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Forest Service Manual 5400 – Landownership
Chapter 5430 – Exchanges

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Approved by: Gloria Manning, Associate Deputy Chief for National Forest System

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Responsible Staff:

Posting Instructions: Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 5400-2003-1 to FSM 5400 Zero Code.

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Digest:

This amendment makes revisions throughout the chapter to clarify and recode direction; revise cross-references; and makes other editorial and formatting changes.

5430.1: In the Authority section, changes the cross-reference to FSM 1010, Laws, Regulations, and Orders (formerly FSM 1021, Guiding Principles). Adds a reference to the land exchange regulations at Title 36, Code of Federal Regulations, part 254, subpart A (36 CFR part 254, subpart A).

5430.11: In the Basic Exchange Authority section, adds cross-references to FSM 5403.1 and FSM 5430.3. Provides that, when delegated the authority, the Director of Lands may approve Weeks Act land exchanges up to certain limits (para. 2e and 2f).

5430.12: In this section for Laws Supplementing Basic Land Exchange Authorities, makes the following changes: Revises the enumeration of paragraphs; moves to paragraph 1b the direction previously contained in paragraph 1c requiring the Secretary of Agriculture to give full consideration to State and local needs when proceeding with an exchange; moves to paragraph 1c the direction previously contained in paragraph 1e providing that lands and interests in lands must be in the same State for exchanges; adds new direction in paragraph 1d, providing that

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lands acquired by exchange by the Secretary of Interior that are within a National Forest System boundary become part of that unit; adds new direction in paragraph 1e directing mandatory use of the Agreement To Initiate document and providing for timely appraisals and for arbitration of valuation disputes, or for bargaining to determine values in lieu of arbitration; adds new direction in paragraph 1f providing that titles be issued simultaneously; adds a new paragraph 1g providing for adjustment of values and compensation; adds a new paragraph 1h providing for approximately equal value exchanges valued at less than \$150,000; adds a new paragraph 1i providing for segregation of Federal lands being considered for exchange from appropriation under the public land laws; adds a new paragraph 1j setting out the requirement formerly in paragraph 1f that the non-Federal party in an exchange must have U.S. citizenship; and adds a new paragraph 3d providing that Federal lands within a designated wilderness may be exchanged for non-Federal lands within that designated wilderness when certain conditions are met.

5430.13: Removes the listing of specific laws that do not have Service-wide application formerly set out in this section and adds direction requiring Regional Foresters to publish Regional supplements within the Directive System providing direction for implementing laws that authorize or direct land exchanges applicable to their Regions.

5430.14: Removes the former exhibit 1, which listed laws extending basic land exchange authorities beyond National Forest boundaries; these extensive provisions are now set out in the Forest Service publication, “Establishment of Modifications of National Forest Boundaries” (FS-612).

5430.2: Clarifies and updates the objective of the land exchange program.

5430.3: Detailed policy direction formerly in this section has been revised and set out at FSM 5403. Adds a cross-reference to FSM 5403 and FSH 5409.13, and retains only the broad policy in this section to consider only those land exchange proposals that are consistent with Forest land and resource management plans.

5430.41: Changes the caption to Washington Office (formerly the responsibilities of the Associate Deputy Chief, National Forest System, were set out at this code).

5430.41a: Establishes a code for the Deputy Chief, National Forest System, and adds a cross-reference to FSM 5404.12 for the responsibilities of this position.

5430.41b: Establishes code for the Associate Deputy Chief, National Forest System, and adds a cross-reference to FSM 5404.13 for the responsibilities of this position (formerly set out at FSM 5430.41).

5430.41c: Recodes to this section the responsibilities of the Director of Lands, Washington Office formerly at FSM 5430.42; adds additional responsibilities for the exchange program involving the National Landownership Adjustment Team, bargaining and arbitration,

assumption of costs, review of cases, and administrative sites; and adds a cross-reference to FSM 5404.14 for the additional responsibilities of this position.

5430.41d: Adds a caption for the National Landownership Adjustment Team and provides a cross-reference to FSM 5404.16 for related responsibilities of this team.

5430.42: Changes the caption to Field Units (formerly, Director, Lands Staff) and moves to FSM 5404.14 and 5430.41c the responsibilities of the Washington Office, Director of Lands, previously set out at this section.

