DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance with Special Use Authorizations

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service proposes to promulgate regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations. The provisions of this proposed rule would apply to applications and authorizations for use of National Forest System lands, including situations in which the land use fee may be waived or exempted, such as facilities financed or eligible to be financed with a loan pursuant to the Rural Electrification Act of 1936 and applications and authorizations involving Federal, State, and local government entities. The provisions of this proposed rule would not apply to applications and authorizations for noncommercial group uses and other uses specifically exempted. In addition, the provisions of this proposed rule would not apply to those applications or authorizations for which processing and/or monitoring fees already are being collected by another Federal agency on behalf of the Forest Service. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received in writing by January 24, 2000.

ADDRESSES: Send written comments to Director, Lands Staff, 2720, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Submit electronic comments (as an ASCII file if possible) to: gtlands4/wo@fs.fed.us. Refer to the **SUPPLEMENTARY INFORMATION:** Section for further information on written comments and electronic filing. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

The public may inspect comments received on this proposed rule in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, 14th Street and Independence Avenue, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1256 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256 or Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1145.

SUPPLEMENTARY INFORMATION:

1. Electronic Access and Filing
2. Written Comments
3. Interagency Coordination
4. Background
5. Analysis of Proposed Rule
6. Regulatory Requirements

1. Electronic Access and Filing

You may view an electronic version of this proposed rule at the Forest Service Internet home page at: http://www.fs.fed.us/recreation/permits/. You may also comment via the Internet to: gtlands4/wo@fs.fed.us. If you submit comments electronically, please submit them, if possible, as an ASCII text file to minimize computer problems and include your name and return mailing address in your Internet message.

2. Written Comments

Please confine written comments to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph you are addressing. The Forest Service may not include in the administrative record for the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in **ADDRESSES**. All comments, including the names, street addresses, and other contact information about respondents will be available for public review at the above address during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead, (202) 205–1256, to facilitate access to the building.

3. Interagency Coordination

The United States Department of the Interior, Bureau of Land Management (BLM), recently proposed revisions to its cost recovery procedures, policies, and fees for processing and administering rights-of-way at 43 CFR parts 2800 and 2808 (64 FR 32105, June 15, 1999). To the extent possible, the Forest Service is proposing to adopt procedures, policies, and fee schedules for cost recovery related to special use applications and authorizations consistent with BLM's rule. In addition to considering comments in response to its proposed rule, the Forest Service will consider comments received in response to BLM's proposed rule in developing the final Forest Service rule. Promulgation of consistent cost recovery regulations and adoption of the same fees by the Forest Service and BLM will benefit both agencies and the public, particularly those who need or already hold an authorization to use and occupy Federal lands administered by both agencies.

4. Background

The Forest Service proposes to issue regulations concerning the recovery of costs for processing applications for special use authorizations issued pursuant to 36 CFR part 251, subpart B, and monitoring compliance with these authorizations. Approximately 74,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities, ranging from individual private uses to large-scale commercial facilities, and public services. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, hydroelectric power generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. The agency receives about 6,000 applications for special use authorizations each year. These applications are subjected to a rigorous decisionmaking process in determining whether to approve or reject them. In 1998, the Forest Service adopted a final rule at 36 CFR part 251, subpart B, streamlining and extensively revising the agency's application process and administration of special use authorizations (63 FR 65949, November 30, 1998).

There are 14 statutes authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937, as well as statutes focusing on a specific use of Federal lands, such as the National Forest Ski Area Permit Act. The basic authority of the Secretary of Agriculture to regulate the occupancy and use of National

Forest System lands is the Act of June 4, 1897 (16 U.S.C. 551).

Additionally, the Independent Offices Appropriations Act of 1952, as amended (IOAA; 31 U.S.C. 9701), and the Office of Management and Budget (OMB) Circular No. A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The Federal Land Policy and Management Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, additional requirements of the Federal Land Policy and Management Act of 1976, and Executive Order Nos. 11998 (Floodplains) and 11990 (Wetlands) also bear directly on the issuance of special use authorizations. These directives and statutory authorities require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. The practical effect of these requirements has been to lengthen the time required and increase the cost associated in processing applications for authorizations for new uses and for existing uses. The time and cost impacts weigh on both the Forest Service and the applicants and holders of authorizations. The significance of these impacts has been a principal factor in the development of this proposed cost recovery rule. These impacts also were a major factor in the previous development of the agency's final rule at 36 CFR part 251, subpart B, streamlining its special uses application process and administration of special use authorizations (63 FR 65949, November 30, 1998).

With limited funds, staffing, and other resources to manage its special uses program, the agency has found it increasingly difficult to provide timely reviews and evaluations of special use applications using appropriated funds. It is also difficult for the agency to ensure authorized facilities are constructed and operated in compliance with existing special use authorizations. The agency has a significant backlog of special use applications to which it has been unable to respond in a manner that satisfies the needs and expectations of special use applicants.

The agency has been able to provide timely responses to those applicants who have voluntarily offered to fund agency costs to review and process their applications for a particular proposed use and occupancy. However, without the appropriate regulatory authority, there is no means of requiring an applicant to pay for the agency's costs of processing applications and monitoring compliance with authorizations.

The IOAA authorizes all agencies of the Federal Government to recover costs associated with providing goods and services that benefit an identifiable recipient. This provision applies to costs incurred by the Forest Service in processing special use applications and monitoring compliance with special use authorizations. Charges imposed under the authority of the IOAA must, among other requirements, be fair and must be based on the costs to the Federal Government and the value of the goods or services to the recipient.

Government-wide direction for implementing the cost recovery provisions of the IOAA is in OMB Circular No. A–25. Section 7 of this circular directs that user charges be instituted through the promulgation of agency regulations. Adoption of this proposed rule would comply with the requirements of OMB Circular No. A–25.

In the past 10 years, the U.S. General Accounting Office (GAO) and the U.S. Department of Agriculture's Office of Inspector General have conducted more than 15 reviews or audits of various aspects of the Forest Service's special uses program. Two of the more recent audits, GAO Report #RCED–96–84 (April 1996) and GAO Report #RCED–97–16 (December 1996), recommended that the Forest Service (1) Operate its special uses program in a more cost-efficient and businesslike manner and (2) Promulgate regulations to allow the agency to exercise existing statutory authorities to recover from applicants and holders the agency's costs to process special use applications and monitor compliance with special use authorizations.

