Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 7, 1994.

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7653(d)—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7653(d), requires educational institutions to report when they have terminated the enrollment of reservists due to unsatisfactory conduct, progress or attendance. The information will be used to determine when to terminate benefits to these reservists.

3. Businesses or other for-profit—Non-profit institutions—Small businesses or organizations.

4. 517 hours.

5. 5 minutes.

6. On occasion.

7. 6,215 respondents.

[FR Doc. 94-5177 Filed 3-7-94; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review: 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 6, 1994.

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7654, requires reservists training under the Montgomery GI Bill to verify their enrollment each month. The information will be used to determine the proper monthly payments to be made to these students.

3. Individuals or households.

4. 67,258 hours.

5. 5 minutes.

6. On occasion.

7. 115,300 respondents.

[FR Doc. 94-5178 Filed 3-7-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59 No. 45
Tuesday, March 8, 1994

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 10, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A Approval of Minutes

B New Business

1 Regulations

a. Debt Collection [Collection of Claims Owed the United States; 12 CFR Part 608] (Final)

Closed Session *

A. Reports

1. OSMO Quarterly Report

B. New Business

1. Enforcement Actions

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5457 Filed 3-4-94; 3:10 pm]

BILLING CODE 6705–01–P

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held March 10, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public. The matter to be considered at the meeting is:

Open Session

A. Reports

1 FCSBA Quarterly Report

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5458 Filed 3–4–94; 3:08 pm]

BILLING CODE 6705–01–P

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 15, 1994

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32248, *Hanson Natural Resources Co.—Non-Common Carrier Status—Petition for a Declaratory Order*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350; TDD (202) 927–5721.

Dated: March 4, 1994.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5233 Filed 3–3–94; 12:24 pm]

BILLING CODE 7035–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6298—Aircraft Accident Summary Report: Continental Express, EMB–120, N24706, Pine Bluff, Arkansas, April 29, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 94–5420 Filed 3–4–94, 1.25 pm]

BILLING CODE 7533–01–M

federal register

Tuesday
March 8, 1994

Part II

Department of Agriculture

Forest Service

36 CFR Part 254
Land Exchanges; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596–AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the requirements that are applicable to the land exchange activities of the Forest Service. The principal provisions of the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. The intended effect is to fully implement the authorities granted by the Federal Land Exchange Facilitation Act of August 20, 1988.

EFFECTIVE DATE: This rule is effective April 7, 1994.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Specialist, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1361.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, the Forest Service and the Bureau of Land Management published separate proposed rules (56 FR 49948–49977) for implementing the amendments to section 206 of the Federal Land Policy and Management Act of 1976, made by the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716).

The purpose of 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; to secure important objectives of resource management, enhancement, development, and protection; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

The proposed rules also incorporated other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. A 60-day public comment period was provided.

Summary of Public Comments Received and Agency Response to Comments

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

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

General Comments

Comment. Two respondents stated that the timeframes in the rule are too lengthy, particularly those related to the initiation and review process.

Response. The time periods specified in various sections of the rule were either imposed by the Federal Land Exchange Facilitation Act or are administratively necessary to comply with the Forest Service's public participation and environmental analysis procedures. However, the Forest Service and BLM have made further adjustments in their scheduling requirements in order to develop more uniform final regulations and to reduce the time periods wherever possible.

Comment. One respondent felt that streamlining the process to expedite exchanges may promote rapid disposal of Federal holdings in urban areas and forego revenue-making opportunities on those properties. It was further suggested that a process for mid-course review, at the highest departmental levels, should be built into the regulations.

Response. The land management agencies generally do not administer lands for intense development in urban areas. Moreover, each exchange opportunity must be analyzed on an individual basis. Certain high value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay and inefficiency. Therefore, this suggestion was not adopted.

Comment. It was pointed out by one reviewer that there is no provision in the rule for conducting public hearings.

Response. In conjunction with the written notification requirements in §§ 254.8 and 254.13 of the final rule, the authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings or meetings is considered unnecessary.

Comment. One respondent suggested that the rule require the preparation of an "environmental values document" to compare relative ecological values to be exchanged.

Response. All resource values associated with the lands involved in an exchange are examined through an environmental analysis completed pursuant to Council on Environmental Quality regulations at 40 CFR parts 1500–1508 and Forest Service directives (FSM 1950; FSH 1909.15). Therefore, a separate "environmental values" document is not required.

Specific Comments

Section 254.1—Scope and applicability. One respondent suggested that paragraph (b) of this section of the proposed rule should give a specific citation to the Small Tracts Act regulations. This suggestion has been adopted in the final rule.

Two parties commented on paragraph (c) of this section of the proposed rule, which would permit application of the rule to land exchanges in Alaska to the extent the regulations did not conflict with the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. One suggested separate regulations for such exchanges, similar to the Small Tracts Act situation. The other felt the rule should allow the authorized officer to depart from this rule to the degree consistent with the Alaska National Interest Lands Conservation Act. These suggestions have not been adopted. Paragraph (c) provides the authorized officer the latitude allowed by law to pursue land exchanges in Alaska and is unchanged from the language of the proposed rule.

Three comments were received on paragraph (d) of this section of the proposed rule. One respondent recommended that, in the name of uniformity, once the final rule is adopted all exchanges should be subject to the new regulations. Another suggested changing the provision related to proceeding with exchanges under prior agreements from "may" to "shall". The third asked for clarification on the handling of exchanges begun prior to this rule. In response, the rule has been revised to clearly state that, unless the parties agree otherwise, any written agreement based on prior regulations shall continue in accordance with that procedure.

Paragraph (e) of the proposed rule provided that the boundary of the national forest be automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended. There were two suggested changes to paragraph (e). One response recommended adding the clause "upon acceptance of title by the authorized officer," as a condition upon the automatic extension of the boundary. The other questioned both the apparent limitation and expansion of Weeks Act authority that the current wording suggests. Both recommended removing the words "by exchange" and made an observation that the Weeks Act refers only to acquired lands within the exterior boundaries of national forests. The recommendation to delete the words "by exchange" was adopted. However, the reference to acceptance of title by the authorized officer would be inconsistent with § 254.16 of the rule and, therefore, was not adopted.

Section 254.2—Definitions. Two respondents suggested that the term "eminent domain" not be used in the definition of "acquisition" because of the negative implication associated with condemnation and the erosion of private property rights. This suggestion was not adopted, because this is the standard definition used by the Forest Service to explain the various methods available to the Secretary of Agriculture to acquire land on behalf of the United States. It should be noted that § 254.3(a) of the rule states that land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Moreover, the Forest Service typically acquires land through exchange, purchase, or donation. Condemnation is rare and is considered as a last resort for acquisition.

One respondent recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such an agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. This revision was not considered necessary or appropriate to a definition, as § 254.4(a) and (b) of the final rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the definition of that term as used in the Small Tracts Act regulations at 36 CFR 254.31. This recommendation was adopted.

One reviewer recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted, because § 254.10(a) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s), which takes into account all factors which might influence the value of the estate to be conveyed.