5430.42a: Establishes a new code for Regional Forester and adds a cross-reference to FSM 5404.21 for the responsibilities of this position (formerly set out at FSM 5430.43).

5430.42b: Establishes a new code for the Director of Lands, Regional Office; sets out the responsibilities of this position for land exchange; and includes a cross-reference to FSM 5404.22 for additional responsibilities of this position.

5430.42c: Recodes to FSM 5430.42c some of the responsibilities of the Forest Supervisor formerly at FSM 5430.44 and adds a cross-reference to FSM 5404.23 for additional responsibilities of this position. Adds responsibilities concerning development of exchange proposals (para. 2); the pursuit of land for timber exchanges wherein the county has not made any formal objections (para. 3); and the avoidance of General Exchange Act cases involving non-Federal lands with obvious mineral potential (para. 4).

5430.42d: Recodes to FSM 5430.42d the responsibilities of the District Ranger formerly at FSM 5430.45 and adds a cross-reference to FSM 5404.24 for additional responsibilities of this position. Adds additional responsibilities for the development of exchange proposals (para. 1) and for the rejection of land exchange offers that involve the construction of improvements on National Forest System lands in exchange for land and interests unless specific legislation authorizes the exchange (para. 2).

5430.43: Removes this code and moves to FSM 5404.21 the responsibilities of the Regional Forester formerly at FSM 5430.43.

5430.44: Removes this code and moves to FSM 5404.23 and FSM 5430.42c the responsibilities of the Forest Supervisor formerly at FSM 5430.44.

5430.45: Removes this code and moves to FSM 5404.24 and FSM 5430.42d the responsibilities of the District Ranger formerly at FSM 5430.45.

5430.5: Adds definitions for arbitration, bargaining, Bankhead-Jones lands, enabling legislation, and public interest, and moves to FSH 5409.13, chapter 30, the definitions previously set out in this section for acquired land, interest, lands, land-for-land, land-for-timber, bipartite, under sale contract, direct cutting rights, tripartite, outstanding rights, reservation, reserved public domain, status, and timber-for-timber or timber-for-land exchanges.

Table of Contents

5430.1 - Authority.....	5
5430.11 - Basic Exchange Authorities.....	5
5430.12 - Laws Supplementing Basic Land Exchange Authorities.....	7
5430.13 - Land Exchange Laws that Apply to Specific Areas.....	10
5430.14 - Extensions of Basic Land Exchange Laws.....	10
5430.15 - Forest Service Land Exchange Regulations	10
5430.2 - Objective.....	10
5430.3 - Policy	10
5430.4 - Responsibility	10
5430.41 - Washington Office	10
5430.41a - Deputy Chief, National Forest System	10
5430.41b - Associate Deputy Chief, National Forest System	10
5430.41c - Director of Lands, Washington Office	11
5430.41d - National Landownership Adjustment Team	11
5430.42 - Field Units.....	11
5430.42a - Regional Forester	11
5430.42b - Director of Lands, Regional Office.....	11
5430.42c - Forest Supervisor.....	12
5430.42d - District Ranger	13
5430.5 - Definitions.....	13

5430.1 - Authority

Basic authorities for the exchange of National Forest System land and interests therein are in Title 7, Code of Federal Regulations, section 2.60 (7 CFR 2.60) and FSM 1010. Land exchange regulations are set out at 36 CFR, part 254, subpart A. Many laws that pertain to specific exchange authorities in localized areas are identified in Regional supplements (FSM 5430.13).

5430.11 - Basic Exchange Authorities

1. General Exchange Act of March 20, 1922 (42 Stat. 465, as amended; 16 U.S.C. 485, 486). This act authorizes the exchange of land or timber that was reserved from the public domain for National Forest System purposes.