In April 1997, the Forest Service completed a reengineering study of its special uses program. The study identified changes needed to manage the program in a more businesslike and customer-service-oriented manner. The study also cited the need for regulations enabling the agency to exercise its existing cost recovery authorities. Recovery of processing and monitoring costs would provide additional funding for the agency to respond more promptly to special use applications, to monitor compliance with authorizations more effectively, and to satisfy the needs and expectations of applicants and holders.

The Forest Service would use the processing and monitoring fees paid by applicants to fund the time that the agency spends on the decisionmaking process in response to applications for the use and occupancy of National Forest System lands; to prepare and issue special use authorizations in those cases where the agency decides to authorize the proposed use and occupancy; and to monitor compliance with the terms and conditions of special use authorizations.

An applicant would also be assessed a processing fee for agency costs to conduct an environmental analysis and prepare associated documentation as required by the National Environmental Policy Act. These tasks are the applicant's responsibility as provided in 36 CFR 251.54. The processing fee would be commensurate with the agency's time and expense in processing each application, and would include the collection of all data and information needed for the agency to (1) Fully describe the proposed use; (2) Identify and evaluate the environmental effects of the proposed use; and (3) Make a decision in response to the application. Applicants would be encouraged to fulfill these responsibilities from sources other than limited agency personnel and resources to maintain the agency's ability to process applications in as efficient and timely a manner as possible. Application processing tasks completed by the applicant or a third party would reduce the amount of time the Forest Service spends on each case, thereby reducing the processing fee assessed to the applicant.

The proposed rule would require an applicant or holder to pay a processing fee and, where applicable, a monitoring fee. The proposed rule would establish categories to be assigned on a case-by-case basis to the processing of each special use application and to the monitoring of compliance with each authorization. These categories would be based on the estimated number of hours that agency personnel would spend in conducting activities directly related to processing an application and monitoring compliance with an authorization.

Except as specifically exempted, the processing fee provisions of this proposed rule would apply to (1) All special use proposals accepted as applications on or after the effective date of this rule; (2) All special use proposals accepted as applications before the effective date of this rule, but for which the agency has not yet issued an authorization; (3) Existing

authorizations when the holder requests and receives authorization to construct new facilities or reconstruct existing facilities (either through an amendment to an existing authorization or through agency approval, pursuant to a master development plan or operating plan); (4) New authorizations to be processed and issued due to termination of existing authorizations; and (5) New authorizations needed due to a change in ownership or control of facilities under an existing authorization.

Except as specifically exempted, the monitoring fee provisions of this proposed rule would apply to the agency's time needed for monitoring compliance of all authorizations issued on or after the effective date of the final rule. Monitoring is defined in the proposed rule at 36 CFR 251.51 as the actions needed to ensure compliance with special use authorizations during construction or reconstruction of facilities, as well as inspections of facilities and authorized activities to ensure compliance with a special use authorization. As defined in the proposed rule, monitoring would not include routine administrative actions, such as billings or maintenance of case files, and fees would not be assessed in any categories for such actions. For categories B–1 through B–III only, monitoring fees would not be assessed for the time associated with cumulative multi-year annual or periodic on-site inspections.

The cost recovery provisions of this rule would not apply to applications or authorizations issued for noncommercial group uses (36 CFR 251.54). The cost recovery provisions of this rule also would not apply to activities otherwise prohibited by a closure order, except for access to non-Federal land within the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3210(a)). These exemptions are necessary to address legal concerns associated with the exercise of First Amendment rights.

Fees would be assessed for several categories of activities. Category A for ''minimal impact'' processing or ''no monitoring'' and the processing and monitoring categories B–I through B–III would apply to those cases requiring no more than 50 hours of agency time to process or monitor. A one-time flat fee would be assessed for the agency's processing and monitoring fees in each of these categories. Category B–IV would apply to more complex applications and authorizations requiring more than 50 hours of agency time to process or monitor. Category C applies when master agreements are established for processing.

Fees for processing applications in categories A and B–I through B–IV would be based on the full actual costs of applications for authorizations issued under the Mineral Leasing Act and on the full reasonable costs of applications for authorizations issued under other authorities; these processing fees would be determined on a case-by-case basis.

A one-time monitoring fee would be assessed for categories B–I through B–II, based on the time needed for inspections during the construction or reconstruction period, plus the time needed for inspections of authorized facilities and operations during one calendar year. Fees for monitoring category B–IV would be based on the full actual costs for authorizations issued under the Mineral Leasing Act and on the full reasonable costs for authorizations issued under other authorities; these monitoring fees would be determined on a case-by-case basis.

The fees collected to recover costs for processing applications and monitoring compliance with authorizations under the proposed rule would be in addition to land use rental fees assessed and collected based on the fair market value of the rights and privileges granted by each authorization. These fee schedules are set out in the Forest Service directive system in chapter 30 of Forest Service Handbook (FSH) 2709.11, Special Uses Handbook.

Upon acceptance of each special use application, the authorized officer would determine the category for the processing fee or, in the case of a category B–IV proposal, would estimate a case-specific processing fee for that application. This fee would be due before the Forest Service processes an accepted application. If the proposed use is approved by the authorized officer, a monitoring fee for the authorization would be determined using the established monitoring fee rate by category (or estimated on a case-specific basis for category B–IV authorizations). The monitoring fee would be due before or at the same time the authorization is issued.

The agency's experience with its management of more than 74,000 current special use authorizations indicates that the cost to process a special use application for a proposed use or occupancy frequently has no relationship to the cost to monitor the construction and/or implementation of that use or occupancy following issuance of the authorization. Applications that can be time consuming to process may require little to no time (or cost) for the agency to monitor, or vice versa. Therefore, the agency proposes that the processing fee category and amount for each case would be determined independently of the monitoring fee category and amount; that is, the processing fee charged for any given application would not dictate the corresponding monitoring fee category or amount.

The recovery of costs from applicants and holders would give the agency the resources to provide more efficient and timely responses to applications for new uses and to applications for changes or additions to existing authorized uses and occupancies. Similarly, cost recovery also would increase the Forest Service's ability to monitor on-site activities to adequately protect National Forest System lands and resources, in accordance with the terms and conditions of special use authorizations.

