200.0–7) rules are: the Forest Service has exclusive authority to automatically extend national forest boundaries to accommodate Weeks Act acquisitions of up to 3,000 acres of contiguous land; the Forest Service has exclusive authority to conduct tripartite land-for-timber exchanges; and BLM has exclusive authority regarding exchanges of coal held in private ownership (fee coal exchanges).

Section 254.2—Definitions

The Federal Land Exchange Facilitation Act of 1988 introduced new terms which require definition and explanation to ensure uniformity in the application of the provisions of the Act. Accordingly, this section of the proposed rule has been expanded significantly over the current regulations. The definitions in this section correspond to those of BLM in proposed 43 CFR 2200.0–5, with two exceptions: (1) In this rule an "assembled land exchange" involves only one exchange transaction and in BLM's rule it may involve more than one exchange transaction over a period of time; and (2) in this rule "Federal lands" are defined as lands administered by the Forest Service and in BLM's rule, this term is defined as lands administered by BLM.

Section 254.3—Requirements

This section sets forth the minimum requirements that would be applicable to all Forest Service exchanges. All exchanges must be subjected to certain tests of need, meet certain criteria, and be governed by certain limitations. This section would establish that exchanges are strictly voluntary transactions between the Forest Service and the non-Federal party and are discretionary on the part of the Secretary. This section further provides that exchanges shall be in the public interest, meet Federal land management and State and local resident needs, and achieve important public objectives. The intended uses of the lands to be conveyed by the Forest Service must not be in conflict with the management objectives on adjacent Federal lands. Land exchanges must be of equal value, involve lands within the same State, and be consistent with the provisions of approved land and resource management plans, where applicable. This is consistent with the present rule, but this proposed rule adds emphasis to landownership adjustment planning in forest plans. Other provisions provide for the automatic addition of lands when acquired by the Secretary of the Interior, to National systems or certain areas established by Act of Congress; refer to established environmental analysis policies and procedures; and set forth the requirements for the legal description of properties involved in an exchange.

Paragraph (h) of this section requires the Forest Service to reserve or retain such rights or interests as are necessary to protect the public interest on the lands or interests conveyed out of Federal ownership.

Paragraph (i) of this section of the proposed rule addresses hazardous substances. First, the paragraph requires each party to notify the other parties of any known incidence of hazardous substances on the involved lands. Second, the Forest Service is required to take necessary measures to determine if hazardous substances are present on the Federal and non-Federal lands. Additionally, the exchange parties are required to reach agreement regarding the removal or other remedial actions concerning such substances prior to completing the exchange.

With respect to Federal lands to be conveyed where hazardous substances were stored for one year or more, or known to have been released or disposed of during the time of Federal ownership, paragraph (i) of this section incorporates the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) at 42 U.S.C. 9620(h). In such instances the conveyance document shall include a covenant warranting that all necessary remedial action was done before conveyance and that any further remedial action found necessary after the transfer shall be completed by the United States, unless the non-Federal party is a potentially responsible party with respect to such lands. When Federal lands with known or possible exposure to hazardous substances are to be conveyed to a potentially responsible non-Federal party, a "hold harmless" agreement by the non-Federal party may be appropriate. The occurrence of hazardous substances on the involved non-Federal lands also may justify a "hold harmless" agreement executed by the non-Federal party, warranting indemnification for any claims against the United States resulting from such hazardous substances. The validity of "hold harmless" and indemnification agreements is recognized in section 107 of CERCLA at 42 U.S.C. 9607(e). Such agreements, while insuring contribution from the warranting or indemnifying non-Federal party for losses or clean-up costs, do not release any party from any liability for the occurrence of hazardous substances.

Paragraph (k) of this section of the proposed rule would update existing regulations to incorporate the requirements of the Exchange Facilitation Act that the Forest Service submit Weeks Act land acquisitions valued at $150,000 or more to Congress for oversight review and submit Weeks Act land acquisitions valued at $250,000 or more to the Secretary of Agriculture for approval prior to submission to Congress for oversight review. This paragraph of the proposed rule would also provide exceptions to the requirements for approval by the Secretary of Agriculture and oversight by Congress; insignificant changes that occur after completion of oversight or Secretarial approval would be exempt from any required resubmission for such oversight or approval; acquisitions, including purchases and exchanges, which are specifically required by enacted legislation, generally would be exempt from Secretarial approval. In keeping with the intent of the Exchange Facilitation Act, these exceptions would expedite the processing of land acquisitions by eliminating the delays which would result from repeated oversight and approval, when minor changes have little or no impact on the case already reviewed and approved. Similarly, Secretarial approval of acquisitions specifically mandated by statute would serve no purpose except to delay the processing of the case. The provisions of this paragraph relate only to Forest Service acquisitions made pursuant to the Weeks Act of March 1, 1911, as amended. There is no comparable provision in the BLM proposed rule.