One respondent stated that the definition of "highest and best use" in the proposed rule might be too broad and recommended that the phrase "and present uses of adjacent property" be added after the words "based on market evidence". The definition in the proposed rule is that used throughout the appraisal profession. The uses of nearby properties are always considered by the appraiser in determining highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, this suggestion was not adopted.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. This revision is not necessary. Market value is applicable to property as though it were in private ownership and anything that may affect value is considered by the appraiser.

One respondent asked if the mineral leasing laws referred to in the definition of "mineral laws" include mineral resources on Weeks Act lands. In response, the definition has been revised to make clear that the mineral laws apply only to those lands reserved from the public domain for National Forest purposes.

It also was recommended that the definition of "party" be revised to recognize States as full parties to an exchange. This change is not necessary. The definition in the proposed rule clearly recognized the States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One respondent recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws and further suggested adding the phrase "or by operation of law" after the word Secretary. This recommendation was not adopted. The purpose of segregation is to avoid the appropriation of long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from entry under both the public land laws and the mineral laws, and the term has long been interpreted to cover both types of entry. The term "by operation of law" would add nothing because this authority already lies with the Secretary.

Another reviewer indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The Department disagrees. The regulations only require the qualified appraiser to determine if the Federal lands exceed $150,000. Although a full appraisal report is not needed, the appraisal analysis must meet the minimum standards contained in the Uniform Standards.

One reviewer suggested adding definitions for "resource values" and "management objectives" in order to clarify the determination of public interest that must be made under § 254.3(b). The Department agrees that a definition of "resource values" would be helpful and has included the term in the definition section. However, a definition of "management objectives" was not included, as the generic term is of widespread common usage.

It also was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the determination of public interest, agreement to initiate an exchange, and assumption of costs. This suggestion was not adopted. Section 254.3(b) of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 254.7 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 254.3(g) requires that an environmental analysis be prepared. This analysis ensures that environmental values such as cultural resources are not overlooked in the determination of public interest.

Section 254.3—Requirements.

(a) *Discretionary nature of exchanges.* One respondent recommended that this paragraph be amended to clarify that the discretionary authority of the Secretary in determining public and State interests is subject to public review. This suggestion was not adopted, as § 254.3(b) of the rule requires consideration of the needs of State and local residents, and § 254.13 of the rule sets forth the requirements for public notice of decisions and subsequent review. Therefore, paragraph (a) is adopted without change from the proposed rule.

(b) *Determination of public interest.* Extensive comments were received on this paragraph. One respondent suggested that protection of watersheds be added as a factor in the determination of public interest. This suggestion has been adopted.

Proposed paragraph (b) provided that the authorized officer may complete an exchange only after a determination that the public interest will be well served. It was suggested that the term "best served" be used, instead of "well served". However, the term "well served" is retained in the final rule, because it is the term used in section 206(a) of the Federal Land Policy and Management Act of 1976.

The same respondent pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested the rule include a list of lands would be acquired and suggested the rule include a list of lands most desirable. It would be impracticable to list in these regulations all the types of lands that would be acquired through exchange, due to the variety of resources on involved lands and the variety of objectives and circumstances that lead to initiation of exchange proceedings. Identification of types of lands suitable for exchange is more appropriate during the land and resource management planning process.

One respondent stated that use of the phrase "accommodation of land use authorizations" as one of the factors to be considered in a public interest determination was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. This suggestion was adopted by expanding on the term "authorized uses" in § 254.4(c)(4) of the rule to include grants, permits, easements, or leases and by providing a cross reference to this provision in § 254.3(b).

One respondent recommended that paragraph (b) emphasize the management and development of private lands as a factor to consider in determining public interest and suggested working for inclusion into the final rule. Additionally, two respondents recommended that this paragraph include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. In response to these comments, paragraph (b) has been revised in the final rule to include consideration of the opportunity "* * * to meet the needs of State and local residents and their economies * * *," thus emphasizing the importance of these criteria in the determination of public interest. Additionally, it should be noted that the "Notice of Exchange Proposal" at § 254.8 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns they may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal would be considered in the development of an environmental analysis. The environmental analysis and related studies would serve as the basis for the "Notice of Decision" at § 254.13 of the rule, and this decision and all supporting documents would be included in the public record.

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

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

A State government wrote that the Regional Coal Team should be provided the opportunity for full participation in reviewing any exchange proposal. The Department agrees. Notice and review procedures are set out in § 254.8 of the final rule. When processing exchanges involving coal, the appropriate Regional Coal Team will have an opportunity to review the exchange; however, it is impracticable to list in § 254.8 all the appropriate entities that should be given review opportunities.

One respondent suggested that the provision of the proposed rule that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be deleted or limited to those uses of conveyed Federal lands that conflict with management objectives of 'adjoining" Indian Trust lands that were established formally prior to the exchange proposal. This suggestion has been partially adopted by making clear that the intended use of conveyed Federal land will not "substantially conflict with established" management objectives (§ 254.3(b)(2)(ii) of the final rule).

The local government respondent also suggested that as a condition of exchange, the Federal lands that may be used for landfills which may affect air quality must use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). The environmental analysis conducted pursuant to paragraph (g) of this section of the rule should consider all potential impacts and measures their effects by whatever standards are appropriate. Rather then defining specific technologies in this rule, the appropriate method of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods. Therefore, the suggestion has not been adopted in the final rule.

In order to consider the objective of meeting the needs of State and local residents, one respondent suggested that this paragraph be revised to require that an exchange be consistent with the zoning and the land use element of the general plan for adjacent non-Federal lands and include a land use consistency determination by each local agency with land use (planning and zoning) authority over adjacent lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in paragraph (h) of this section of the rule. Since those bodies would have jurisdiction over lands conveyed to non-Federal ownership, it would be meaningless to include in the rule that the use of the conveyed lands must be consistent with local zoning.

Five respondents felt that the proposed requirement that the land exchanged into non-Federal ownership must be used or managed to conform to or enhance adjacent Federal lands uses was costly, inequitable, unfair, or could otherwise limit exchange opportunities. However, this paragraph of the proposed rule simply required the authorized officer to consider the intended uses as part of the public interest determination. The language of paragraph (b)(2) of this section of the proposed rule did not imply control over future uses or place any requirement on the management of the land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to paragraph (h) of this section of the final rule. It would not be in the public interest to convey Federal lands if the intended uses were to create substantial management conflicts on adjacent Federal lands; therefore, this provision is retained in the final rule as one of the findings the authorized officer must be able to make in order to determine that the public interest is well served by the exchange.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis should not be placed on non-commodity resources. Paragraph (b) of this section of the rule is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 254.2 of the final rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. In response, cultural resources is now specified as a resource to consider in reaching a public interest determination.

Another party wanted "promotion of multiple-use values" changed to "continuation of multiple-use values". The language of the proposed rule has been retained, because it is the language used in section 2(a)(1) of the Federal Land Exchange Facilitation Act of 1988 in which Congress finds that land exchange is an important tool for "the promotion of multiple-use values".