- a. The non-Federal land or timber must be within the same State and within the exterior boundary of a National Forest or within an area covered by the provisions of the act.
- b. The non-Federal land must be valuable chiefly for National Forest purposes.
- c. The National Forest land must be non-mineral in character or, if the land is valuable or potentially valuable for minerals, the United States must reserve such minerals or consider their value in the exchange. The Bureau of Land Management (BLM) must concur in the valuation and conveyance of minerals.
- d. Either party may make reservations when in the public interest as provided in Title 36, Code of Federal Regulations, part 254 (36 CFR part 254), FSM 5403.1, and FSM 5430.3.
- e. The Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1716, 1717; FSM 5430.12) requires that land exchanges must be conducted with United States citizens, must be within the same State, must be of equal value, and may be equalized with cash.
- f. Upon the request of the Forest Service, the BLM issues a patent for land reserved from the public domain and a quitclaim deed for reacquired National Forest System land with reserved public domain status being conveyed by the United States.

2. Weeks Act of March 1, 1911 (36 Stat. 961 as amended; 16 U.S.C. 516). This act authorizes the exchange of National Forest System land or timber that has Weeks Law (acquired land) status.

- a. The non-Federal land or timber must be within the same State and within the exterior boundary of a National Forest, or it must be within an area approved for acquisition by the Secretary of Agriculture (purchase unit).
- b. The non-Federal land must be within the watershed of a navigable stream and must be valuable chiefly for the regulation of the flow of that stream or for the production of timber.

- c. The acquisition of the lands by the United States under the Weeks Act must have the consent of the State legislature. Any special provisions in the State Consent Act are applicable.
- d. Either party may make reservations when they are in the public interest. Reservations by the non-Federal owner are subject to applicable regulations at 36 CFR 251.14 through 251.18 (FSM 5403.1 and FSM 5430.3).
- e. The Secretary of Agriculture approves Special Receipts Act and Weeks Act exchanges of \$250,000 or more. Weeks Act exchanges of \$150,000 or more must be submitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The exchange cannot be consummated until 30 days after the submission of the report to Congress. This oversight is required by section 17(b) of the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600, *et seq.*) and cannot be waived.
- f. The Regional Forester or, when delegated, the Director of Lands, Regional Office, or the Forest Supervisor may approve Special Receipts Act and Weeks Act exchanges as follows:
 - (1) Exchanges less than \$150,000.
 - (2) Exchanges of \$150,000 or more up to \$250,000 after congressional oversight as provided in the preceding paragraph e. (See the preceding para. e for requirements regarding congressional oversight for exchanges of \$150,000 or more and approval by the Secretary of Agriculture for exchanges of \$250,000 or more.)
- g. The requirements of FLPMA regarding equal value, cash equalization, location within the same State, and citizenship set out in the preceding paragraph e apply to Weeks Act exchanges.
- h. The Regional Forester or, when delegated, the Director of Lands, Regional Office, or the Forest Supervisor conveys title by quitclaim deed.

3. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 525, as amended; 7 U.S.C. 1010, 1011(c)). This act authorizes the exchange of National Forest System lands that have Bankhead-Jones Title III status and all Federal lands in National Grasslands.

- a. Either party may make reservations when in the public interest as provided at 36 CFR part 254 (FSM 5403.1 and FSM 5430.3).
- b. Mineral valuation and conveyance requires BLM's concurrence; BLM issues patents and or quitclaim deeds if the Title III lands are reserved from the public domain.
- c. The requirements of FLPMA regarding equal value, cash equalization, citizenship, and location within the same State apply to exchanges as set out in preceding paragraphs 3 through 3b.

4. Forest Service Omnibus Act of October 23, 1962 (76 Stat. 1157; 16 U.S.C. 555a). This act authorizes the exchange of National Forest System lands having acquired status when no other exchange authority applies to the disposal of those specific lands.

- a. The non-Federal land must be suitable for Forest Service activities.
- b. The requirements of FLPMA regarding equal value, cash equalization, citizenship, and location within the same state apply to exchanges under this authority.

5. Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 912, as amended; 16 U.S.C. 1277). This act authorizes the acquisition of property within the National Wild and Scenic Rivers System.

- a. Any National Forest System property in the same state, except land within the National Wild and Scenic Rivers System, may be exchanged.
- b. Either party may make reservations when in the public interest as provided at 36 CFR part 254 (FSM 5403.1 and FSM 5430.3).
- c. The Forest Service can acquire State-owned property by exchange.
- d. The requirements of FLPMA regarding equal value, cash equalization, citizenship, and location within the same State apply to exchanges within the Wild and Scenic Rivers System.