The corresponding section of the BLM proposed rule (43 CFR 2200.0–6) includes provisions regarding the exchange of revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands; fee coal exchanges; a statutory requirement (section 210 of FLPMA) to notify the Governor of the involved State 60 days prior to conveyance and again upon conveyance of Federal lands in an exchange; and a provision for treatment of unsurveyed, unpatented school sections on public domain lands as non-Federal lands in exchanges with the States. Such provisions apply only to BLM and not to the Forest Service.

Section 254.4—Agreement to Initiate an Exchange

This section of the proposed rule would provide procedures for either the Forest Service or an individual, business, governmental, or non-profit entity to propose an exchange. If a proposal appears to be feasible, the authorized officer and the other party involved would execute an "agreement to initiate an exchange". Feasibility may be based on a combination of such factors as land management planning, existing land use authorizations, the presence of environmental values, timeframes and costs to complete the exchange, and the market value of the lands involved. Currently, the Forest Service uses the similar "statement of intent" as an optional documentation of the initial agreement to pursue an exchange. Paragraph (c) of this section of the proposed rule would make the agreement to initiate mandatory in every exchange, to clearly establish the starting point for the appraisal timeframes and meet other objectives. At a minimum, an agreement to initiate would include: The identity of the exchange parties; a description of the properties proposed for exchange; a statement certifying United States citizenship; a description of the appurtenant rights proposed to be exchanged; any known authorized or unauthorized uses and encumbrances; a schedule to complete the exchange; assignment of responsibilities and related costs; any provisions concerning compensation for costs assumed; notice of any hazardous substances on the involved lands and commitments regarding responsibility for removal; permission to enter and examine the lands of each party; the terms of any assembled land exchange arrangement; a statement as to any arrangements for relocation of tenants occupying non-Federal land; a notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal land; and the procedure for transfer of title. Paragraph (d) of this section would provide that unless the parties agree otherwise, an appraisal shall be arranged no later than 90 days from the date an agreement to initiate is signed. Paragraphs (e), (f), and (g) of this section of the proposed rule would make clear that an agreement to initiate may be amended by consent of the parties or terminated by any party upon written notice, and is nonbinding in that either party may withdraw from the exchange at any time prior to entering into a binding exchange agreement, without incurring any liability whatsoever to the other party.

Section 254.5—Assembled Land Exchanges

Under paragraph (b) of this section of the proposed rule, the Federal and non-Federal parties, as part of an agreement to initiate an exchange, may elect to assemble multiple, individually-owned, non-Federal parcels into single land exchanges, to take advantage of the economy and efficiency of processing large-acreage exchange packages. The Forest Service has successfully used assembled land exchange arrangements in the past. The General Accounting Office (GAO) Report RCED–87–9 of February 5, 1987, recommended that if the Forest Service is going to continue using assembled land exchanges, the agency should develop policies to promote and control its use. The GAO Report found assembled land exchanges to be particularly useful and cost effective in exchanging small tracts of land where more than one ownership is involved. In response to the GAO Report recommendation, a provision for assembled land exchanges is incorporated into paragraph (a) of this section of the proposed rule. Paragraph (c) of this section requires that assembled land exchanges must be agreed upon in the agreement to initiate.

Except for the provisions of paragraph (b) of § 254.9 of this proposed rule, which permits the separate valuation of non-Federal parcels assembled from multiple ownerships and comparable valuation treatment of involved multiple Federal parcels, assembled land exchanges are subject to the same requirements and processes as any other Forest Service land exchange. The corresponding section of the BLM proposed rule (43 CFR 2201.1–1) differs from the Forest Service proposal in that such assembled lands may be exchanged through a series of transactions over a period of time, with periodic balancing of values.

Section 254.6—Segregative Effect

Under paragraph (a) of this section of the proposed rule, if a proposal were made to exchange Federal lands, such lands which were reserved from the public domain for national forest purposes may be segregated from appropriation under the public land laws and the mineral laws for a period not to exceed 5 years. Pursuant to the Exchange Facilitation Act, this is an extension of the current two-year segregation authority of the Secretary of the Interior. As used in this proposed rulemaking, the public land laws include those non-mineral laws that pertain to the disposal of Federal lands. The mineral laws include the mining laws, mineral leasing laws and the Geothermal Steam Act, but do not include the Materials Act. This provision is intended to eliminate, subject to valid existing rights, the possibility of Federal lands being disposed of under some other authority or encumbered by mining claims or mineral leases during the time such lands are involved in an exchange proposal. However, because many land exchanges take several years to complete, this provision would not preclude the authorized officer from issuing temporary use authorizations to extract small quantities of sand and gravel, collect firewood, conduct recreational activities such as outfitting and guiding, or for any other temporary activity that would have minimal impact on the physical suitability or appraised value of the Federal lands involved in an exchange.

