

#### § 254.4

#### 36 CFR Ch. II (7–1–07 Edition)

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 non-binding agreement to initiate an exchange. At a minimum, the agreement must include:

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

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

(3) A statement by a party, other than the United States and State and local governments, that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

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

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

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

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

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

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

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

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

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

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

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which

are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

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

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

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

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

#### § 254.5 Assembled land exchanges.

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

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

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

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

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

#### § 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management

(BLM) to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

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

(c) The segregative effect terminates as follows:

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

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

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

#### § 254.7 Assumption of costs.

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

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

(2) Subject to the limitation in paragraph (c) of this section, the parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: land surveys; appraisals; mineral examinations; timber