6. Forest and Rangeland Renewable Resources Act of June 30, 1978 (92 Stat. 354, 16 U.S.C. 1643). Section 4 of this act authorizes the Secretary of Agriculture to acquire land or interests in lands within the United States to establish and maintain a system of experiment stations, research laboratories, experimental areas, and other forest and rangeland research facilities. These exchanges are not limited to the same State; however, the other provisions of FLPMA regarding equal value, cash equalization, and citizenship apply to such exchanges.

5430.12 - Laws Supplementing Basic Land Exchange Authorities

The following laws are not complete exchange authorities for the Forest Service. They are used in conjunction with the basic exchange laws in FSM 5430.11.

1. Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (90 Stat. 2755 as amended; 43 U.S.C. 1701, 1715, 1716, 1717). This act supplements all earlier exchange authorities except the Sisk Act of December 4, 1967 (16 U.S.C. 484a).

- a. Section 205 authorizes the exchange of land and interests in lands for the purpose of acquiring access across non-Federal lands to units of the National Forest System.
- b. Section 206(a) supplements and expands existing exchange authorities found in FSM 5430.11 by authorizing the acquisition and conveyance of interests in lands. This section also requires the Secretary of Agriculture to give full consideration to State and local needs as well as Federal needs in considering a land exchange.

c. Section 206(b) amends the value requirements of prior exchange authorities by requiring that properties be equal in value or, if the values are not equal, either party may make them equal by payment of cash not to exceed 25 percent of the Federal value. The parties may agree to waive a payment of cash equalization to the non-Federal party, when the amount waived is not more than 3 percent of the value of the involved Federal land or \$15,000, whichever is less. This section also requires the lands and interests in lands that are exchanged to be located in the same State.

d. Section 206(c) provides that lands the Secretary of Interior acquires by exchange that are within the boundaries of any unit of the National Forest System, immediately become part of the National Forest System unit, without need for further action.

e. Section 206(d) makes the use of an Agreement To Initiate mandatory for land exchanges. This section also provides for timely appraisals and for arbitration of valuation disputes, or for bargaining to determine values in lieu of arbitration.

f. Section 206(e) requires that exchanged titles be issued simultaneously, unless the parties otherwise agree.

g. Section 206(f) requires the use of uniform Federal appraisal standards. This section provides for the adjustment of relative exchanged values to compensate an exchange party for assuming certain costs of the other party when both parties agree and the Secretary determines it to be in the public interest. However, this section also provides that the exchange parties may agree that any party would assume certain exchange costs of another party without compensation.

h. Section 206(h) provides for exchanges of approximately equal value on the basis of statements of approximately equal value for certain qualified cases in which the Federal value is not more than \$150,000.

i. Section 206(i) provides for temporary segregation, for up to five years, of Federal lands under consideration for exchange, to protect them from appropriation under the mining laws during the exchange process. In addition, upon acceptance of title by the United States, this section provides for a 90-day automatic segregation of lands acquired in an exchange to protect the newly acquired lands from appropriation under the public land laws, including the mining laws, while the need for permanent protection is considered.

j. Section 207 provides that the non-Federal party must be a citizen of the United States or must be a corporation subject to the laws of any State or of the United States.

2. Department of Agriculture Organic Act of August 3, 1956 (70 Stat. 1032; 7 U.S.C. 428a(a)). There must be authorization language in the annual Appropriation Act for Interior and Related Agencies in order to use this authority. Use the Organic Act only where there is no authority for exchange in other laws as provided in FSM 5430.11 and FSM 5430.12. This act is

most often used for exchanges involving Forest Service administrative sites outside the National Forest boundaries.

3. Wilderness Act of September 3, 1964 (78 Stat. 896; 16 U.S.C. 1134). This act authorizes the acquisition of non-Federal land and interests in wilderness areas in exchange for Federal land in the same State.

a. Within wilderness designated under this act, the owner of non-Federal property surrounded by National Forest System lands shall have such rights as may be necessary to ensure adequate access or shall have the opportunity to voluntarily exchange such lands under authorities available to the Secretary of Agriculture (36 CFR part 254).

b. The United States shall not convey any mineral interests unless the non-Federal owner conveys all owned mineral interests.

c. The requirements of FLPMA regarding equal value, cash equalization, location within the same State, and citizenship apply to Wilderness Act exchanges.

d. Federal lands within a designated wilderness may be conveyed in an exchange for non-Federal lands within designated wilderness if it has been determined that the exchange will further the purposes of this act. Consider the need for restrictions in the deed of conveyance to ensure that use of the land after conveyance into non-Federal ownership will conform to the wilderness character of the area.