Section 254.7—Assumption of Costs

Although in past exchanges it was common practice to negotiate the assignment of responsibilities, the proposed rule would specifically incorporate a provision, as set forth under the Act, that some responsibilities may be negotiated. It is the general practice that each party in a land exchange pays its own expenses, but the parties may elect to assume, with or without compensation, various costs or other responsibilities or requirements associated with the exchange. Because the requirements and costs for completing an exchange vary with different localities, the authorized officer must determine which requirements and costs are ordinarily borne by each party.

Paragraph (a) of this section of the proposed rule would allow the parties to an exchange to assume, without compensation, all or part of the costs or other responsibilities or requirements, that would ordinarily be borne by the other parties; or 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 would ordinarily be borne by the other party. Paragraph (a) also lists some items considered eligible for such compensation as specified in the Act as well as other requirements associated with the exchange process such as timber cruises, title curative actions, hazardous substance surveys and controls, and assemblage of non-Federal parcels from multiple ownerships. This listing is not all-inclusive.

Paragraph (b) of this section of the proposed rule specifies that the authorized officer may agree to assume costs ordinarily borne by a non-Federal party without compensation or to compensate a non-Federal party for assuming Federal costs only on an exceptional basis, when it is clearly in the public interest and under certain conditions. The intent of specifying these conditions is to avoid routine Federal assumption of non-Federal costs without compensation and routine adjustments of relative values to compensate the non-Federal party for assuming Federal costs. The corresponding section of the BLM proposed rule (43 CFR 2201.1–3) differs from that of the Forest Service.

Paragraph (c) of this section of the proposed rule would require that the amount of all adjustments agreed to as compensation for costs could not exceed 25 percent of the appraised value of the lands to be exchanged out of Federal ownership. This limitation is consistent with section 206(b) of the Federal Land Policy and Management Act, which establishes a 25 percent limitation on the payment of money in order to equalize the values of the lands involved in an exchange.

Section 254.8—Notice of Exchange Proposal

After an agreement to initiate is signed by the parties, paragraph (a) of this section of the proposed rule would require the authorized officer to publish a notice of the exchange proposal in newspapers of general circulation. As in the existing regulations, this notice would serve to inform the public of an exchange proposal, provide an opportunity for those with liens, encumbrances, or other claims to come forward, and offer a period of time for comments from those who wish to furnish information or express their views about a proposed exchange.

Notices would be sent to authorized users including livestock permittees, right-of-way holders, oil and gas lessees, etc. Paragraph (b) of this section of the proposed rule would provide that the general public and affected users would be allowed 45 days from the date of first publication to submit their comments or to notify the authorized officer of any claims to the lands. The timely submission of comments ensures that the authorized officer has the benefit of information and comments provided by the public in evaluating the suitability of the exchange through an environmental analysis and appropriate documentation.

Paragraph (c) of this section of the proposed rule would continue a provision of the existing rule, that land descriptions published in the notice of exchange proposal need not be republished if any of the described lands are excluded from the final exchange transaction. This paragraph would also add a provision not in the existing rules to make clear that minor corrections and insignificant changes would not require republishing of a notice, as long as the general concept and basis of the exchange proposal remains the same. These provisions will avoid unnecessary delays in the processing of exchanges.

Section 254.9—Appraisals

1. Appraiser Qualifications

Paragraph (a) of this section defines a qualified appraiser and requires that the individual be approved by an authorized officer. Exchanges are generally complex and sensitive transactions, requiring high levels of coordination and responsiveness to immediate needs. Due to the complexity that is typical of most exchanges, an appraiser, in order to be qualified, must have the appropriate level of experience and skills to provide the necessary appraisals and support documentation in an efficient and timely manner. Qualified appraisers would also be required to meet applicable State certification or licensing requirements that are consistent with the provisions of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331), title XI—Real Estate Appraisal Reform Amendments. This law requires all States and Territories to enact laws assuring that after December 31, 1991, all appraisals prepared in connection with Federally related transactions will be done by individuals certified or licensed in accordance with State laws. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is responsible for monitoring implementation of State certification and licensing laws.

Under this proposed rule, qualified appraisers must be certified or licensed in any State or Territory in order to be eligible for agency appraisal assignments to facilitate land acquisitions. This requirement will eliminate a double standard for non-Federal and Federal appraisers, provide recognition to those agency appraisers who meet State standards, and instill public confidence in the administration of appraisal standards and procedures applicable to land exchanges.

2. Market Value

In estimating market value, an appraiser prepares an analysis supporting an opinion of what a property would likely sell for under current market conditions. Paragraph (b) of this section of the proposed rule supplements the definition of market value in § 254.2 and clarifies market value as it applies to exchanges involving mineral and timber interests, other resource values, and parcels involved in assembled land exchanges. An appraiser's determination of highest and best use is crucial in estimating market value.