This proposed Forest Service cost recovery rule is consistent with the IOAA and a variety of subsequent statutes that authorize the use and occupancy of National Forest System lands. The IOAA provides that Federal agencies should recover the costs they incur in providing a specific benefit or service to identifiable recipients beyond those provided to the general public. The Forest Service's processing of a special use application provides a special benefit and service to applicants for new authorizations and to those proposing modifications to existing authorizations. The service and benefit provided consist of the agency's review and consideration of requests to use and occupy National Forest System lands. Likewise, monitoring, as defined at 36 CFR 251.51 of the proposed rule, provides a special benefit to holders of special use authorizations that is not available to the general public in the form of actions necessary to ensure that the construction or reconstruction of facilities and the authorized activities comply with the terms and conditions of the authorization. This proposed rule would provide the process by which recipients may pay for such Governmental benefits and services.

Upon final adoption, this rule as proposed would not provide the agency with the authority to retain and spend any of the funds collected. The agency's retention and expenditure of the fees that would be assessed and collected pursuant to this proposed rule would need to be authorized by Congress. The Forest Service proposes to seek such authority in conjunction with final adoption of this proposed rule. Doing so would maximize agency responsiveness to applicants and holders by making the funds deposited by them available for the agency to use in processing their

applications and monitoring their authorizations.

Authority

Laws or administrative directives which authorize cost recovery by the Forest Service include:

1. Independent Offices Appropriations Act of 1952 (IOAA), as amended (31 U.S.C. 9701). This act provides that each Federal agency may charge for goods and services the agency provides to identifiable recipients. Such charges must be fair and must be based on the costs to the Federal Government and the value of the specific goods or services provided to the recipient.

2. Office of Management and Budget (OMB; formerly Bureau of the Budget) Circular No. A–25, as revised July 15, 1993. This circular provides Federal agencies with specific direction for implementing the cost recovery provisions in Title V of the IOAA. Section 4a specifies that the circular covers all Federal activities that convey special benefits to recipients beyond those accruing to the general public.

3. Mineral Leasing Act of 1920, as amended (30 U.S.C. 185(l)). The 1973 amendment to section 28 of this act authorizes oil and gas pipeline uses; requires that an applicant for a right-of-way or permit reimburse the Federal Government for administrative and other costs incurred in processing the application; and requires that a holder of a right-of-way or permit reimburse those administrative and other costs incurred by the Federal Government in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on the right-of-way.

The legislative history of the 1973 amendment to the Mineral Leasing Act states that the reimbursement is in addition to rent charged for the land use. Under the Mineral Leasing Act, Federal agencies are entitled to recover actual costs; for example, the costs of preparing environmental impact statements, including environmental analyses and biological evaluations for Endangered Species Act compliance.

4. Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1764(g)). Section 504 of FLPMA provides for reimbursement of costs in addition to the collection of a land use fee. The act authorizes agencies to promulgate regulations or, prior to promulgation of such regulations, to require as a condition of a right-of-way that an applicant or a holder reimburse the Federal Government for all ''reasonable'' administrative and other costs incurred in processing an application for a right-of-way in monitoring authorizations. Factors that must be considered in establishing such reasonable costs under FLPMA include actual costs, the monetary value of the rights and privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors. The act also provides a concise statement of Congressional intent concerning cost recovery generally.

Public Law 98–300 (1984) amended section 504 of FLPMA (43 U.S.C. 1764(g)) to exempt certain Rural Electrification Act-financed facilities from Federal land use fees, but notably retains the authority of agencies to require reimbursement of reasonable administrative and other costs related to processing applications and monitoring authorizations for such facilities.

5. National Historic Preservation Act of 1966 (NHPA; (16 U.S.C. 470(h–2)). Section 110(g) of this act provides that Federal agencies may require prospective licensees and permittees to pay for the Federal Government's costs of preservation activities as a condition of issuance of a license or permit.

Comparison of Forest Service and BLM Proposed Cost Recovery Rules and Fees

The cost recovery provisions and fees in this proposed Forest Service rule are consistent with those proposed by BLM, but there are differences:

1. The Forest Service addresses only cost recovery in its proposed rule at the previously reserved 36 CFR 251.58, whereas the proposed BLM rule (64 FR 321055, June 15, 1999) not only addresses revisions to its existing cost recovery regulations, but also proposes extensive revisions unrelated to processing and monitoring fees and includes reorganization and recoding of BLM's rules on rights-of-way at 43 CFR parts 2800 and 2880.

2. The Forest Service is proposing a processing fee category A for ''minimal impact'' and a monitoring fee category A for ''no monitoring'' to include low impact activities and uses in areas already approved or designated for that use in forest plans. Many of these activities and uses are recreational (such as fishing tournaments and bicycling races). The BLM rule does not include these categories; the BLM rule addresses only rights-of-way and does not apply to recreation activities. The Forest Service proposes a fee of $75 for processing an application in the minimal impact processing fee category A and no monitoring fee.

3. The Forest Service and BLM both propose to assign applications and authorizations to fee categories for processing and monitoring based on the time and other costs the agencies incur. Whereas the Forest Service would assign the monitoring fee category to an authorization separately from the processing fee category for the application, BLM would automatically assign the fee category for monitoring based on the processing fee category.

4. The Forest Service would issue the cost recovery fee schedules in the agency's directive system in Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 30 (which can be accessed electronically via the Internet at the agency's directives home page: http://www.fs.fed.us/im/directives/). BLM is setting out its fee schedule in the preamble to its proposed and final rules and proposes to make the fee schedule available at BLM offices and on its home page at http://www.blm.gov.

The BLM sets out separate proposed fee schedules for applications and authorizations under the Mineral Leasing Act and those under the Federal Land Policy and Management Act because of the differences in the legal standard for calculating cost recovery fees under these two authorities. The Forest Service has adopted the same approach as BLM in setting out its proposed cost recovery fee schedules. For further information on these cost differences, see the description in the preceding Authority section.

