

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

Act of June 9, 1916, referred to in subsec. (e), is not classified to the Code.

Act of February 26, 1919, referred to in subsec. (e), is act Feb. 26, 1919, ch. 47, 40 Stat. 1179, which is not classified to the Code.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-632, §5(1), inserted exception relating to subsec. (e).

Subsec. (e). Pub. L. 99-632, §5(2), added subsec. (e).

§ 1716. Exchanges of public lands or interests therein within the National Forest System**(a) Authorization and limitations on authority of Secretary of the Interior and Secretary of Agriculture**

A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) Implementation requirements; cash equalization waiver

In exercising the exchange authority granted by subsection (a) or by section 1715(a) of this title, the Secretary concerned may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned and the other party or parties involved in the exchange may mutually agree to waive the requirement

for the payment of money to equalize values where the Secretary concerned determines that the exchange will be expedited thereby and that the public interest will be better served by such a waiver of cash equalization payments and where the amount to be waived is no more than 3 per centum of the value of the lands being transferred out of Federal ownership or \$15,000, whichever is less, except that the Secretary of Agriculture shall not agree to waive any such requirement for payment of money to the United States. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Status of lands acquired upon exchange by Secretary of the Interior

Lands acquired by the Secretary by exchange under this section which are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, or the boundaries of the California Desert Conservation Area, or the boundaries of any national conservation area or national recreation area established by Act of Congress, upon acceptance of title by the United States shall immediately be reserved for and become a part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, and regulations applicable to such unit or area.

(d) Appraisal of land; submission to arbitrator; determination to proceed or withdraw from exchange; use of other valuation process; suspension of deadlines

(1) No later than ninety days after entering into an agreement to initiate an exchange of land or interests therein pursuant to this Act or other applicable law, the Secretary concerned and other party or parties involved in the exchange shall arrange for appraisal (to be completed within a time frame and under such terms as are negotiated by the parties) of the lands or interests therein involved in the exchange in accordance with subsection (f) of this section.

(2) If within one hundred and eighty days after the submission of an appraisal or appraisals for review and approval by the Secretary concerned, the Secretary concerned and the other party or parties involved cannot agree to accept the findings of an appraisal or appraisals, the appraisal or appraisals shall be submitted to an arbitrator appointed by the Secretary from a list of arbitrators submitted to him by the American Arbitration Association for arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding for a period of not to exceed two years on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal or appraisals.

(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the

other party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to withdraw from the exchange. A decision to withdraw from the exchange may be made by either the Secretary concerned or the other party or parties involved.

(4) Instead of submitting the appraisal to an arbitrator, as provided in paragraph (2) of this section,¹ the Secretary concerned and the other party or parties involved in an exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

(5) The Secretary concerned and the other party or parties involved in an exchange may mutually agree to suspend or modify any of the deadlines contained in this subsection.

(e) Simultaneous issue of patents or titles

Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interest therein to be transferred out of Federal ownership shall be issued simultaneously after the Secretary concerned has taken any necessary steps to assure that the United States will receive acceptable title.

(f) New rules and regulations; appraisal rules and regulations; "costs and other responsibilities or requirements" defined

(1) Within one year after August 20, 1988, the Secretaries of the Interior and Agriculture shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interests therein involved in such exchanges.

(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions: *Provided, however, That* the provisions of such rules and regulations shall—

(A) ensure that the same nationally approved appraisal standards are used in appraising lands or interest therein being acquired by the Federal Government and appraising lands or interests therein being transferred out of Federal ownership; and

(B) with respect to costs or other responsibilities or requirements associated with land exchanges—

(i) recognize that the parties involved in an exchange may mutually agree that one party (or parties) will assume, without compensation, all or part of certain costs or other responsibilities or requirements ordi-

narily borne by the other party or parties; and

(ii) also permit the Secretary concerned, where such Secretary determines it is in the public interest and it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, and upon mutual agreement of the parties, to make adjustments to the relative values involved in an exchange transaction in order to compensate a party or parties to the exchange for assuming costs or other responsibilities or requirements which would ordinarily be borne by the other party or parties.

As used in this subparagraph, the term "costs or other responsibilities or requirements" shall include, but not be limited to, costs or other requirements associated with land surveys and appraisals, mineral examinations, title searches, archeological surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions, or which are necessary to bring the Federal or non-Federal lands or interests involved in the exchange to their highest and best use for the appraisal and exchange purposes. Prior to making any adjustments pursuant to this subparagraph, the Secretary concerned shall be satisfied that the amount of such adjustment is reasonable and accurately reflects the approximate value of any costs or services provided or any responsibilities or requirements assumed.

(g) Exchanges to proceed under existing laws and regulations pending new rules and regulations

Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (f) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in the Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange have agreed to initiate an exchange of land or interests therein prior to the day of enactment of such subsections, subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

(h) Exchange of lands or interests of approximately equal value; conditions; "approximately equal value" defined

(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of land or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interests therein which are of approximately equal value in cases where—

¹ So in original. Probably should be "subsection."