One respondent felt that the regulation "guts" the entire public interest test set forth in the Federal Land Policy and Management Act of 1976, by mandating that regardless of the Secretary's determination of public interest, an exchange must not occur if the specified conditions are not met. That respondent recommended deletion of this section. The Department disagrees. Section 206(a) of the Federal Land Policy and Management Act of 1976 provides a listing of considerations to be included in any public interest determination. That listing includes "better Federal land management and the needs of state and local people." In addition to the substantive changes made in response to comments received, paragraph (b) of the final rule has been subdivided into paragraphs (b)(1)–(b)(3) for ease of use and reference.

(c) *Equal Value Exchanges.* One respondent recommended that this paragraph of the rule be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the Alaska National Interest Lands Conservation Act." This recommendation cannot be adopted. Section 206(b) of the Federal Land Policy and Management Act of 1976 requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

Finally, it was suggested that a cross reference to the provisions for approximately equal value exchanges in § 254.11 of the rule be included in this paragraph. This suggestion was adopted.

(d) *Some State exchanges.* Four respondents recommended that this paragraph of the rule be amended to allow for interstate exchanges. This suggestion cannot be adopted, because section 206(b) of the Federal Land Policy and Management Act of 1976 requires that the Federal and non-Federal lands involved in an exchange must be located in the same State.

(e) *Congressional designations.* It was suggested that in the phrase "upon acceptance of title by the United States," the words "United States" be replaced with "authorized officer." This change would not be legally correct, since title may be accepted in the name of the United States by means other than formal acceptance by an authorized officer. (See § 254.16(a) of the final rule.)

(f) *Land and resource management planning.* Several reviewers felt the proposed rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. No change in the rule is necessary to be responsive to this concern. Agency land and resource management plans can be amended to recognize new information or changes in conditions.

Another respondent felt that the regulations should not require that land use plans specifically authorize exchange of Federal land in question, stating that the land use plan could not foresee all exchange proposals. The proposed rule did not require that a land and resource management plan specifically authorize an exchange—only that an exchange proposal be consistent with the goals and objectives of the plan. This criterion is a requirement of the National Forest Management Act and agency policy, and, therefore, is retained in the final rule.

Concern was also expressed that there was nothing in the regulations on identifying non-Federal lands for exchange; this respondent called for involving the private landowner from the beginning. This suggestion was not incorporated in the final rule, because land and resource management plans identify areas or specific tracts of non-Federal lands which the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to pursue land exchanges. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

Sometimes BLM lands are identified as needed to complete a land exchange involving non-Federal lands which would be suitable for National Forest System purposes. One respondent suggested that BLM lands suitable for such exchanges be identified in the BLM planning process. No change was made in the rule to respond to this question. Land and resource management plans for National Forest System lands do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiation between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using the criteria specified in 43 CFR 2200.0–6(b).

(g) *Environmental analysis.* One respondent pointed out that this paragraph of the proposed rule suggested that the public is not invited to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations and Forest Service environmental analysis policy and procedure already address public notice and comment on environmental documents; therefore, it is not necessary to repeat these opportunities in this rule. In addition, § 254.8 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments which shall be considered in the environmental analysis of the proposed exchange.

Finally, a concern was expressed that compliance with section 106 of the National Historic Preservation Act is not mentioned. It would be impracticable to list in this paragraph all the statutory and regulatory requirements that must be considered in an environmental analysis. Cultural resources is only one of the many significant resources which must be considered. This rule does not limit or exclude any resources from consideration.

(h) *Reservations or restrictions in the public interest.* Several respondents questioned the authority and need to use reservations or restrictions in the conveyance of Federal land. Two comments regarding authority focused on perceived conflicts between the Federal Land Exchange Facilitation Act and the Federal Land Policy and Management Act of 1976. One comment suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another comment suggested conveying partial interests to third parties, in lieu of reservations or restrictions. Two respondents were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. One respondent suggested that the first sentence be deleted, since covenants create continuing administrative burdens for agencies and invite reciprocal restrictions.

Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) and other statutory authorities provide for the use of reservations or restrictions, and the Department is unaware of any conflicts between FLPMA and the Land Exchange Facilitation Act. Identification of a need for reservations or restrictions begins with an agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest, and if so, confirm whether reservations or restrictions are needed. The final rule allows alternative methods to protect resources other than reservations or restrictions, such as third party participation. Although reservations or restrictions may place burdens on both the Federal and non-Federal parties, the effects of reservations or restrictions would be considered by each party prior to a decision to proceed.

A major utility company representative expressed the thought that the United States could retain title to, or administration of, lands involved in an exchange that are subject to rights-of-way. This is correct, the authority to reserve and retain any rights and interests, including rights-of-way permits, easements, or grants, when it is in the public interest, is provided in paragraph (h) of this section of the final rule.

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

One respondent stated that the Federal Land Policy and Management Act of 1976 exempts land exchange patents from including terms, covenants, or conditions. This is not correct. Section 206 of the Federal Land Policy and Management Act of 1976 supplements other existing Forest Service land exchange authorities and specifically provides authority to exchange an interest in land of less than fee estate. The authority to convey less than fee estate confers authority to accept terms and impose covenants, conditions, and reservations as determined by the Secretary as needed to protect the public interest.

Three respondents suggested the United States retain a mineral royalty when exchanging Federal land. There is no statutory authority requiring the reservation of a royalty interest.

One comment suggested that if Federal property has public interests so critical that they should be retained then the lands should not be exchanged. That is certainly a true statement and is the basis for turning down many proposals for land exchanges. However, in some cases both parties may be willing to accept reservations or covenants to protect critical interests, in order to make tenable an exchange that would otherwise be untenable.

(i) *Hazardous substances.* One respondent suggested that the agencies require "hold harmless agreements" when conveying Federal lands affected by hazardous substances to a "potentially responsible party." While "hold harmless agreements" are desirable, it is necessary to maintain the option for providing "hold harmless agreements" in negotiating land exchanges of critical public importance, in order to avoid discouraging non-Federal parties who are unable to assume such liability.

One respondent pointed out a perceived inconsistency in the requirements for notification for private parties and the Federal government. The notice to the private party requires that "known" storage, release, or disposal of hazardous substances be addressed, whereas, the private party must notify the government of "known or suspected * * *" The respondent favored the broader application but suggested that, in any case, they should be consistent. The Department agrees. The rule has been revised to require both parties to give notice of only "known" storage, release, or disposal, in accordance with the minimum standard of the Environmental Protection Agency regulations at 40 CFR Part 373.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but would not require such on Federal lands and recommended that the provisions be made consistent. This suggestion has been adopted. Paragraph (h)(1) of the final rule also requires the authorized officer to determine whether hazardous substances are present on the Federal lands.

Several respondents proposed that the private parties only be required to provide a broad "hold harmless" indemnification if the government will reciprocate. This suggestion cannot be adopted. Under 42 U.S.C. 9620, the United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also to warrant in the conveyance document to other than a "potentially responsible party" that the United States will be responsible for any further cleanup necessary.