The Forest Service has added letters in naming its proposed fee categories to accommodate the addition of category A for the minimal impact processing fee (up to and including 8 hours) and no monitoring fee, and to incorporate the existing BLM processing and monitoring fee categories I through IV as Forest Service categories B–I through B–IV. Category B–I would require more than 8 and up to and including 24 hours of agency time for processing or up to and including 24 hours of agency time for monitoring; category B–II would require more than 24 hours and up to and including 36 hours; category B–III would require more than 36 hours and up to and including 50 hours; and category B–IV would require more than 50 hours. The Forest Service proposed category C involves the use of master agreements which would apply only to fees for processing applications, not to monitoring the authorization. The Forest Service proposed categories A and C would not apply to applications and authorizations under the Mineral Leasing Act. The following tables summarize the fee schedules and categories proposed by the Forest Service and BLM:

PROPOSED FEE SCHEDULES FOR APPLICATIONS AND AUTHORIZATIONS

[Except those authorized under the Mineral Leasing Act]

Category		Processing	Processing Fee		Monitoring	Monitoring Fee	
FS	BLM	Hours	FS	BLM	Hours	FS	BLM
A		≤8	75 (minimal impact).		0	0 (no monitoring)	
B–I	I	>8 & ≤24	$230	$230	≤24	$80	$80.
B–II	II	>24 & ≤36	390	390	>24 & ≤36	130	130
B–III	III	>36 & ≤50	750	750	>36 & ≤50	230	230
B–IV	IV	>50	Full reasonable cost as required determined on a case-by-case basis.	Full reasonable costs as required.	>50	Full reasonable costs as required costs as required determined on a case-by-case basis.	Full reasonable costs as required.
C*	Master Agreement.	Full reasonable costs as required determined on a case-by-case basis.	As negotiated		As negotiated..		

*Master agreement for processing fees only.

PROPOSED FEE SCHEDULE FOR MINERAL LEASING ACT APPLICATIONS AND AUTHORIZATIONS

Category*		Processing Hours	Processing Fee		Monitoring Hours	Monitoring Fee	
FS	BLM		FS	BLM		FS	BLM
B–I	I	>8 & ≤24	$200	$200	≤24	$70	$70
B–II	II	>24 & ≤36	290	290	>24 & ≤36	100	100
B–III	III	>36 & ≤50	750	750	>36 & ≤50	330	330
B–IV	IV	>50	Full actual costs determined on a case-by-case basis.	Full actual costs	>50	Full actual costs determined a case-by-on costs.	Full actual costs.
	Master Agreement.			As negotiated		As negotiated..	

*Note that the Forest Service does not have a category A (minimal impact/no monitoring) or a category C (master agreement) for Mineral Leasing Act applications and authorizations.

5. Analysis of Proposed Rule

A section-by-section explanation of the proposed cost recovery rule follows.

Proposed § 251.51 Definitions. This section would be revised to add a definition of monitoring that ensures consistency in the identification of activities subject to a monitoring fee and in the determination of monitoring fee categories and amounts.

Proposed § 251.58 Cost Recovery. This section is currently reserved under the heading ''Cost Reimbursement.'' Regulations would be promulgated to implement requirements in the various applicable laws and OMB Circular No. A–25 directing Federal agencies to recover costs for services provided to identifiable recipients beyond those accruing to the general public. This section would deal specifically with the recovery of costs involved in processing applications for special uses and in monitoring compliance with special use authorizations.

The proposed rule generally would not apply to agency costs associated with administration of outstanding rights in Federal lands that may be exercised without a special use authorization. An example would be use of public highways that predate the establishment of a National Forest. The proposed rule may apply to an outstanding right when the holder of that right is otherwise required by law or regulation to secure an authorization or approval from the Forest Service.

Paragraph (a) of the proposed rule would direct the agency to recover its processing costs for special use applications and monitoring costs for authorized special uses by assessing fees separate from any fees charged for use and occupancy of National Forest System lands.

Paragraph (b) would apply the cost recovery requirements to the processing of applications and monitoring of special use authorizations pursuant to 36 CFR part 251, subpart B.

Paragraphs (b)(1) through (b)(3) would specify situations that would prompt assessment of processing fees pursuant to this rule. Examples include, but are not limited to, cases where a new or amended authorization is needed to approve substantial changes to an existing use.

Paragraph (b)(4) specifies that monitoring fees would be applicable only to special use authorizations issued on or after the date of the adoption of this rule.

Paragraphs (c) through (c)(6)(iii) would address proposed processing fees to recover agency costs. Some of the agency's processing costs, as indicated in paragraph (c)(1), would include the agency's formal acknowledgment of receipt and initial review of an application, case file set-up, computer data entry coding, environmental reviews and analyses, meetings with the

applicant, and preparation of a special use authorization. These costs would be specific to a project and would not include the cost of agency services or benefits that are for the benefit of the general public. Paragraphs (c)(1)(i) to (c)(1)(ii)(B) would set out the requirements for determining processing fees based on actual costs for applications under the Mineral Leasing Act or reasonable costs for applications under other authorities.

Paragraphs (c)(2) through (c)(6)(iii) would provide for a schedule of six processing fee categories, based on the complexity of the proposed use and the agency time needed for processing applications.

A one-time, nonrefundable fee would be assessed for processing applications in categories A through B–III. For applications other than those submitted for authorizations issued under the Mineral Leasing Act, a minimal impact category A, requiring up to 8 hours to process (paragraph (c)(2)(i)), would be established at a rate of $75. The Forest Service has determined that it costs at least $75 to process any special use application. The agency does not anticipate a need for a minimal impact category for Mineral Leasing Act applications.

Categories B–I through B–IV would be defined using criteria comparable to those proposed by BLM (64 FR 32105, June 15, 1999). The proposed schedule fee rates for categories B–I through B–III (paragraphs (c)(2)(ii)–(iv)) would be identical to those proposed by BLM and are based on cost data that BLM has collected to support those rates in each category. The Forest Service proposes to adopt those rates and categories because (1) its costs of processing special use applications on National Forest System lands are comparable to BLM's costs of processing applications for rights-of-way on BLM-administered public lands, and (2) the public is better served by maintaining consistency in special uses and rights-of-way administration between the Forest Service and BLM.

Under category B–IV (paragraph (c)(2)(v)), a processing fee specific to each project is proposed to recover the full reasonable costs (for non-Mineral Leasing Act applications) or the full actual costs (for Mineral Leasing Act applications) that are associated with conducting agency studies, lengthy environmental analyses, and other actions that cumulatively require more than 50 hours of agency time to complete.

For applications under authorities other than the Mineral Leasing Act, the Forest Service and the applicant could enter into master agreements (category C) to recover processing costs associated with a particular application, a group of applications, or similar applications filed by the same applicant within a specified geographic area (paragraphs (c)(2)(vi)(A)–(E)). Each application covered by a master agreement would be assigned its own processing fee category and rate. Master agreements may be considered an efficient alternative to case-specific estimates of processing time, particularly when an applicant or holder routinely submits proposals or has several authorizations within a defined area or administrative unit. The agency does not anticipate a need for master agreements for processing Mineral Leasing Act applications because they seldom, if ever, are submitted as a group or relate to other applications.

