§ 254.9

local governments, and the congres-
sional delegation and shall make other
distribution of the notice as appro-
appropriate. At a minimum, the notice shall
include:
(1) The identity of the parties in-
volved 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 sub-
mit 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 pro-
posed exchange, all comments must be
made in writing to the authorized offi-
cer and postmarked or delivered within
45 days after the initial date of publica-
tion.

(c) The authorized officer is not re-
quired to republish legal descriptions
of any lands that may be excluded from
the final exchange transaction, pro-
vided such lands were identified in the
notice of exchange proposal. In addi-
tion, minor corrections of land descrip-
tions 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 sec-
tion, and, to the extent appropriate,
with the Uniform Appraisal Standards
for Federal Land Acquisitions: Inter-
agency Land Acquisition Conference
1992 (Washington, DC, 1992), ISBN 0-16-
038050-2 when appraising the values
of the Federal and non-Federal lands in-
volved in an exchange.

(a) Appraiser qualifications. (1) A
qualified appraiser(s) shall provide to
the authorized officer appraisals esti-
mating 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 par-
ties. At a minimum, a qualified ap-
praiser shall be an individual agreeable
to all parties and approved by the au-
thorized officer, who is competent, rep-
utable, impartial, and has training and
experience in appraising property simi-
ar to the property involved in the ap-
praisal assignment.

(2) Qualified appraisers shall possess
qualifications consistent with State
regulatory requirements that meet the
intent of Title XI, Financial Institu-
tions Reform, Recovery, and Enforce-
3331). In the event a State or Territory
does not have approved policies, prac-
tices, and procedures regulating the ac-
tivities of appraisers, the Forest Serv-
vice may establish appraiser qualifica-
tion standards commensurate with
those generally adopted by other
States or Territories meeting the re-
quirements 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 mar-
et;
(iii) Include historic, wildlife, recrea-
tion, 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 ex-
tent they are consistent with the high-
est 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 ac-
quired from multiple ownerships by the
non-Federal party for purposes of ex-
change, pursuant to § 254.5 of this sub-
part. 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:
(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.
(iii) 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.

(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:
(i) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;
(ii) The value of the lands to be conveyed out of Federal ownership is not...