4. Exchange for Schools Act (Sisk Act) of December 4, 1967 (81 Stat. 531, as amended; 16 U.S.C. 484a, 521c-521i). This act authorizes the exchange of not more than 80 acres of National Forest System land with a public school authority or with a State, county, or municipal government.

a. The non-Federal value may consist of land, cash, or a combination of both land and cash. There is no limitation on the amount of cash equalization paid by the non-Federal party.

b. The Forest Service shall deposit the cash equalization payment into a special Treasury fund which, when appropriated is available until expended for the purchase of replacement National Forest System lands suitable for the same purposes in the same State.

c. Lands may be conveyed to a State, county, or municipal government only if that entity had authorized use of the land considered for a land exchange on January 12, 1983. The lands conveyed may be used only for the purposes for which the State, county, or municipal government was using the lands prior to conveyance. The restrictions of this paragraph do not apply to conveyances to schools.

5. National Trails System Act of October 2, 1968 (82 Stat. 922; 16 U.S.C. 1246). This act authorizes the acquisition of non-Federal land or interests within the National Trail System in

exchange for National Forest System land in the same State. The requirements of FLPMA regarding equal value, cash equalization, and citizenship apply to such exchanges.

5430.13 - Land Exchange Laws that Apply to Specific Areas

Numerous laws authorize or direct land exchanges in specific areas. Because these laws do not have Service-wide application, each Regional Forester shall issue supplements within the Directive System for direction implementing the laws applicable to their Regions.

5430.14 - Extensions of Basic Land Exchange Laws

Congress has enacted many laws to extend the provisions of the basic land exchange authorities (FSM 5430.11) to specific areas beyond National Forest System boundaries. Most of these authorities extend provisions of the General Exchange Act (FSM 5430.11, para. 1). Refer to the Forest Service publication, FS-612, "Establishment of Modifications of National Forest Boundaries," for a list of the current extension provisions. This publication can be found in most Forest Service offices or can be obtained from the Washington Office, Lands Staff.

5430.15 - Forest Service Land Exchange Regulations

The regulations governing the exchange of National Forest System land are at Title 36, Code of Federal Regulations, part 254, subpart A (36 CFR part 254, subpart A).

5430.2 - Objective

The objective of the land exchange program is to utilize land exchanges as a tool, in concert with the purchase program, to implement Forest land and resource management planning and direction; to optimize National Forest System landownership patterns; to further resource protection and use; and to meet the present and future needs of the American people.

5430.3 - Policy

Consider only those land exchange proposals that are consistent with Forest land and resource management plans (36 CFR part 219). For additional direction, refer to FSM 5403.1 and FSH 5409.13.

5430.4 - Responsibility

5430.41 - Washington Office

5430.41a - Deputy Chief, National Forest System

For direction on the responsibilities of this position, see FSM 5404.12.

5430.41b - Associate Deputy Chief, National Forest System

For direction on the responsibilities of this position, see FSM 5404.13.

5430.41c - Director of Lands, Washington Office

For related direction regarding responsibilities of this position, see FSM 5404.14.

The Director of Lands, Washington Office, has the responsibility to:

1. Review National Landownership Adjustment Team reports and formally notify the appropriate Regional Forester as to the findings and need for any corrective action.
2. Review Weeks Act land exchange cases valued at \$150,000 or more to ensure compliance with appropriate laws, regulations, and policies and prepare reports on such land exchanges before submission for congressional oversight. Review Weeks Act land exchange cases valued at \$250,000 or more to ensure compliance with appropriate laws, regulations and policies and prepare reports on such land exchanges before submission for approval by the Secretary of Agriculture and subsequent Congressional oversight.
3. As provided for at 36 CFR 254.10, initiate the use of bargaining and/or arbitration when warranted to resolve disputes about land exchange values.
4. Review and concur in administrative site exchange proposals when the Forest Service is acquiring an administrative site and/or facility, before the authorized officer proceeds with the execution of the Agreement To Initiate.
5. Review and concur in all timber-for-land exchange proposals, prior to approval by the Regional Forester.
6. Review and approve all assumptions of costs proposals involving compensating an exchange party for assuming exchange processing costs ordinarily borne by the other party as provided at 36 CFR 254.7

5430.41d - National Landownership Adjustment Team

For direction on the responsibilities of this team, see FSM 5404.16.