Processing fees in category B–IV or processing fees submitted pursuant to a master agreement could be assessed and collected in periodic installments. The authorized officer would estimate the processing fees for category B–IV applications on a case-specific basis and would reconcile the fees based on the full reasonable costs for non-Mineral Leasing Act applications or on the full actual costs for Mineral Leasing Act applications. Upon the agency's completion of all processing tasks for a category B–IV application, any remaining balance of the processing fees would be either refunded to the applicant or credited towards monitoring fee assessments. When the estimated processing fee in category B–IV is lower than the agency's costs for processing an application, the applicant would be obligated to pay the difference between the estimated costs and the agency's full actual or reasonable costs. For all categories, an applicant's payment of a processing fee would neither ensure nor imply agency approval of the proposed use or occupancy. The applicant would be liable for the agency's processing costs regardless of whether the application is subsequently denied by the agency or withdrawn by the applicant.

Establishment of a processing fee is expected to encourage prospective applicants to discuss their proposed use and occupancy with the Forest Service prior to submitting an application. The agency anticipates that this fee may also provide an incentive for proponents to better design their applications to meet the agency's resource management concerns and objectives. The agency would not duplicate processing activities to be conducted by the applicant. Applicants would be strongly encouraged to conduct as many of the necessary processing steps as possible (such as collecting data; performing studies; completing resource surveys, evaluations, and assessments; and conducting and documenting environmental analyses). Having the applicant conduct these steps would minimize the time the Forest Service needs to process an application and would reduce the application's impact on limited Forest Service resources. The applicant also would minimize the application processing fee charged by the Forest Service and, in many cases, would expedite the Forest Service's processing of the application.

Paragraphs (c)(3) through (c)(3)(ii) would address how processing costs would be assessed when two or more applicants apply and compete for one use. Included are separate provisions for assessing processing fees when the competitive interest in a particular use or occupancy is (1) unsolicited by the Forest Service or (2) solicited by the Forest Service.

Paragraphs (c)(4) through (c)(4)(ii) would describe how and when the authorized officer would determine an appropriate processing fee for each accepted application, notify and bill applicants, and revise fees.

Paragraphs (c)(5) through (c)(5)(ii) would provide direction for the payment of processing fees and would provide that the agency would not initiate processing an application until receipt of full payment of the prescribed processing fee.

Paragraphs (c)(6) through (c)(6)(iii) would specify that processing fees in categories A and B–I through B–III are nonrefundable and would describe under what conditions the processing fee for category B–IV would be refunded to an applicant.

Paragraphs (d) through (d)(4)(ii) would provide for recovering those costs the Forest Service incurs in monitoring compliance with special use authorizations during construction or reconstruction of facilities, plus those costs incurred during on-site inspections of authorized facilities and operations to ensure compliance with a special use authorization.

Paragraphs (d)(1) through (d)(1)(ii) would describe the basis for monitoring fees. A one-time, nonrefundable fee would be assessed for monitoring compliance with authorizations in categories B–I through B–III. The authorized officer would estimate the monitoring fee under category B–IV on a case-by-case basis and would reconcile the fee based on full reasonable costs for monitoring non-Mineral Leasing Act authorizations or full actual costs for monitoring Mineral Leasing Act authorizations.

Paragraphs (d)(2) through (d)(2)(v) would provide for a schedule of five monitoring fee categories, based on the complexity of the activity to be monitored. Except for authorizations issued under the Mineral Leasing Act, a category A would be established for authorizations that require no monitoring and for which no monitoring fee would be charged. The agency does not anticipate a need for a no monitoring category for Mineral Leasing Act authorizations. Categories B–I through B–IV would be defined using criteria comparable to those proposed by BLM (64 FR 32105, June 15, 1999) and are based on cost data that BLM has collected to support its monitoring fee rates.

Paragraph (d)(3)(i) would allow the holder to pay the monitoring fee in installments based on estimates of the total fee and with the approval of the authorized officer. When the estimated monitoring fee in category B–IV is lower than the agency's costs incurred in monitoring an authorization, the holder of the special use authorization would pay the difference.

Paragraphs (d)(4) through (d)(4)(ii) would specify that monitoring fees in categories B–I through B–III are nonrefundable and would describe under what conditions the monitoring fee for category B–IV would be refunded to an authorization holder.

Paragraphs (e) through (e)(3) would provide applicants and holders with a process for disputing or requesting a reduction in the established processing or monitoring fees.

Paragraphs (f) through (f)(2) would identify the circumstances under which the authorized officer may waive all or part of a processing or monitoring fee. Waiving all or any part of a fee pursuant to these criteria would be discretionary on the part of the authorized officer and would not be an entitlement of the applicant or holder.

Paragraph (f)(1)(i) would provide for waiving fees for a local, State, or Federal governmental entity that waives similar fees for the Forest Service.

Paragraph (f)(1)(ii) would allow the authorized officer to waive part of the processing fee when a major portion of the costs results from issues not related to the actual project being proposed. For example, an application is submitted for an outfitter-guide use in a geographic area where numerous similar outfitter-guide uses have already been authorized. The new application prompts the need for the Forest Service to conduct an analysis of the capability of the land and its resources to accommodate particular types of uses related to the proposed use, and to examine allocations of commercial versus noncommercial uses within the subject area. Although the analysis is triggered by the new application, the purpose of the analysis is only minimally attributable to the applicant's proposed use and occupancy. Thus, it is inappropriate to assess that applicant the total cost of such an analysis.

Paragraph (f)(1)(iii) would provide for a waiver or partial waiver of processing or monitoring fees when a proposed project is intended to prevent or mitigate damage to real property or to mitigate hazards to public health and safety resulting from an act of God, an act of war, or negligence of the United States. For example, a storm destroys a culvert crossing of a forest development road that provides access to a parcel of private land. The landowner has an easement for the operation and maintenance of the landowner's proportionate use of the road. The landowner offers to replace the culvert and mitigate the associated damages that have resulted from the storm, and the work requires the landowner to obtain a special use authorization for occupancy and use of National Forest System lands outside the right-of-way limits of the roadway. The fee for processing an application for this work may be waived by the authorized officer because of the public and/or agency benefits to be realized by the proposed use (that is, mitigating damages to National Forest System lands and resources by repairing the culvert crossing and adjacent lands to standards established by the Forest Service).

