Forest Service, USDA

§ 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 involved non-Federal lands; and

(b) 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) The decision to approve or disapprove an exchange proposal shall be subject to appeal as provided under 36 CFR part 214 or 215 for 45 days after the date of publication of a notice of availability of the decision.

[59 FR 10867, Mar. 8, 1994, as amended at 64 FR 25822, May 13, 1999; 78 FR 33725, June 5, 2013]

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(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 214 or 215, 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