Another respondent stated that a "hold harmless agreement" may not protect Federal interests from cleanup liability imposed by a third party. This comment is correct. A "hold harmless agreement" would not relieve the United States of any appropriate liability; however, it would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

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

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules, Inc.* v. *U.S. EPA*, 938 F.2d 276, DC Cir. 1991) that the United States is responsible for hazardous substances on Federal land regardless of ownership at the time the substances were present, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. This suggestion was adopted and the phrase was deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of hazardous substances on the Federal lands to be conveyed. The first sentence of paragraph (i)(1) of § 254.3 was modified to include reference to this requirement.

It should be noted that the Community Environmental Response Facilitation Act (106 Stat. 2174) was signed into law on October 19, 1992, about one year after the proposed land exchange rules were published in the Federal Register. The procedural requirements of this statute, which amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)), will be followed to the extent applicable to land exchanges, and the agencies will consider whether there is a need for future rulemaking in connection with this new law.

(j) *Legal description of properties.* One respondent said that property description by legal survey is sometimes difficult and suggested that the rule be amended to provide for use of a map as an alternative. This suggestion cannot be adopted. Department of Justice standards and Public Land Survey System laws do not permit use of a map reference as a legal description of lands.

Coordination with State and local governments. It was suggested that the Forest Service add a paragraph on Coordination with State and Local Governments similar to that included in the BLM proposed rule. In response, the final rule was amended at § 254.8(a) to specifically provide for notifying State and local governments of proposed exchanges. In addition, § 254.13(a)(2) of the final rule also provides for Forest Service notice to State and local governments when a decision is made to proceed with an exchange.

Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision to require a consistency review by the State government. Paragraph (h) of this section of the rule states that the lands conveyed out of Federal ownership shall be subject to local government laws, regulations, and zoning, and § 254.8 provides for notification of State and local governments. These provisions afford State and local governments full opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on a proposed exchange. Therefore, no additional reference to local plans and ordinances was felt to be needed in this final rule.

Section 254.4—Agreement to initiate an exchange. A representative of an environmental group suggested a provision requiring full public input and, also, specifying that the National Environmental Policy Act (NEPA) process must begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of § 254.8 of the rule. Additional public input opportunities will be dependent upon the level of NEPA analysis and documentation, which, in turn, is dependent upon the complexity of each exchange proposal. Generally, the NEPA process is begun soon after an agreement to initiate is executed.

Another respondent suggested that the agreement to initiate should additionally detail who would be responsible for costs incurred to date in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with paragraph (f) of this section and § 254.14(d) of the rule, which provide that there are no obligations or reimbursement requirements in exchanges which are terminated short of a binding exchange agreement.

One respondent questioned if a non-Federal party were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of BLM, would that party be required to indicate as a part of the proposal document that the offered land is covered by a Forest Plan showing the land is essential to the programs of the National Forest Sytem? No; the non-Federal party would have no responsibility to determine whether the acquisition of the non-Federal land is consistent with the land and resource management plan. This would be a Federal responsibility.

Another respondent suggested adding language requiring the authorized officer to meet with the non-Federal party and discuss proposed exchanges to the extent necessary prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe the rule needs to be burdened with such a requirement. Such advance meetings and discussions are commonplace and necessary to reach the point of entering an agreement to initiate. However, a meeting is not always needed, especially where a proposal is clearly infeasible or without merit.

One respondent suggested language requiring the prospective parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to evaluate the feasibility of an exchange proposal. However, its use should remain discretionary, due to the added cost and to the fact that such an estimate by an appraiser is not always needed to estimate relative values of properties to be exchanged.

One comment suggested that the preliminary estimate of value should reflect the intended use of the lands, thus eliminating the potential for unwarranted, substantial ("windfall") profits by the non-Federal landowner. This suggestion was not adopted. The appraisal process cannot be used to identify windfall profits. However, in preparing any estimate of value, an appraiser must take into consideration all probable uses of the property, including the proposed or intended use. Appraisal standards require that these uses be legal, economically feasible, and physically possible and that appraisals reflect the highest and best use (i.e., the most profitable use) of the property. The intended use may not always be the highest and best use of the property, the value of which, nevertheless, must be considered in arriving at the estimated land values. To disregard an important element of information that may influence market value would be improper.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. This suggestion was not adopted. A standard form listing all the information necessary to determine the feasibility of a Federal land exchange is impracticable because the information required depends upon the particular situation.

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

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

Two respondents suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion cannot be adopted.

One industry representative had dual concerns that all known uses be identified in the "agreement to initiate" and that right-of-way grants be specifically identified as an authorized use. Paragraph (c) of § 254.4 was amended to adopt this recommendation, in order to assure that all affected parties can be considered and notified.

Another industry respondent pointed out that proposed § 254.4(c)(7) would require documentation of any agreed upon compensation of assumed costs which are normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 254.7 of the rule gives a partial listing of costs for which compensation may be made, but it would be inappropriate to assign responsibility in this rule, as responsibilities may vary between localities. The assignment of responsibility is best made by the authorized officer, in accordance with local common practices.

Another respondent suggested that the requirement of paragraph (c)(11) of this section of the proposed rule, regarding relocation of tenants on involved non-Federal lands, should apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The application of relocation benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, 4651) applies only to qualified displaced parties on acquired non-Federal lands. Under paragraph (c)(3) of this section of the rule, there is a requirement to identify any legitimate users of the involved Federal lands authorized to occupy those lands. Section 254.15(c)(2) of the rule specifies the measures required to protect such authorized users.

Two parties asked that paragraph (c)(11) also be used to establish the sequence and timelines for other required reports or clearances. The requirement that the agreement provide a timeline is already specified in paragraph (c)(5) of this section; the sequence of preparing or approving required reports is subject to negotiation and agency administrative procedures.

Another respondent recommended deleting the entire second sentence of paragraph (d) of this section of the proposed rule, which provided that, in the absence of current market information reliably supporting values, the parties may agree to use other acceptable and commonly recognized methods to estimate values. This respondent said that this provision is "inconsistent with" and would "eviscerate" § 254.9 of the rule. To the contrary, this provision is identical to the provision of § 254.9(b)(3) of the rule. This provision allows the use of other methods to determine the value of unique properties, for which there are no comparable sales.

Several respondents questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal as provided in paragraph (g) of this section of the proposed rule. One of the parties recommended deleting this paragraph. Another felt there should be no appeal if the non-Federal party withdraws. The final rule retains paragraph (g) as proposed. As provided by § 254.4(c) of the rule, an agreement to initiate an exchange is nonbinding on all parties. An administrative appeal opportunity is, therefore, illogical and meaningless. However, pursuant to § 254.13, final notices of decision of the Federal authorized officer are appealable.

Section 254.5—Assembled land exchanges. This section of the proposed rule addressed procedures to be followed when an entity has assembled non-Federal parcels from multiple ownerships and offers the assembled parcels for exchange as one transaction. Several States expressed concern that under the proposed regulations States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values, when compared with an assembled multiple ownership exchange. States or any other landowners may qualify for assembled land exchanges and the valuation procedures discussed in § 254.9(b), if they assembled the offered non-Federal parcels from multiple ownerships, in accordance with the terms of an agreement to initiate. This provision of the final rule did not change from the proposed.