Certain individuals and organizations assemble from multiple ownerships, parcels of non-Federal land for exchange at the request of, or with the cooperation of, the Forest Service. It is in the public interest to utilize assembled land exchanges, due to the efficiency and economy of combining a number of small exchanges into one large exchange. Previous appraisal practices penalized such assemblages by treating the assembled parcels as a single ownership, which typically resulted in reduced valuation for the properties. The proposed rule would provide for parcels assembled from multiple ownerships to be treated as individual tracts in the appraisal. This special treatment would not apply when an individual owning multiple parcels proposes to exchange those parcels in a single exchange. When non-Federal parcels are considered as individual parcels in an assembled land exchange, the same individual-tract treatment would be used in the appraisal of any multiple-parcel Federal lands involved in the exchange.

3. Appraisal Report Standards

Paragraph (c) of this section of the proposed rule sets forth standards for appraisal reports. These standards are consistent with recognized industry and government appraisal standards. In developing the proposed content requirements for appraisal reports, the Forest Service utilized portions of several sources, including: The "Uniform Appraisal Standards for Land Acquisitions" (1987), published by the Appraisal Standards Board of the Appraisal Foundation; the "Uniform Appraisal Standards for Federal Land Acquisitions" (1973), prepared by the Interagency Land Acquisition Conference for the Department of Justice; and the Government-wide appraisal standards contained in 49 CFR part 24, published by the Department of Transportation, implementing appraisal provisions of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended. Both Forest Service staff appraisers and appraisers contracted by the agency or non-Federal party would have to comply with these standards.

4. Appraisal Review

Paragraph (d) of this section establishes standards for reporting the results of an independent and impartial appraisal review. These standards are consistent with those issued by the Appraisal Standards Board of the Appraisal Foundation. The Forest Service is responsible for assuring that the appraisal report reasonably estimates market value. Consequently, except for statements of value prepared by agency appraisers, all appraisals shall be reviewed by a qualified review appraiser to determine if the report is technically adequate and meets agency standards. The review appraiser must have qualifications at least equal to those for qualified appraisers contained in paragraph (a) of this section.

Section 254.10—Bargaining; Arbitration.

A major new provision of the Act authorizes bargaining and arbitration as methods to resolve a disagreement concerning the appraised values of the lands involved in an exchange.

As provided in the Act, paragraph (a) of this section establishes that within 180 days after appraisals are submitted to an authorized officer for review and approval, the parties may either accept the findings of the initial appraisal(s) or, if they cannot agree to accept such findings, may bargain or employ some other process to resolve the disagreement over value. 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, and may involve another appraiser review, additional appraisals, third party facilitation, or other commonly recognized practices for resolving value disputes. Any agreement based on bargaining shall be documented by the authorized officer.

The Act and this proposed rule further provide that, if the parties cannot agree on values within the 180-day period and desire to continue processing an exchange, the appraisal(s) will be submitted to an arbitrator unless the parties have employed bargaining or some other method to determine values. Arbitration would be conducted in accordance with rules established by the American Arbitration Association. An arbitrator would be appointed by the Secretary of Agriculture from a list provided by the Association. Within 30 days after completion of arbitration, the parties must decide whether to proceed with the exchange, modify the exchange to reflect the findings of arbitration, or withdraw from the exchange. A decision to withdraw from an exchange may be made by either party. The Act and this proposed rule provide that values established by arbitration will be binding for a period not to exceed 2 years from the date of the arbitrator's decision.

Paragraph (b) of this section of the proposed rule would limit arbitration to resolution of the disputed value estimate(s) of the contested appraisal(s), and would prohibit an arbitrator's recommendations which would affect any other aspects of the exchange proposal or affect management decisions regarding Federal lands.

As provided in the Act, the parties may agree to modify or suspend the deadlines associated with this section of the proposed rule. The need for such agreement could result from scheduling problems, processing obstacles, special requirements which may be unique to any particular exchange proposal, or other situations causing delays.

Section 254.11—Exchanges at Approximately Equal Value

In accordance with the Act and in the interest of expediting relatively small exchanges and reducing the administrative costs, paragraph (a) of this section of the proposed rule would permit the authorized officer, without the use of full narrative appraisals, to process exchanges in which the Federal and non-Federal lands are substantially similar, there are no significant elements of value requiring complex analysis, and the value of the Federal lands to be conveyed is not more than $150,000, as based upon a statement of value prepared by a qualified appraiser and approved by an authorized officer.

As defined in § 254.2 of the proposed rule, a statement of value is a simplified valuation report which documents the estimate of value and contains, at a minimum, the conclusions reached in an appraiser's investigation and analysis. Statements of value are commonly used in small, simple, low-value exchanges. For most exchanges at approximately equal value, a statement of value would only be prepared for the Federal lands under consideration. In accordance with paragraph (b) of this section, if a statement of value concludes that the Federal lands are valued at less than $150,000, the authorized officer would inspect the Federal and non-Federal lands and prepare a written determination as to whether the properties are substantially similar in terms of location, acreage, use, and physical attributes and therefore approximately equal in value. This documentation would provide a reasonable record of assurance that use of the authorization of this section is in the public interest.