Paragraph (f)(1)(iv) would provide for a waiver or partial waiver of processing or monitoring fees when a proposed activity is necessary to move a facility or improvement to a new location to comply with public health and safety or environmental requirements that were not in effect at the time the authorization was issued. For example, the discovery of habitat critical to threatened or endangered species requires an authorized officer to relocate a recreation residence to another lot. The authorized officer may waive the fee to process the holder's application for relocation of the residence to another lot.

Paragraph (f)(1)(v) would provide for a waiver or partial waiver where an improvement or facility must be relocated because the land is needed by a Federal agency or federally funded project for an alternative public purpose. For example, the Forest Service decides to construct a recreational facility in a location occupied by an authorized use, such as a private access road. The new recreational facility requires relocation of a segment of the access road to preclude user conflicts between the landowner and the recreating public. The road relocation requires a new or amended special use authorization. Processing fees associated with the landowner's application for the authorization may be waived by the authorized officer.

Paragraphs (f)(1)(vi) through (f)(1)(vi)(B) would provide for waiving fees for processing an application or monitoring an authorization on behalf of a nonprofit organization, corporation, or association that is not controlled by or a subsidiary of a profit-making enterprise when studies undertaken in processing the application have a public benefit or the proposed facility or project would provide a free service to the public or to a USDA program.

Paragraph (f)(2) would require that requests for waivers be in writing and include an analysis of the applicability of the waiver criteria.

Paragraph (g) would exempt from processing and monitoring fees those applications and authorizations for noncommercial group uses and for activities otherwise prohibited by a closure order, except for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

Paragraph (h) would provide that decisions to assess a processing or monitoring fee or to determine the fee category or amount are not appealable. Paragraph (h) also would provide that a decision in response to a request for a reduction in a processing or monitoring fee is not subject to administrative appeal.

Paragraph (i)(1) would provide that the proposed schedules for processing and monitoring fees applicable to most special use applications and authorizations would be set out in the Forest Service directive system. This paragraph would specify further that the agency will keep fee schedules current with annual adjustments of fee rates in each cost category using the Implicit Price Deflator-Gross Domestic Product (IPD-GDP) index and will round up changes in the rates to the nearest dollar. Paragraphs (i)(2)(i) and (i)(2)(ii) would require the agency to review the fee rates on the 5-year anniversary of the adoption of the final rule.

6. Regulatory Requirements

Environmental Impact

This proposed rule would establish administrative fee categories and

procedures for processing special use applications and monitoring special use authorizations on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed rule would not interfere with any action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed action would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this proposed action would not have a significant economic impact on a substantial number of small entities as defined by the act because it would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. In addition, the Forest Service is proposing a flat fee of $75 for processing an application in the minimal impact processing fee category A and no monitoring fee. Most small entity application requests would fall within this flat fee category.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Moreover, the cost recovery processing and monitoring fees set out in this proposed rule may be waived for local and State government entities that waive similar fees they might otherwise assess the Forest Service. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by the Office of Management and Budget (OMB) (Number 0596–0082). Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend 36 CFR part 251 as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Amend § 251.51 by adding a definition for ''monitoring'' in alphabetical sequence to read as follows:

§ 251.51 Definitions.

* * * * *

Monitoring—Actions needed to ensure compliance with special use authorizations during construction or reconstruction. Monitoring also includes on-site inspections of facilities and authorized activities to ensure compliance with a special use authorization. Monitoring does not include routine administrative actions, such as billings or maintenance of case files.

* * * * *

3. Revise the heading for § 251.58 and add new text to the formerly reserved § 251.58 to read as follows:

§ 251.58 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's processing costs for special use applications and monitoring costs for authorized special uses. These fees are separate from any fees charged for the use and occupancy of National Forest System lands. Fee rates for recovery of processing costs are determined according to categories established for the hours of work required to process applications as set out in paragraph (c)(2) of this section.

Separate categories for recovery of monitoring costs are set out in paragraph (d)(2) of this section. As provided in paragraph (i) of this section, processing and monitoring fee rates are revised annually, set out in the Forest Service directive system, and reviewed every 5 years.

(b) *Special use applications and authorizations subject to cost recovery requirements.* Except as exempted in paragraph (g) of this section, the cost recovery requirements of this section apply in the following situations to the processing of applications and monitoring of special use authorizations issued pursuant to this subpart B.

(1) *Applications for use and occupancy that require a new special use authorization.* Fees for processing an application for a new special use authorization shall be assessed for any application that has been formally accepted by the agency on or after [the effective date of the final rule] and any application that was accepted by the agency before [the effective date of the final rule], but for which an authorization has not yet been issued, regardless of whether the application was unsolicited or solicited by the Forest Service.

(2) *Changes to existing authorizations.* Processing fees apply to proposals by holders that would require an application to amend an authorization, operating plan, or master development plan.

(3) *Applications for new authorizations prompted by termination of an existing authorization or by a change in ownership or control of the authorized improvements.* Applicants or holders proposing a new authorization prompted by termination of an existing authorization or by a change in ownership or control of the holder of the authorized improvements shall submit the information needed for the authorized officer to determine the appropriate processing and monitoring fee.

(4) *Monitoring of authorizations issued on or after [the effective date of the final rule].*

(c) *Processing fee requirements.* A processing fee is required for each application for a special use authorization as identified in paragraphs (b)(1) through (b)(3) of this section. Processing fees do not include costs incurred by the applicant in providing information, data, and documentation necessary for the authorized officer to make a decision on the proposed use or occupancy, pursuant to the provisions at § 251.54.