5430.42 - Field Units

5430.42a - Regional Forester

For direction on the responsibilities of the Regional Forester, see FSM 5404.21.

5430.42b - Director of Lands, Regional Office

For additional direction on the responsibilities of the Regional Director of Lands, see FSM 5404.22.

The Regional Director with responsibility for the Region's lands program has the responsibility to:

1. Prepare Regional supplements identifying those laws pertaining to specific land exchange authorities within the Region.
2. Approve all land exchanges involving the acquisition of administrative sites or facilities after coordination with the Acquisition Management and Engineering staffs, subject to direction in FSM 5403.1.
3. Execute Agreements to Initiate, Exchange Agreements, and exchange cutting agreements, including modifications.
4. Authorize the cutting and removal of exchange timber or release of funds in land-for-timber exchanges after acceptance of title to the non-Federal land.
5. Approve performance or security bonds in connection with land exchange cases after obtaining approval from the Regional Attorney as to their form and legal acceptability.
6. Ensure that Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by United States" is followed when preparing conveyance documents and title evidence.
7. Ensure that each land exchange property is appraised to determine its market value according to the "Uniform Appraisal Standards for Federal Land Acquisition" issued by Interagency Land Conference.
8. Minimize the amount of cash equalization to the United States involving land exchanges.
9. Ensure that field units correctly report land exchange accomplishments.
10. Ensure compliance with Forest Service authorities and responsibilities regarding hazardous substances and petroleum products as outlined in FSM 2160.4.
11. Submit all requests for consideration of bargaining or arbitration to the Washington Office, Director of Lands. Only the Washington Office, Director of Lands is authorized to initiate or agree to the use of arbitration or bargaining as a means of determining land values in land exchanges.
12. Submit all requests for the use of assumption of costs to the Washington Office, Director of Lands for review and approval.

5430.42c - Forest Supervisor

For additional direction on the responsibilities of the Forest Supervisor, see FSM 5404.23.

Each Forest Supervisor is responsible for developing and carrying out an effective landownership adjustment program. Unless authorities are otherwise delegated or limited by the Regional Forester, each Forest Supervisor is responsible for:

1. Negotiating with landowners to share the costs of exchange preparation in mutually beneficial cases.
2. Involving the public early in the development of an exchange proposal through the required newspaper notice and by notification of Indian tribes, State and local governments, congressional delegations, affected permit holders, and affected publics.
3. Not pursuing land-for-timber exchanges if formal objections are made by an affected county concerning a reduction in their payment in lieu of taxes or 25 percent fund receipt payments.
4. Avoiding General Exchange Act cases involving non-Federal lands with obvious mineral potential that would permit subsequent appropriation under the 1872 mining laws.

5430.42d - District Ranger

For additional direction on the responsibilities of the District Ranger, see FSM 5404.24. Unless otherwise delegated or limited by the Forest Supervisor, each District Ranger is responsible for:

1. Taking proactive initiative in developing land exchange proposals, rather than taking only reactive steps in response to proposals from non-Federal parties.
2. Rejecting proposals where the non-Federal party is to construct improvements on National Forest System land in exchange for land and interests unless specific legislation authorizes the exchange.

5430.5 - Definitions

For additional definitions, see Title 36, Code of Federal Regulations, part 254, subpart A; FSM 5405; and FSH 5409.13, section 30.5.

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

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

Bankhead-Jones Lands. Lands identified in Title III of the Bankhead Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010-1012) (FSM 5430.11).

Enabling Legislation. Legislation passed by a State, which allows for the use of the Weeks Act. Enabling legislation is also referred to as a State Consent Act.