Section 254.6—Segregative effect. This section of the proposed rule provided for withdrawal of Federal lands and interests in lands from entry under public land and mineral laws for up to 5 years when a proposal is made to exchange Federal lands. One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." This rule provides no additional segregation authority, but merely allows segregation by record notation in lieu of publication in the **Federal Register**. It is true that the Federal Land Exchange Facilitation Act only allows for segregation from appropriation under the mining laws. However, public land law segregation to protect the Federal and non-Federal parties from competing lands actions during consideration of an exchange is authorized by section 204(b) of the Federal Land Policy and Management Act of 1976; that authority was not rescinded by the Federal Land Exchange Facilitation Act. Segregation of lands provides stability which allows appraisal of values and processing toward conveyance without disruption from subsequent entry onto the Federal lands. Accordingly, this provision was retained in the final rule.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt that the holder of a right-of-way should have the ability to renew during the period of segregation. The rule would not prohibit such renewal. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 254.2 of the rule deal with the disposal of National Forest lands reserved from the public domain. Rights-of-way are not disposal actions and, therefore, are not affected by the segregation.

Section 254.7—Assumption of costs. This section of the proposed rule sets out those costs the authorized officer may assume without compensation and how parties may be compensated for assumption of costs normally borne by the other party. Thirty-one comments were received on this section of the proposed rule. A major concern of the respondents related to the criteria in paragraph (b) that determine if the authorized officer can compensate the other parties for assumption of costs or assume the costs without compensation from the other parties. They felt these criteria placed unwarranted limitations on the exercise of the cost compensation authority granted by the Federal Land Exchange Facilitation Act. The Act requires the Secretary to determine if it is in the public interest to make adjustments to values by compensating the non-Federal party for assuming certain costs. Therefore, it is necessary in the rule to establish when Federal compensation or assumption of costs is in the public interest. Failure to do so would provide an environment that could foster arbitrary, capricious, and inconsistent decisions. These criteria are retained without change in the final rule to ensure that compensation for costs assumed is in the public interest.

A concern was expressed that cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Cash equalization funds are appropriated and made available to the Forest Service in a general fund for use in any qualifying land exchange. Therefore, Federal cash equalization needs seldom delay case processing.

One respondent suggested that compensation be allowed whenever it is in the best interest of both parties, rather than on an "exceptional basis." Mutual interest is an essential ingredient of every land exchange; however, the government must be concerned with the aggregate effect of cost compensation. Without a limitation on Federal cost assumption compensation, the United States taxpayer could end up paying disproportionate costs in the aggregate for land exchange. Therefore, the Department believes the "exceptional circumstance" limitation is appropriate and necessary to protect the public interest and it has been retained in the final rule.

It appeared to one respondent that there was no restriction on the adjustment of relative values, other than the 25 percent cap, to adequately protect the government from bearing undue costs. In fact, however, the Federal Land Exchange Facilitation Act states that the amounts to be compensated must be reasonable and must accurately reflect the value of the cost and service. This wording is incorporated in paragraph (b)(1) of this section of the rule as one of the five criteria that must be met before compensation can be paid. Each exchange has specific circumstances, so anything other than general restrictions could impede an exchange, which would be counter to the intent of the Act. The five criteria contained in paragraph (b), along with the 25 percent limitation of § 254.12, offer the authorized officer reasonable parameters for ensuring that Federal assumption of costs or compensation for costs assumed by other parties is in the public interest.

It was suggested that the term "in the public interest" be defined. A public interest determination involves many factors, as described in § 254.3(b) of the rule. However, for purposes of assumption of non-Federal costs without compensation and for compensation of non-Federal parties who assume Federal processing costs, § 254.7(b) of the rule sets forth the circumstances under which such purposes are deemed to be in the public interest. Therefore, this suggestion was not adopted.

A suggestion was made to spell out which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 254.4(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two respondents stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. There are many requirements involved in a land exchange. Section 254.4(c)(6) of the rule requires an assignment of responsibility for performance of required functions and for costs associated with processing an exchange in the agreement to initiate. NEPA documentation is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to make sure that the costs associated with the cultural resources survey, mitigation including excavation, reports, and coordination with the State Historic Preservation Officer (SHPO), are considered. This was adequately covered in the proposed rule and is retained in the final rule at § 254.7(a)(2) which states that parties may agree to make adjustments in relative values to cover costs which include cultural resource surveys and mitigation.

One reviewer suggested clarifying paragraph (b) is as it applies to agreement to initiate provisions under paragraph (a) of this section of the rule. The criteria for compensation or assumption of costs listed in paragraph (b) should be determined by the authorized officer, documented in either the agreement to initiate or in a separate document, and made part of the case record file for that land exchange.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that paragraph (b) of this section of the proposed rule attempted to combine compensation to the non-Federal party with compensation for Federal costs and, thus, was vague. Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be unnecessary to require compensation of the non-Federal party as a standard matter of practice. In every exchange case, the authorized officer is required to establish which party has the responsibility for accomplishing and paying for each step of the exchange process. Those processes and their costs which are the responsibility of the United States will be borne by the Forest Service, unless the non-Federal party voluntarily agrees to assume them.

Section 254.8—Notice of exchange proposal. Several respondents requested that the regulation specifically state that the State government be notified at the time of the notice of exchange rather than waiting until the notice of decision. One of these also requested that the congressional delegation be included in this notice of exchange proposal. These recommendations were adopted and are included in paragraph (a) of this section of the final rule.

A right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice to all authorized users, including right-of-way holders, was specified in paragraph (a) of this section of the proposed rule and is retained in the final rule.

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

One respondent suggested that paragraph (a)(4) of proposed § 254.8 be revised to make it clear that public comments regarding the environmental impacts of the proposed exchange are being sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of the proposed rule stated that comments would be sought from the public and that timely comments would be considered in the environmental analysis of the proposal; however, the language was not as clear as it might be. Therefore, in the final rule, paragraph (a)(4) has been revised to make clear that the public is invited to submit any comments on or concerns about the exchange proposal, including advising the agency on any liens or other encumbrances or claims related to the lands. Paragraph (b) then links receipt of these comments to the environmental analysis. As previously noted, additional opportunity for public input during environmental analysis will be offered as appropriate. A primary purpose of the notices of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate such notification, the properties must be described legally. However, the authorized officer may include additional information, as appropriate, for ease of identifying the lands. Information regarding intended uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified first of a proposed exchange when the parties enter into an agreement to initiate and again when a decision is reached.

Two respondents suggested that the notice to authorized users should be by certified mail. However, this suggestion was not adopted; the authorized officer needs the freedom to choose the best and most appropriate means to notify authorized users, including certified mail.

A State government official requested that notice be given by **Federal Register** publication. Although **Federal Register** notice would reach groups on a national scale, newspaper publication is a more effective way to reach most interested and potentially affected persons and groups. This, in combination with the direct notice requirements of paragraph (a), will ensure effective notice. Additional requirements to give notice in the **Federal Register** would be administratively burdensome, costly, and redundant.