(A) the combined value of the lands or interests therein to be transferred from Federal ownership by the Secretary concerned in such exchange is not more than \$150,000; and

(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (f) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a statement of value made by a qualified appraiser and approved by an authorized officer; and

(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning with respect to lands managed by the Secretary of Agriculture as it does in the Act of January 22, 1983 (commonly known as the "Small Tracts Act").

(i) Segregation from appropriation under mining and public land laws

(1) Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. Upon a decision not to proceed with the exchange or upon deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted shall be promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

(2) All non-Federal lands which are acquired by the United States through exchange pursuant to this Act or pursuant to other law applicable to lands managed by the Secretary of Agriculture shall be automatically segregated from appropriation under the public land law, including the mining laws, for ninety days after acceptance of title by the United States. Such segregation shall be subject to valid existing rights as of the date of such acceptance of title. At the end of such ninety day period, such segregation shall end and such lands shall be open to operation of the public land laws and to entry, location, and patent under the mining laws except to the extent otherwise provided by this Act or other applicable law, or appropriate actions pursuant thereto.

(Pub. L. 94-579, title II, §206, Oct. 21, 1976, 90 Stat. 2756; Pub. L. 100-409, §§3, 9, Aug. 20, 1988, 102 Stat. 1087, 1092.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), (d)(1), (e), (f)(1), (2)(B)(ii), (g), (h)(1), and (i), is Pub. L. 94-579, Oct.

21, 1976, 90 Stat. 2743, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

Act of January 22, 1983 (commonly known as the "Small Tracts Act"), referred to in subsec. (h)(2), is Pub. L. 97-465, Jan. 12, 1983, 96 Stat. 2535, which enacted sections 521c to 521i of Title 16, Conservation, and amended section 484a of Title 16. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-409, §3(b), inserted "concerned" after "Secretary" in first sentence.

Pub. L. 100-409, §9, inserted provision relating to waiver of cash equalization payments.

Subsec. (c). Pub. L. 100-409, §3(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System."

Subsecs. (d) to (i). Pub. L. 100-409, §3(a), added subsecs. (d) to (i).

Statutory Notes and Related Subsidiaries

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Pub. L. 100-409, §2, Aug. 20, 1988, 102 Stat. 1086, provided that:

"(a) FINDINGS.—The Congress finds and declares that—

"(1) land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State, and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs;

"(2) needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners;

"(3) the Federal Land Policy and Management Act of 1976 [Pub. L. 94-579, see Short Title note set out under section 1701 of this title] and other laws provide a basic framework and authority for land exchanges involving lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture; and

"(4) such existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchanges.

"(b) PURPOSES.—The purposes of this Act [see Short Title of 1988 Amendment note set out under section 1701 of this title] are:

"(1) to facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the Departments of the Interior and Agriculture by—

“(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards; and

“(B) establishing procedures and guidelines for the resolution of appraisal disputes.[:]

“(2) to provide sufficient resources to the Secretaries of the Interior and Agriculture to ensure that land exchange activities can proceed consistent with the public interest; and

“(3) to require a study and report concerning improvements in the handling of certain information related to Federal and other lands.”

LAND EXCHANGE FUNDING AUTHORIZATION

Pub. L. 100-409, §4, Aug. 20, 1988, 102 Stat. 1090, provided that: “In order to ensure that there are increased funds and personnel available to the Secretaries of the Interior and Agriculture to consider, process, and consummate land exchanges pursuant to the Federal Land Policy and Management Act of 1976 [Pub. L. 94-579, see Short Title note set out under section 1701 of this title] and other applicable law, there are hereby authorized to be appropriated for fiscal years 1989 through 1998 an annual amount not to exceed \$4,000,000 which shall be used jointly or divided among the Secretaries as they determine appropriate for the consideration, processing, and consummation of land exchanges pursuant to the Federal Land Policy and Management Act of 1976, as amended, and other applicable law. Such moneys are expressly intended by Congress to be in addition to, and not offset against, moneys otherwise annually requested by the Secretaries, and appropriated by Congress for land exchange purposes.”

SAVINGS PROVISION

Pub. L. 100-409, §5, Aug. 20, 1988, 102 Stat. 1090, provided that: “Nothing in this Act [see Short Title of 1988 Amendment note set out under section 1701 of this title] shall be construed as amending the Alaska Native Claims Settlement Act (Public Law 92-203, as amended) [43 U.S.C. 1601 et seq.] or the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) [see Tables for classification] or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of Agriculture by either such Acts. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby. Nothing in this Act shall be construed to change the discretionary nature of land exchanges or to prohibit the Secretary concerned or any other party or parties involved in a land exchange from withdrawing from the exchange at any time, unless the Secretary concerned and the other party or parties specifically commit otherwise by written agreement.”

§ 1717. Qualifications of conveyees

No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

(Pub. L. 94-579, title II, §207, Oct. 21, 1976, 90 Stat. 2757.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1718. Documents of conveyance; terms, covenants, etc.

The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 1716(b) of this title shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided*, That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further*, That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs.

(Pub. L. 94-579, title II, §208, Oct. 21, 1976, 90 Stat. 2757.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1719. Mineral interests; reservation and conveyance requirements and procedures

(a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 1716 of this title, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b).

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he