(1) *Basis of processing fees.* The processing fee categories A and B–I through B–IV set out in paragraphs (c)(2)(i) through (c)(2)(v) of this section are based upon the amount of time that the Forest Service spends reviewing the application, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating an applicant's technical and financial qualifications, making a decision on whether to issue the authorization, and preparing documentation of analyses, decisions, and authorizations for each application. Different processing fee schedules are set out in the agency's directive system (paragraph (i) of this section) for applications submitted under the Mineral Leasing Act (based on recovery of actual costs) and applications submitted under other authorities (based on recovery of reasonable costs). The amount of time required for processing an application and thus the processing fee depend on the complexity of the project; the amount of information that the authorized officer needs to make a decision in response to the proposed use or occupancy; and the degree to which the applicant is willing to provide this information to the agency. Processing work conducted by the applicant or a third party minimizes the time the Forest Service needs to process the application and thus reduces the processing fee. The total processing time is the total time estimated for all Forest Service personnel involved in processing an application and is estimated on a case-by-case basis to determine the fee category. A one-time, nonrefundable fee shall be assessed for processing applications in categories A and B–I through B–III. The processing fee under category B–IV set out in paragraph (c)(2)(vi) shall be established on a case-specific basis, based on the authorized officer's estimate of the agency's processing costs. Differences between the estimated processing costs and the agency's final processing costs are reconciled when the processing of the applications is complete.

(i) *Use of actual costs in determining fees for processing applications under the Mineral Leasing Act.* For applications submitted under authority of the Mineral Leasing Act (30 U.S.C. 185(l)), the authorized officer reconciles the difference between the processing fee estimated for the category B–IV application and the agency's full actual costs incurred in processing the application.

(ii) *Use of reasonable costs in determining fees for processing applications under other authorities.* For applications submitted under other authorities, the authorized officer reconciles the differences between the processing fee estimated for the category B–IV application and the agency's full reasonable costs incurred in processing the application. The applicant:

(A) May submit a written analysis of actual costs, the monetary value of the rights and privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors as applied to the full reasonable costs associated with processing the application, or

(B) May agree in writing to waive consideration of reasonable costs and pay all actual costs incurred in processing the application.

(2) *Processing fee categories.*—(i) *Category A: Minimal impact.* The Forest Service has available, or the applicant provides, the information necessary to process the application in compliance with the National Environmental Policy Act and other applicable statutes. Total estimated processing time for an application in this fee category does not exceed 8 hours for agency personnel to review the application, to decide on whether to issue an authorization for the proposed use or occupancy, and to prepare and issue the authorization.

(ii) *Category B–I: More than 8 and up to and including 24 hours.* The total estimated time in this category is more than 8 and up to and including 24 hours for Forest Service personnel to process an application.

(iii) *Category B–II: More than 24 and up to and including 36 hours.* The total estimated time in this category is more than 24 and up to and including 36 hours for Forest Service personnel to process an application.

(iv) *Category B–III: More than 36 and up to and including 50 hours.* The total estimated time in this category is more than 36 and up to and including 50 hours for Forest Service personnel to process an application.

(v) *Category B–IV: More than 50 hours.* In this category more than 50 hours are needed for Forest Service personnel to process an application. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(vi) *Category C: Master agreements.* The Forest Service and the applicant may enter into master agreements for the agency to recover processing costs associated with a particular application, a group of applications, or similar applications filed by the same applicant within a specified geographic area. A master agreement shall include:

(A) An initial cost estimate;

(B) A description of the method for periodic billing, payment, and auditing;

(C) A description of the geographical area covered by the agreement;

(D) A work plan and provisions for updating; and

(E) Specific conditions for terminating the agreement.

(3) *Competitive interest.* The authorized officer shall determine if a competitive interest exists when a proposal is submitted to use or occupy National Forest System lands.

(i) In situations where there are two or more unsolicited competitive proposals, each applicant must pay processing fees as required under this section. Processing costs that are associated with more than one application (such as the costs of printing an environmental impact statement that generally relates to all of the applications) must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, but may not exceed the full actual costs of processing applications submitted under the Mineral Leasing Act or the full reasonable costs of processing applications submitted under other authorities.

(ii) When the Forest Service solicits applications for the use and occupancy of National Forest System lands through a request for proposal, a prospectus, or similar solicitation, the agency is responsible for the costs of environmental analyses and reviews conducted before the solicitation is issued. The Forest Service shall collect a fee from each party requesting a copy of the solicitation package to cover the agency's costs for printing and mailing. The selected applicant is required to pay a processing fee that covers the Forest Service's costs to review and evaluate the selected applicant's proposal, including establishing a case file; recording data; and conducting financial reviews, additional environmental analysis, and preauthorization meetings with the applicant.

(4) *Billing and revision of processing fees.*—(i) Billing. When the Forest Service accepts a special use application, the authorized officer shall provide written notice to the applicant that the application has been formally accepted and shall include a bill for the estimated amount of the processing fee, based on one of the processing fee categories A, B–I through B–IV, or C (paragraphs (c)(2)(i) through (vi)).

(ii) *Revision of processing fees.* In processing an application, if the authorized officer discovers previously undisclosed information that necessitates a change in the processing fee, the authorized officer shall revise the processing fee based on that information before continuing with consideration of the application. Written notice of the authorized officer's processing fee determination shall be provided to the applicant, along with a bill for that fee amount.

(5) *Payment of processing fees.*—(i) Payment of the processing fee shall be due within 30 days of the bill issued pursuant to paragraph (c)(4) of this section. The processing fee must be paid before the Forest Service can initiate or, in the case of a revised fee, continue with processing an application. Payment of the processing fee by the applicant does not obligate the Forest Service to authorize the applicant's proposed use or occupancy.

(ii) When the estimated processing fee in category B–IV is lower than the full actual costs of processing an application submitted under the Mineral Leasing Act or lower than the full reasonable costs of processing an application submitted under other authorities, the applicant shall pay the difference between the estimated and the full actual or reasonable processing costs.

(6) *Refunds of processing fees.* (i) Processing fees in categories A and B–I through B–III are nonrefundable.

(ii) For category B–IV applications, an applicant whose application is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in processing the application up to and including the date the agency denies the application or receives written notice of the applicant's withdrawal. When an applicant withdraws a category B–IV application, the applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the application.

(iii) If the payment of any category B–IV processing fee exceeds the full actual costs of processing an application submitted under the Mineral Leasing Act or the full reasonable costs of processing an application submitted under other authorities, the authorized officer shall either refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(d) *Monitoring fee requirements.* The monitoring fee for an authorization shall be assessed independently of any fee assessed for processing the application for that authorization, pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization.