One respondent expressed confusion as to how the notice of exchange proposal relates to forest plan notices. Unless the proposed exchange requires a land and resource management plan amendment or revision, the notice of exchange proposal has no relationship to land and resource management planning.

In addition to the changes made in response to comments, paragraph (a) was revised in the final rule to explicitly require that the notice of exchange proposal include the deadline for comments to be received and the name, title, and address of the official to whom comments should be sent and from whom additional information may be obtained.

Some respondents suggested that minor modifications to the notice of exchange, for example, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values, not previously published, will require republication. This was a provision of the proposed rule and is retained in the final rule.

Section 254.9—Appraisals. A respondent expressed concern with the reference to the Uniform Appraisal Standards for Federal Land Acquisitions, since those standards are focused on acquisition under threat of condemnation; the respondent recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. This recommendation cannot be fully adopted. The Federal Land Exchange Facilitation Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Land Acquisitions" to the extent practical. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Uniform Standards of Professional Appraisal Practice regarding appraisal standards, which the Appraisal Institute has adopted, have been incorporated in § 254.9 of this rule.

Two professional appraisal organizations suggested that BLM and the Forest Service adopt the Uniform Standards of Professional Appraisal Practice to assure consistency and quality in appraisals. The Uniform Standards of Professional Appraisal Practice include standards for all categories of appraisal, including real and personal property, and are more general than the Uniform Federal Standards. The Uniform Appraisal Standards for Federal Land Acquisitions set detailed requirements for the act or process of estimating value. Since the Uniform Standards of Professional Appraisal Practice define an appraisal report differently from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in § 254.2 of the rule. The standards are consistent with the Uniform Standards of Professional Appraisal Practice and incorporate the Government-wide Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0–16–038050–2 and the Department of Transportation standards of appraisal (49 CFR part 24, subpart B).

(a) *Appraiser qualifications.* Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two believed requiring all appraisers to be State certified or licensed was impractical and possibly premature, since many States have not fully enacted their appraisal certification laws. One of the two suggested that State certification or licensing should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision.

Eighteen States currently require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for Federally regulated financial agencies to be certified or licensed. In some States, appraisers not involved in Federally related financial transactions may voluntarily become certified or licensed.

Federal real estate appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, for purposes of supporting uniform national standards for appraisers, it is important that agency appraisers be qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems resulting from uneven progress by the States in implementing certification or licensing requirements, the final rule has been revised to require qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Consequently, the agency will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted State regulatory requirements in other States as established by each agency.

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

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

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three persons suggested this was unfair and that instead, the parties should agree on selection of the appraiser. The authorized officer must approve the appraiser agreed upon and selected by the parties. As provided in § 254.4 of the proposed rule and retained in the final rule, the parties, in arranging for appraisals, must agree on the selection of a qualified appraiser.

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

(b) *Market value.* Paragraph (b) of § 254.9 of the proposed rule set out standards to guide appraisers. A respondent suggested that paragraph (b)(1)(iii) be modified to require that consideration of prices paid for similar properties be limited to properties "in the same general location as the subject property." This limitation would severely restrict an appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic, or other resource values, for which comparable property transactions may be beyond the general location of the subject property; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in paragraph (b)(1)(iii) of this section of the proposed rule be expanded to include watershed and archaeological values. This suggestion was not adopted. It is impracticable to list all resource values to be considered by the appraiser, and the list is merely suggestive, not all inclusive. The phrase "and other resource values or amenities" covers all other resources that may have value in the private competitive market, including watershed and archaeological values.

A reviewer suggested that paragraph (b)(1)(iv) of this section of the proposed rule be revised to require the appraiser to consider water rights along with timber and mineral interests. The reviewer noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." This suggestion was adopted.

Several comments were received indicating an apparent conflict between instructions in paragraphs (b)(1)(v) and those in (b)(1)(vi) of this section of the proposed rule, regarding how to appraise multiple properties in an assembled exchange. Paragraphs (b)(1)(v) and (vi) of the proposed rule were combined into paragraph (b)(1)(v) of the final rule to clarify that if stipulated in an agreement to initiate, lands assembled from multiple ownerships can be appraised separately.

Several people commented on proposed paragraph (b)(1)(vii), which would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this paragraph "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent further stated that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response, the Department believes these are valid points and has removed this provision from the final rule.

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

One respondent thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. This person suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This contingency was already provided for in proposed paragraph (b)(2) of this section, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained as paragraph (b)(3) in the final rule.

One reviewer suggested reliance on the "departure" provisions of the Uniform Standards of Professional Appraisal Practice, which would permit an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income). This suggestion was not adopted, as the principal direction for Federal appraisals comes from the Uniform Appraisal Standards for Federal Land Acquisitions, which specifies the direct comparison or market approach as the preferred approach. The Uniform Standards of Professional Appraisal Practice supplements the Federal standards.

In addition to the changes made in response to comments, paragraphs (b)(1)(vi)(A), (B) have been redesignated in the final rule as paragraphs (b)(2)(i), (ii) for clarity. Paragraph (b)(2) is thus redesignated as (b)(3) in the final rule.

(c) *Appraisal report standards.* Three respondents expressed concern that language contained in paragraph (c)(5) of this section of the proposed rule was vague and could subject appraisers to open-ended liability regarding disclosure of potentially hazardous environmental conditions. Upon review, the Department agrees with these comments. As a result, this provision has been modified to require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One person expressed concern over the lack of sufficient safeguards against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not reliable indicators that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay a land exchange. The need for two appraisals should be determined by the parties involved in an exchange and should be based on the complexity of the appraisal.

One respondent observed that parties to an exchange would be required to invest considerable time and expense in conducting studies, appraisals, and title clearance before an informed decision could be made whether to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. This suggestion was not adopted. The parties must agree to pursue an exchange early in the process, in an agreement to initiate, before incurring any significant investment of time and expense. However, until a binding exchange agreement is entered, all parties are subject to loss of their investments if any party decides that the proposed exchange is no longer feasible. The signing of a binding exchange agreement pursuant to § 254.14 fixes the agreed upon values and commits the parties to continue until the transaction is completed. This avoids last-minute changes in values and other elements of the exchange which could jeopardize the stability that is necessary for closing any real estate transaction.

Another person suggested that paragraph (c)(10)(ii) of this section of the proposed rule, requiring all appraisers to certify that they personally examined all comparable sales, could be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. This suggestion was not adopted. It is a long-standing requirement of Federal appraisal standards and a requirement of the Uniform Standards of Professional Appraisal Practice that an appraiser must make a personal on-site examination of the comparable sales to perform an accurate comparative analysis.

(d) *Appraisal review.* There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although additional education and experience are always desirable, the standards set forth in paragraph (a) of this section of the rule are adequate in that they require the appraiser to possess the minimum qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Other comments suggested that the review appraiser should be an agency employee and that the reviewer should be appointed by the authorized officer. These suggestions were not adopted. Paragraph (a) of this section of the final rule would allow reviewers to be employees or contractors of the Federal or non-Federal exchange parties, to provide for those situations when it is in the public interest to use a qualified non-Federal review appraiser. Additionally, it should be noted that the authority to review appraisals is delegated by the Secretary to the Chief Appraiser, instead of to the authorized officer, to maintain the independence of the valuation process from the exchange negotiation process.