Section 254.12—Value Equalization; Cash Equalization Waiver

This section of the proposed rule would provide various methods for equalizing the appraised values of Federal and non-Federal lands in order to complete the exchange transaction. A continuation of the methods in the current regulations, paragraph (a) of this section would allow equalization through adding or excluding Federal or non-Federal lands or making a cash equalization payment. Any combination of these methods may be used, except that a cash equalization payment and/or compensation for various costs assumed cannot exceed 25 percent of the appraised value of the Federal lands to be conveyed, as provided in paragraph (b) of this section. This limitation is consistent with section 206(b) of FLPMA which established a 25 percent limitation on the payment of money in order to equalize the values of lands involved in an exchange.

Pursuant to the Act, paragraph (c) of this section would include a new provision that upon agreement by both parties, a cash equalization payment by the United States may be waived if the amount does not exceed 3 percent of the value of the Federal lands to be exchanged or $15,000, whichever is less. This authority could be exercised after the authorized officer certifies in writing that the waiver will expedite the exchange and serve the public interest. However, the proposed rule further clarifies provisions of the Act, by establishing that the waiver could not be applied to exchanges where the value differential is in excess of $15,000. This requirement would restrict use of the waiver to relatively small differences in value and preclude any use of the authority to reduce larger cash equalization payments. This waiver authority will expedite those exchanges where the non-Federal party wishes to waive receipt of payment for a small excess value of the involved non-Federal lands.

Cash equalization payments due the United States in Forest Service exchanges may not be waived, because the Secretary of Agriculture is prohibited by the Act from waiving a payment of cash due the United States. It should be noted that the BLM proposed rule differs from the Forest Service proposal in this respect, because the Secretary of the Interior is authorized to waive a cash equalization payment to the United States.

Section 254.13—Approval of Exchange; Notice of Decision

Paragraph (a) of this section of the proposed rule would require the authorized officer to notify the public of a decision to approve an exchange proposal. Notice of this decision would be published in newspapers of general circulation and copies of the notice will be distributed to affected State and local governmental entities, the non-Federal exchange parties, authorized users of involved Federal lands, the Congressional delegation, and any individuals who had previously requested notification or filed written objections to the exchange proposal. The notice would contain the date and description of the decision, name and title of the deciding official, directions to obtain a copy of the decision, and the date on which the appeal period would begin. Paragraph (b) of this section would require that an appropriate notice containing the same information be distributed if a decision is made by the authorized officer to disapprove an exchange. Paragraph (c) of this section would provide that in accordance with 36 CFR part 217, the public and affected parties would be allowed 45 days after issuance of a notice of decision in which to appeal the authorized officer's decision to approve or disapprove an exchange proposal.

Section 254.14—Exchange Agreement

Under the current rule, the parties may enter into an exchange agreement (not to be confused with an agreement to initiate) once a decision has been made by the authorized officer to approve an exchange proposal. Paragraph (a) of this section of the proposed rule would continue the optional use of exchange agreements unless hazardous substances are located on the involved non-Federal lands; in which case, the use of exchange agreements would be mandatory. The exchange agreement would be legally binding on all parties, subject to the terms and conditions of the agreement and § 254.14(b) of the proposed rule. Paragraph (c) of this section specifies that the parties would be liable for failure to comply with the terms of an exchange agreement. Paragraph (d) of this section would emphasize the lack of any binding obligations by any party, in the absence of an exchange agreement.

Section 254.15—Title standards (Title Evidence, Conveyance, and Encumbrances)

Paragraph (a) of this section of the proposed rule would modify the current rule to provide that unless otherwise provided by the USDA Office of the General Counsel, evidence of title in land or interests being conveyed to the United States and the conveyance documents must be in conformance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States". Under Federal law, the United States is not required to furnish title evidence for the Federal lands being exchanged. All conveyances from the United States are executed by means of a patent or deed pursuant to paragraph (b) of this section of the proposed rule.

Paragraph (c) of this section of the proposed rule would require that all encumbrances pertaining to non-Federal lands including taxes, liens, mortgages, etc. must be eliminated, released, or waived in accordance with the requirements of the USDA Office of the General Counsel or the Department of Justice, as appropriate. Additionally, the United States cannot accept lands encumbered by reserved or outstanding interests that would interfere with the management of Federal lands. All reserved interests found to be acceptable will be subject to the appropriate rules and regulations of the Secretary of Agriculture or other agreed upon covenants in the conveyance documents. These requirements are a continuation of those in the current rule and are necessary to ensure that such conveyances and reservations do not interfere with the use and management of the lands and interests for national forest purposes.

Paragraph (c) of this section would also provide that the non-Federal party may remove any personal property that is not part of the exchange proposal. This may be done prior to acceptance of title by the United States or within a period of time thereafter as agreed upon by the parties. If the personal property is not removed within the specified timeframe, it will become vested in the United States. This would clarify the provision of the current rule, that the non-Federal land be free of encumbrances at the time of conveyance, and provide a reasonable and orderly process for removal or abandonment of personal property not made part of the exchange.