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fee categories B–I through B–III, authorization holders are assessed monitoring fees based on the estimated time needed for agency monitoring to ensure compliance with special use authorizations during the construction or reconstruction of facilities, plus the estimated time needed to perform on-site inspections of authorized facilities and/or operations during one calendar year. The basis for determining the appropriate monitoring fee category B–I through B–IV does not include the time spent preparing billings, maintaining case files, or performing other routine administrative actions; for categories B–1 through B–III, estimates also do not include the time expended in cumulative multi-year annual or periodic on-site inspections. Monitoring fee categories are set out in paragraphs (d)(2)(i) through (d)(2)(v) of this section. A one-time, nonrefundable fee shall be assessed for monitoring compliance with authorizations in categories B–I through B–III. The monitoring fee under category B–IV set out in paragraph (d)(2)(v) shall be established on a case-specific basis, based on the authorized officer's estimate of the agency's monitoring costs. Differences between the estimated monitoring costs and the agency's final costs shall be reconciled when monitoring of the authorization has been completed.

(i) *Use of actual costs in determining fees for monitoring authorizations issued under the Mineral Leasing Act.* For authorizations issued under the Mineral Leasing Act (30 U.S.C. 185 (l)), the authorized officer reconciles the difference between the monitoring fee estimated for the category B–IV and the agency's full actual costs incurred in monitoring the authorization.

(ii) *Use of reasonable costs in determining fees for monitoring authorizations issued under other authorities.* For authorizations issued under authorities other than the Mineral Leasing Act, the authorized officer reconciles the difference between the monitoring fee estimated for the category B–IV authorization and the agency's full reasonable costs incurred in monitoring the authorization. The applicant:

(A) May submit a written analysis of actual costs, the monetary value of the rights or privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors as applied to the full reasonable costs associated with monitoring the authorization, or

(B) May agree in writing to waive consideration of reasonable costs and

pay all actual costs incurred in monitoring the authorization.

(2) *Monitoring fee categories.* The monitoring fee categories are:

(i) *Category A: No monitoring.* This category applies to authorizations for use and occupancy that have low or no impacts on National Forest System lands and resources and for which the agency has no identifiable need or intention to conduct a site visit for resource protection purposes. No monitoring fee shall be assessed in this category.

(ii) *Category B–I: Up to and including 24 hours.* Up to and including 24 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(iii) *Category B–II: More than 24 and up to and including 36 hours.* More than 24 and up to and including 36 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(iv) *Category B–III: More than 36 and up to and including 50 hours.* More than 36 and up to and including 50 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(v) *Category B–IV: More than 50 hours.* More than 50 hours are needed for Forest Service personnel to monitor compliance with a special use authorization.

(3) *Billing and payment of monitoring fees.* (i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. The monitoring fees in categories B–I through B–III must be paid in full before or at the same time the authorization is issued. For authorizations in category B–IV, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to periodic payments.

(ii) When the estimated monitoring fee for an authorization in category B–IV is lower than the full actual costs of monitoring compliance with an authorization issued under the Mineral Leasing Act or lower than the full reasonable costs of monitoring compliance with an authorization issued under other authorities, the holder shall pay the difference in the next periodic payment or the authorized officer shall bill the holder for the difference between the estimated and the full actual or reasonable monitoring. Payment shall be due within 30 days of receipt of the bill.

(4) *Refunds of monitoring fees.* (i) Monitoring fees in categories B–I through B–III are nonrefundable.

(ii) If the holder's payment of any category B–IV estimated monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act or the full reasonable costs of monitoring an authorization under other authorities, the authorized officer either shall adjust the next periodic payment to reflect the overpayment or shall refund the excess payment to the holder.

(e) *Applicant and holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or amounts.* (1) If an applicant or holder disagrees with the processing or monitoring fee category assigned by the authorized officer or, in the case of category B–IV applications or authorizations, with the estimated dollar amount of the processing or monitoring fee, the applicant or holder may submit a written request to the authorized officer for either a change in the fee rate or, in category B–IV cases, the estimated fee amount.

(2) In the case of a disputed processing fee, such a request suspends the Forest Service's processing of the application, pending the following:

(i) Consideration of the request by the authorized officer,

(ii) Determination by the authorized officer of an appropriate processing fee, and

(iii) The applicant's advance payment of the fee.

(3) In the case of a disputed monitoring fee, a request to change the fee suspends the authorization for which the disputed fee is charged.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The applicant is a local, State, or Federal governmental entity that waives similar fees that the Forest Service might otherwise be assessed for services provided by the applicant;

(ii) A major portion of the processing costs results from issues not related to the project being proposed;

(iii) The proposal consists of a project intended to prevent or mitigate damage to real property, or to mitigate hazards or dangers to public health and safety resulting from an act of God, an act of war, or negligence of the United States.

(iv) The proposal involves moving a facility or improvement to a location outside the authorized area to comply with public health, public safety, and environmental protection laws and regulations that were not in effect at the time the authorization was issued.

(v) The application is for a new authorization to relocate facilities or improvements that must be moved because the land is needed by a Federal agency or federally funded project for an alternative public purpose.

(vi) The applicant is a nonprofit organization, corporation, or association that is not controlled by or a subsidiary of a profit-making enterprise, and:

(A) The studies undertaken in connection with processing the application have a public benefit or

(B) The proposed facility or project will provide a free service to the public or a program of the Secretary of Agriculture.

(2) An applicant's or holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraph (f)(1) of this section apply.

(g) *Exemptions from processing and monitoring fees.* No processing or monitoring fees shall be charged when the application or authorization is for a noncommercial group use as defined in § 251.51 or for activities otherwise prohibited by a closure order, except for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

(h) *Appeal of decisions.* (1) A decision to assess a processing or monitoring fee to determine the fee category or amount is not subject to administrative appeal.

(2) A decision by an authorized officer in response to a request for a reduction in a processing or monitoring fee likewise is not subject to administrative appeal.

(i) *Processing and monitoring fee schedules.* (1) The Forest Service shall maintain schedules for processing and monitoring fees in the directive system (36 CFR 200.4). These schedules shall be updated annually by adjusting the rates using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index. The Forest Service shall round up changes in the rates to the nearest dollar.

(2) Upon the 5-year anniversary of the effective date of this section [Effective Date of the Final Rule], the Forest Service shall review these rates:

(i) To determine whether they are commensurate with the actual or reasonable costs incurred by the agency in conducting the processing and monitoring activities covered by this section; and

(ii) To assess consistency with processing and monitoring fee schedules established by the United States Department of the Interior, Bureau of Land Management.

Dated: November 15, 1999.

Hilda Diaz-Soltero,

Associate Chief, Forest Service.

[FR Doc. 99–30587 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–11–P