Section 254.10—Bargaining; arbitration. Sixteen comments were received on this section of the proposed rule objecting to: (1) Appointment of an arbitrator by the Secretary; (2) allowing an arbitration decision to be binding for a period not to exceed 2 years; (3) allowing the agency 180 days for review of the appraisal; and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments, as these provisions are specific requirements of section 3 of the Federal Land Exchange Facilitation Act.

One person felt this section should clarify who would pay the costs of arbitration. This suggestion was not adopted. First, the costs of arbitration may be addressed in an agreement to initiate. Second, if the parties have not reached prior agreement on paying arbitration costs, the rules of the American Arbitration Association, which the Exchange Facilitation Act specifies must be used, provide for the assignment of costs.

Section 254.11—Exchanges at approximately equal value. One respondent felt the $150,000 limit was too high and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act of 1988.

Section 254.12—Value equalization; cash equalization waiver. One respondent stated that the rule should provide safeguards against windfalls, asserting that non-Federal parties acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. This suggestion was not adopted, as section 206(b) of the Federal Land Policy and Management Act of 1976 established sufficient restrictions to limit the use of cash equalization payments in land exchanges to the minimum necessary.

One respondent stated that BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with BLM. This recommendation cannot be adopted. The Exchange Facilitation Act's prohibition on waiver of payment of cash equalization applies only to the Secretary of Agriculture.

It was suggested that the 25 percent limitation not be applied in Alaska and that the guidance of the Alaska National Interest Lands Conservation Act should be used instead. This is already accommodated in § 254.1(c) of the rule, which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act, except to the extent to which the rules conflict with provisions of those Acts.

Two respondents were concerned about the 25 percent limitation imposed by the regulations. One felt this limitation is not in compliance with the Federal Land Policy and Management Act of 1976 and the Federal Land Exchange Facilitation Act, and that while section 206(b) of the Federal Land Policy and Management Act of 1976 limits equalization to 25 percent of the value of the Federal lands, the Exchange Facilitation Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting the ability to complete exchanges with this provision. The Exchange Facilitation Act provides discretionary authority to the Secretary to adjust relative values to compensate for costs assumed in accordance with terms of the Agreement to Initiate. In accordance with § 254.7 of the rule, such compensation will be made by cash equalization payment under authority of section 206(b) of the Federal Land Policy and Management Act of 1976, and therefore, will be subject to the 25 percent limitation of that authority.

Section 254.13—Approval of exchange; notice of decision. A State agency felt that notification to States will occur too late as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposal sent to State and local governments, and others, under § 254.8 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before the appraisal(s) and environmental analysis.

One respondent recommended that the Forest Service appeal regulations be amended to incorporate land exchange decisions as appealable actions. This recommendation was not adopted. Land exchange decisions are subject to Forest Service appeal regulations at 36 CFR part 217 and part 251, subpart C. This section of the land exchange rules merely informs readers of the applicability of the appeal regulations.

In response to a reviewer who asked when the appeal period would begin, paragraph (b) of this section of the rule was revised to be consistent with the administrative appeal regulations which specify that the appeal period begins after publication of a notice of the decision.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the associated increased workload. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. The second notice is equally important; it provides notice of the final decision on the proposal and affords the opportunity for appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before completion of an exchange. Paragraph (a) of § 254.14 of the rule addresses that contingency. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which serves to lock in the appraised values.

Section 254.14—Exchange agreement. One respondent suggested that an appraisal could be reviewed and approved in advance of an exchange agreement. No change in the rule is needed. The appraisal is always reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 254.15—Title standards. One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degree of warranty. Since this rule does not change established methods of conveyance, this suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as Department of Justice title standards.

One respondent suggested that this section be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. This suggestion was not adopted. While the parties to an exchange may include general terms concerning case closing matters in an agreement to initiate, title acceptance is dependent upon instructions, requirements, and conditions which can be set forth only at the end of the exchange process, rather than at the beginning. The requirements for title acceptance are presented in § 254.16 of the rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion could not be adopted. Agency policy (Forest Service Manual 5430.3) requires that property acquired by the United States cannot contain reservations or outstanding rights that are inconsistent with the purpose for which the lands are being acquired.

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

Several respondents felt the proposed rule did not provide sufficient protection for existing third party special uses of Federal land following an exchange of title. As previously noted, § 254.4 of the rule was revised to address authorized uses in the agreement to initiate. Further, agency policy (Forest Service Manual 5403.1 and 5430.3) requires recognition and protection of authorized third party uses to the extent appropriate, although, if in the public interest, the regulations at 36 CFR 251.60(b) provide for termination or revocation of special-use authorizations if the involved lands are transferred out of Federal ownership.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace the Federal authorization. This suggestion was not adopted. The United States has no general authority to require a non-Federal exchange party to offer any alternative use arrangement to the holder of a Federal special-use authorization. However, if the exchange party offers to continue the terms of an existing permit, then the termination or revocation of the Federal permit to facilitate an exchange is more justifiable. Although a land exchange party and an authorized user may agree to a permanent right of use, the users are generally granted authorizations with terms similar to the Federal authorizations by the non-Federal exchange party.

Three comments offered by the ski industry stated that lands occupied by a ski area should not be exchanged without the specific consent of the permittee. This suggestion was not adopted, as holders of ski area permits are afforded the same consideration as is afforded other types of special-use holders. Federal special-use authorizations of all types are revoked or terminated to facilitate a land exchange of the involved Federal lands only when it is found to be in the public interest. In such case, the agency will encourage the non-Federal exchange party to reach agreement with the holder of a Federal special-use authorization to furnish privileges equal to those enjoyed by the user under the Federal permit.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. To adopt this suggestion would require amendment of the agency's appeal rule. Moreover, it is unlikely to be in the best interest of a third party user to appeal if the same use and substantially same conditions have been offered. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected generally, would not jeopardize the consummation of an exchange. However, the agency believes that the third party user should retain the right to an administrative appeal to protect the third party's interests.

An industry respondent requested that the regulation clarify that (1) a mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. In recognition of the unique rights of holders of Federal mineral leases, paragraph (a)(2) of § 254.15 of the rule has been revised to apply only to non-mineral leases.

Another comment from the business sector was that the regulation should permit only those reservations to be placed on the Federal land that were first specified in the agreement to initiate. However, after an agreement to initiate is entered, additional rights and reservations may be identified that must be recognized. Therefore, the rule does not adopt this comment.

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

Section 254.16—Case closing. It was suggested that paragraph (a) of this section of the rule refer to patents or "other documents of conveyance." However, patents and deeds are the only forms of conveyance by the Federal government.

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. The Department agrees. This section has been revised to clarify that acceptance of title occurs upon recordation and that the segregation period for the acquired non-Federal lands terminates midnight of the 90th day after recordation.