In addition, paragraph (c) of this section would provide that tenants occupying non-Federal lands involved in a land exchange may be eligible for advisory assistance and relocation payments. This may include compensation for moving expenses and costs associated with buying a comparable replacement dwelling. This provision is consistent with the regulations set forth in 49 CFR 24.2, which implement the relocation provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation benefits are not applicable to owner-occupants in voluntary exchanges, provided the owner-occupants are notified in writing of the voluntary basis for the exchange. Arrangements for relocating tenants and the notification of owner-occupants regarding the voluntary basis for the exchange shall be made part of the agreement to initiate an exchange.

With regard to authorized uses on Federal lands to be conveyed in an exchange, under paragraph (c) of this section, the authorized officer is to notify all third-party use holders early in the exchange process. This notice gives right-of-way grant holders, livestock permittees, oil and gas lessees, and other authorized users on Federal lands the opportunity to comment on the exchange proposal and to participate in the process. If Federal lands proposed for exchange are occupied under grant, permit, easement, or lease, the Forest Service prefers to encourage the third-party use holder and the non-Federal exchange party to reach an independent agreement accommodating the authorized use before a decision is made to approve the exchange. The Forest Service authorized use is then terminated upon conveyance and the continued use after conveyance is authorized under the terms and conditions agreed upon by the use holder and the non-Federal exchange party. If an agreement cannot be reached, the authorized officer may consider other alternatives, including but not limited to retention of the Federal lands occupied by the authorized use or, in some cases, termination of the use. Although the current rules are silent regarding authorized uses, paragraph (c) of this section of the proposed rule would clarify the long-standing Forest Service policy to provide reasonable consideration of the authorized users' privileges under the terms of the authorization. The addition of these provisions to the proposed rule signifies the importance of this consideration.

Section 254.16—Case Closing (Title Approval, Transfer, and Acceptance)

Current rules do not address the issue of simultaneous transfer of lands involved in exchanges. However, the Act requires that the proposed rule allow the Federal and non-Federal lands to be transferred simultaneously. Paragraph (a) of this section would provide for simultaneous transfer and the condition necessary to make such transfers possible. Although the regulation does not specify the method to effect a simultaneous transfer, it may be done through an escrow agreement. The parties may agree to waive the requirement for simultaneous transfer.

Paragraph (b) of this section would provide that, unless otherwise specified, title to the non-Federal lands will be accepted by the United States after the USDA Office of the General Counsel issues a final title opinion approving the title. Upon acceptance of title, the non-Federal lands acquired by the United States automatically will be segregated from appropriation under the public land laws and mineral laws for a period of 90 days and thereafter automatically opened to operation of such laws.

Summary

These proposed regulations are intended to facilitate and expedite Forest Service land exchanges by: (a) Clarifying their scope and application and the exceptions to their application; (b) defining terms used in exchanges; (c) stating the general requirements of land exchanges; (d) delineating procedures for initiating exchanges; (e) endorsing assembled land exchanges under certain circumstances; (f) explaining the terms under which lands may be segregated from appropriation; (g) establishing the responsibility for duties and costs associated with land exchanges and the conditions under which one party may assume costs, responsibilities, and requirements of the other party; (h) stating the minimum requirements for providing public notice of an exchange; (i) providing rules pertaining to land appraisals which reflect nationally recognized appraisal standards; (j) prescribing procedures and guidelines for resolution of appraisal disputes; (k) describing conditions and limitations for approximately equal value exchanges; (l) providing for cash equalization payments and waiver, and defining the limits of each; (m) establishing the rules under which an exchange may be approved and appealed; (n) outlining the requirements for a binding exchange agreement; and (o) referencing the standards and requirements for the conveyance documents, and title evidence and approval. The public is invited to submit written comments concerning the provisions of this proposed rule.

The principal authors of this proposed rule are James Dear, Paul Tittman, and Phil Bayles of the Forest Service Washington Office Lands Staff, with assistance from Kathy Dolge (Washington Office Lands Staff), John Criswell (Idaho Panhandle National Forests, Idaho), John Varro (Huron-Manistee National Forests, Michigan), and Ron Cecchi (Shasta-Trinity National Forests, California). This proposed rule was prepared in cooperation with Roger Taylor, Dave Cavanaugh, and Mike Pool of the BLM Washington Office.

Regulatory Impact

The proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule contains minimum procedures necessary to implement the Exchange Facilitation Act. The rule would not have an effect of $100 million or more on the economy; would not substantially increase prices or costs for consumers, industry, or State or local governments; nor would it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

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

Moreover, this proposed rule has been considered regarding the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action would not have a significant impact on a substantial number of small entities.

Environmental Impact

Based on experience, this proposed rule would not have a significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded for documentation in an Environmental Assessment or an Environmental Impact Statement (40 CFR 1508.4).