A reviewer suggested specifying that the authorized officer accept title and that the date of acceptance be noted on the land records. This suggestion has been partially adopted. Paragraph (b) of § 254.16 of the final rule has been rewritten to state that title acceptance occurs upon recordation, rather than by action of the authorized officer, and provides for notation of the date of acceptance.

One respondent felt that "Case Closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation in addition to title acceptance. Therefore, the more general title of "Case Closing" was retained.

It was suggested that paragraph (b) of this section of the rule add the regulatory citation for withdrawal. A citation to 43 CFR part 2300 has been added.

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

An environmental group pointed out that exchanges are final only after the administrative appeal process had been completed. This is correct but no change was needed in the rule. Title does not transfer until any administrative appeal has been resolved, and the deed has been recorded.

A State government respondent suggested that a time constraint be placed on the Office of the General Counsel review. This is undesirable and impracticable. Legal review of complicated title issues can be time consuming, but it is a critical step in any land exchange.

Concern was expressed that in paragraph (a) of this section of the rule the word "only" reverses the meaning and intent of Section 3(a) of the Act and should be deleted. As previously noted, this paragraph has been revised in the final rule and this problem has been eliminated through the rewording.

Section 254.17—Information requirements. The agreement to initiate an exchange and the exchange agreement required by §§ 254.4 and 254.14 of the 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. On May 1, 1992, the Forest Service requested approval of an extension of the information collection. That approval was granted by OMB on June 11, 1992. The information collection has now been approved for use through June 30, 1995.

Regulatory Impact

The rule has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant rule. The rule contains minimum procedures necessary to implement the Exchange Facilitation Act. The rule will not have an effect of $100 million or more on the economy; will not substantially increase prices or costs for consumers, industry, or State or local governments; nor will it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The rule has been considered in light of Executive Order 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessment 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 were deemed necessary in this rule.

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

Section 31b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 254

Land Exchanges, National forests

Therefore, for the reasons set forth in the preamble, part 254 of Title 36 of the Code of Federal Regulations is hereby amended by revising subpart A to read 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 1740; 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 may be supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

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

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

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

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

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

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

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

§ 254.2 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Lands means any land and/or interests in land.

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

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

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

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

Person means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated. No Member of Congress may participate in a land exchange with an agency of the United States, as set forth in 18 U.S.C. 431–433.

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

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

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

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

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

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

§ 254.3 Requirements.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.

(1) *Factors to consider.* When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of existing or planned land use authorizations (§ 254.4(c)(4); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

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

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

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

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

(c) *Equal value exchanges.* Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

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

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

(f) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part 219). Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

(g) *Environmental analysis.* After an agreement to initiate an exchange is signed, the authorized officer shall undertake an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Forest Service environmental policies and procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the authorized officer shall consider timely written comments received in response to the exchange notice published pursuant to § 254.8 of this subpart.

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

(i) *Hazardous substances.*

(1) *Federal lands.* The authorized officer shall determine whether hazardous substances are known to be present on the Federal lands involved in the exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands in the contract agreement and in the conveyance document, pursuant to 40 CFR part 373 and 42 U.S.C. 9620. For purposes of this section, the notice of hazardous substances on involved Federal lands in an agreement to initiate an exchange or an exchange agreement meets the requirements for notices established in 40 CFR part 373. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a) and participated as an owner, or in the operation, arrangement, generation, or transportation of the hazardous substances found on the Federal land, the conveyance document from the United States must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substances remaining on the property has been taken before the date of transfer and that any additional remedial action found necessary after the transfer shall be conducted by the United States, pursuant to 42 U.S.C. 9620(h)(3). The conveyance document must also reserve to the United States the right of access to the conveyed property if remedial or corrective action is required after the date of transfer. Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement as referenced in 42 U.S.C. 9607(e) whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any hazardous substances known to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless agreement" shall be included in an exchange agreement, pursuant to § 254.14 of this subpart.

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

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

§ 254.4 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Forest Service or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands proposed for exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. A qualified appraiser must prepare the preliminary estimate.

(c) If the authorized officer agrees to proceed with an exchange proposal, all prospective parties shall execute a nonbinding agreement to initiate an exchange. At a minimum, the agreement must include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by a party, other than the United States and State and local governments, that such party is a citizen

of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 254.7 of this subpart;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands (§ 254.3(i) and § 254.14);

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

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

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

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 217 or 36 CFR part 251, subpart C.

§ 254.5 Assembled land exchanges.

(a) Whenever the authorized officer determines it is to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

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

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

§ 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management (BLM) to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

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

(c) The segregative effect terminates as follows:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published in the **Federal Register** by the appropriate BLM State Office, if a decision is made not to proceed with the exchange or upon removal of any lands from the exchange proposal; or

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

§ 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest as specified in paragraph (b) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) Subject to the limitation in paragraph (c) of this section, the parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: land surveys; appraisals; mineral examinations; timber cruises; title searches; title curative actions; cultural resource surveys and mitigation; hazardous substance surveys and controls; removal of encumbrances; arbitration, including all fees; bargaining; cure of deficiencies preventing highest and best use of the land; conduct of public hearings; assemblage of non-Federal parties from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) As a condition of an agreement to initiate, the authorized officer may agree to assume without compensation costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

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

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

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

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

§ 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, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish legal descriptions of any lands that may be excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 254.9 Appraisals.

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

(a) *Appraiser qualifications.*

(1) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual agreeable to all parties and approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

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

(b) *Market value.*

(1) In estimating market value, the appraiser shall:

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

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

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

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

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

(2) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

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

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

(3) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

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

(1) A summary of facts and conclusions;

(2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

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

(4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

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

(6) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

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

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

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

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

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

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

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.*

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

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

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

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

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

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

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

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

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

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

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

§ 254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following:

(1)(i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

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

(B) Request for additional appraisals;

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

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

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s), at the initiative of either party, must be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it must be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange must determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision is limited to the value estimate(s) of the contested appraisal(s). An arbitrator may not include in an award decision recommendations regarding the terms of a proposed exchange, nor may an arbitrator's award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 254.11 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value upon a determination that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and accepted by an authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer, not the non-Federal party, determines whether the Federal and non-Federal lands are approximately equal in value and must document how the determination was made.

§ 254.12 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

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

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

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

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

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

§ 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice must include:

(i) The date of decision,

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

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

(v) The date of the beginning of the appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, and individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision shall be subject to appeal as provided under 36 CFR part 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 an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement must contain the following:

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

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

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

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided.

(1) Acceptable title can be conveyed:

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) The exchange proposal receives any required Secretarial approval;

(5) No objections are raised during any required congressional oversight;

(6) In the event of an appeal under 36 CFR part 217 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

(7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to, land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

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

§ 254.15 Title standards.

(a) *Title evidence.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) *Title encumbrances.*

(1) *Non-Federal lands.*

(i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz,* 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands pass simultaneously and are deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner must be met. The minimum requirements and conditions necessary for recordation include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands;

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

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

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

§ 254.17 Information requirements.

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

Dated: February 18, 1994.

Adela Backiel,

Deputy Assistant Secretary, Natural Resources and Environment.

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