Controlling Paperwork Burdens on the Public

The content of an agreement to initiate an exchange and the content of an exchange agreement as would be required by §§ 254.4 and 254.14 of this proposed rule represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in an agreement to initiate an exchange and an exchange agreement.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 and implementing regulations at 5 CFR part 1320, the Forest Service requested, in conjunction with the publication of the first proposed rule, and, on August 3, 1989, received approval from the Office of Management and Budget (OMB) for the information to be addressed in an agreement to initiate or an exchange agreement. The information collection was assigned OMB Control No. 0596–0105 and was approved for use through June 30, 1992. Because the information requirements in this proposed rule are identical to those in the previous proposed rule, additional OMB review is not necessary. However, reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 36 CFR Part 254

Land exchanges, National forests.

Therefore, for reasons set forth above, it is proposed to revise part 254, subpart A of title 36 of the Code of Federal Regulations as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

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 1723; and other applicable laws.

§ 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 are 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 and timber, except those exchanges made under the authority of the Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i), 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 an agreement to initiate an exchange was entered into prior to [*Insert effective date of final rule*], may proceed in accordance with the rules and regulations in effect at the time the agreement was signed.

(e) Where lands are acquired by exchange under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), contiguous to existing national forest boundaries and totaling no more than 3,000 acres in each transaction, the boundary of the national forest shall automatically be extended pursuant to the Weeks Act to encompass the acquired lands.

(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 governed by the exchange statute appropriate to 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 became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges generally assume the same status as the Federal lands conveyed.

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

§ 254.2 Definitions.

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

Acquisition means the procuring 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 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.

"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 laws, the mineral leasing laws, 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.

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.

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 orderly administration of the Federal lands.

Statement of value means a written report prepared by a qualified appraiser that documents an estimate of value and contains, at the minimum, the conclusions reached in the appraiser's investigation and analysis.

§ 254.3 Requirements.

(a) *Exchanges are discretionary.* 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. 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 to secure important objectives including but not limited to: Protection of fish and wildlife habitats, cultural resources, 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 land use authorizations; promotion of multiple-use values; and fulfillment of public needs. The authorized officer must find that

(1) The resource values and the public objectives which 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 land will not be in conflict with management objectives on adjacent Federal lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), or bargaining based on appraisal(s), or arbitration. Lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange shall 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, shall immediately be 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 shall thereafter be managed in accordance with all laws, rules, regulations, and forest plan 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 Forest Land and Resource Management Plans, where applicable. 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 forest plan applicable to such area.

(g) *Environmental analysis.* When 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 Forest Service environmental policies and procedures. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 254.8 of this subpart.

(h) *Reservations made 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 shall be 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 provide notice of known storage, release, or disposal of hazardous substances on the Federal lands during the time of Federal ownership to the other parties in accordance with the provisions of 40 CFR part 373. For purposes of this subpart, an agreement to initiate an exchange or an exchange agreement shall qualify as a "contract notice" as required by 40 CFR part 373. Unless the non-Federal party is potentially responsible and participated in the storage, disposal, or release of hazardous substances, the conveyance document from the United States shall contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substance 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 completed by the United States, pursuant to 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it could 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 or suspected 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 present on the non-Federal land involved in an exchange. If hazardous substances are present 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 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 be properly described and clearly locatable by other means as may be prescribed by law.

(k) *Special review and approval.* A decision to approve an exchange under § 254.13 of this subpart may be made conditionally and must be subject to any required statutory approval by the Secretary or Congressional oversight. Except as provided in paragraphs (k)(1) and (k)(2) of this section, 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), and land acquisitions of $250,000 or more in value, made under Weeks Act authority, must also be submitted to the Secretary for approval, prior to submission to Congress for oversight review:

(1) Minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight or approval by the Secretary, provided the general concept of and basis for the acquisition remain the same.

(2) Land acquisitions specifically mandated by legislation shall be exempt from Secretarial approval, unless otherwise specified.

§ 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 involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of values of the lands involved in the proposal. The preliminary estimate 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, 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. State and local governments are exempt from this certification requirement;

(4) A description of the appurtenant rights proposed to be exchanged or reserved and any known authorized or 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 contained in § 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. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 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 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, shall not be appealable under 36 CFR part 217 or 36 CFR part 251, subpart C.

§ 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 shall be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

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

§ 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 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 mineral laws for a period not to exceed 5 years from the date of 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 shall terminate:

(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 BLM in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion 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.

(d) Non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, pursuant to § 254.16(b) of this subpart, and the public land records shall be noted accordingly.

§ 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, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, the agreement to initiate an exchange may provide that:

(1) 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; curing deficiencies preventing highest and best use of the land; conducting 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) The authorized officer may agree to assume costs ordinarily borne by the non-Federal party without compensation 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:

(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 of this subpart.

§ 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 users and 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 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; and

(4) An invitation to the public to submit any comments or to advise as to any liens, encumbrances, or other claims relating to the lands being considered for exchange.

(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.

§ 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 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.

(a) *Appraiser qualifications.* (1) A qualified appraiser 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.

(2) Qualified appraisers shall comply with State regulatory requirements consistent with 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 implement 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 that are reflected in prices paid for similar properties in the competitive market;

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

(v) Estimate separately, if stipulated in the agreement to initiate in accordance with § 254.4 of this subpart, the value of each property assembled from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 254.5 of this subpart;

(vi) Estimate the value of multiple-parcel Federal lands involved in an assembled land exchange arrangement in a manner comparable to that used on the involved non-Federal lands;

(vii) Disregard any change in market value prior to the date of valuation caused by the intent of the Forest Service to acquire the non-Federal property, or the intended public use of the property; and

(viii) Refrain from independently adding the separate values of the fractional interests to be conveyed, unless market evidence indicates:

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

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

(2) 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 shall contain, at a minimum, the following 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) Disclosure of any knowledge of the presence, or possible presence, of potentially hazardous environmental conditions on the property;

(6) A comparative market analysis. If more than one method of valuation is used, there shall be 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, 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 statement certifying that the appraiser signing the report:

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

(ii) Personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) Has no present or prospective interest in the appraised property; and

(iv) Did not receive 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. This 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, except for statements of value prepared by agency appraisers, shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 254.9(a) of this subpart.

(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 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 statement certifying that the review appraiser:

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

(B) Did not receive 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)(i) (A)–(D) 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 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 report(s), and 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 shall be in writing and made part of the administrative record. Such agreement shall reference all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) Alternatively, 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 want to continue with the land exchange, the appraisal(s) shall, 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 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 shall be binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration shall be 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.

§ 254.11 Exchanges at approximately equal value.

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

(1) It is in the public interest and that the consummation of a particular 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 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 shall document how the determination of approximately equal value 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) In no event shall 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 exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive cash equalization payment due the non-Federal party, but the Secretary of Agriculture shall not agree to waive cash equalization payment due the United States. The amount to be waived shall not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. The waiver of cash equalization payment 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 certifies, in writing, that the waiver will expedite the exchange and that the public interest will be better served by the waiver.

§ 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, market value estimates, 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 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 shall include:

(i) Date of decision;

(ii) Concise description of the decision;

(iii) Name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) 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 make any other distribution of the notice as appropriate.

(b) If the authorized officer makes a decision to disapprove an exchange, the officer shall distribute an appropriate notice of decision containing the same information required under paragraph (a)(1) of this section.

(c) For a period of 45 days after issuance of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to appeal as provided under 36 CFR part 217 or, for eligible parties, under 36 CFR part 251, Subpart C.

§ 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 agreement shall be required if hazardous substances are present on the non-Federal lands. An exchange agreement shall:

(1) Identify the parties, describe the lands and interests to be exchanged, identify all reserved and outstanding interests, stipulate any necessary cash equalization, and set forth all other terms and conditions necessary to complete an exchange;

(2) Include 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) Fix the agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as provided for in paragraph (a) of this section, shall be legally binding on all parties, subject to the terms and conditions thereof, and 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) A decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld in the event of an appeal under 36 CFR part 217 or 36 CFR part 251, subpart C; and

(5) 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 comply with the terms of an exchange agreement, the noncomplying party will be 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, no action taken by the parties shall create any contractual or other binding obligations or rights enforceable against any party prior to issuance of a patent or deed to the Federal lands, or acceptance of title to the non-Federal lands by the United States.

§ 254.15 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for lands or interests being conveyed to the United States shall be in conformance with the Department of Justice "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 shall be prepared, executed, and acknowledged in accordance with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance, and in accordance with the laws of the State in which the lands are located.

(2) Conveyances from the United States shall be by patent, quitclaim deed, or deed 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) Taxes, liens, and other encumbrances such as mortgages, deeds of trust, and judgments shall be eliminated, released, or waived in accordance with requirements of the 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 by the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary or other agreed upon covenants or conditions contained in the conveyance documents.

(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 shall 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 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 pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title Transfers.* Unless otherwise agreed, or required by law, patents or deeds for Federal lands and deeds for non-Federal lands shall be issued (delivered and recorded) simultaneously only after the authorized officer is satisfied that the United States will receive acceptable title and possession to the lands or interests being acquired.

(b) *Title acceptance and approval.* Unless otherwise specified by the USDA Office of the General Counsel, title acceptance of lands or interests being conveyed to the United States shall occur only upon the issuance of a final title opinion, approving the title, by the USDA Office of the General Counsel or the Department of Justice, as appropriate. 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. Unless action is taken to withdraw the lands within the 90-day period, they automatically will be open to operation of the public land laws and the mineral laws, except to the extent otherwise provided by law.

Dated: September 20, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 91-23179 Filed 10-1-91; 8:45 am]

BILLING CODE 3410-11-M