The Proposal

The FAA proposes to amend 14 CFR part 71 by revoking Alaskan VOR Federal airway V–489 in its entirety. Revoking the Alaskan V–489 would eliminate the confusion between the Alaskan V–489 and the Domestic V–489 and resolve the automated flight plan conflicts the confusion causes with the Anchorage and New York ARTCCs. The FAA is proposing to revoke Alaskan VOR Federal airway V–489 in its entirety. The Domestic VOR Federal airway V–489 would remain unchanged.

Other existing routes would mitigate the loss of the Alaskan V–489. Currently, Alaskan the V–489 offers indirect routing between the Galena, AK, VOR/DME and the Tanana, AK, VOR/DME NAVAIDs; however, two other routes—Alaskan VOR Federal airway V–488 and Area Navigation (RNAV) route T–225—offer direct routing between these two NAVAIDs.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–489 [Remove]

* * * * *

Issued in Washington, DC.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–04780 Filed 3–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD35

Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, is proposing to amend its special use regulations to update the processing and monitoring fee schedules based on current Agency costs; to provide for recovery of costs associated with processing special use proposals, as well as applications; and to remove the exemption for commercial recreation special use applications and authorizations that involve 50 hours or less to process or monitor. In addition, the Forest Service is proposing to amend its special use regulations to increase the strict liability limit consistent with the strict liability limit established by the United States Department of the Interior, Bureau of Land Management, and to expressly provide for requiring holders of a special use authorization to obtain insurance, as needed.

DATES: Comments on this proposed rule must be received in writing by May 8, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD35, should be sent via one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments;

2. *Email: SM.FS.WO_LandStaff@usda.gov;*

3. *Mail:* Director, Lands and Realty Management Staff, 201 14th Street SW, Washington, DC 20250–1124; or

4. *Hand Delivery/Courier:* Director, Lands and Realty Management Staff, 1st Floor Southeast, 201 14th Street SW, Washington, DC 20250–1124.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific section and wording being addressed, where possible. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule at the Office of the Director, Lands and Realty Management Staff, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC 20024, on business days between 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead at 202–205–1680 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Reginal Woodruff, Acting Assistant Director, Washington Office Lands and Realty Management Staff, 202–644–5974 or *reginal.woodruff@usda.gov.* Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service at 800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

1. Background and Need

The Forest Service administers approximately 74,000 special use authorizations for use and occupancy of National Forest System (NFS) lands for a wide variety of purposes, including powerline facilities, communications facilities, outfitting and guiding, campground concessions, and four-season resorts. The activities and facilities authorized by special use authorizations contribute significantly to the national economy and the social

and economic foundation of rural communities and towns.

To obtain a special use authorization for a new use or activity, a proponent must submit a special use proposal which meets two sets of screening criteria outlined in the Agency's existing special uses regulations at 36 CFR 251.54(e)(1) and (5). If the proposal passes the screening, the proponent may submit a special use application for evaluation by the Forest Service. Per existing 36 CFR 251.54(e)(6), environmental analysis and documentation are required for special use applications, but not for special use proposals. Under the Forest Service's existing special use regulations at 36 CFR 251.58(c), the Agency may charge a processing fee for evaluating applications, but not for screening proposals. Under existing 36 CFR 251.58(d), the Agency may charge a monitoring fee for ensuring compliance with the terms of a special use authorization. Per existing 36 CFR 251.58(g)(4), minor category recreation special uses (requiring 50 hours or less to process or monitor) are exempt from cost recovery fees.

Ensuring that the Forest Service's Special Uses Program is delivered efficiently and effectively is critical to its ongoing success. The Forest Service's special uses cost recovery fees, which are expressly authorized by several Federal statutes and existing Forest Service regulations and directives, are a critical tool for achieving those goals because they cover the Agency's costs to process special use applications and monitor compliance with special use authorizations. In addition, the Agency has the statutory authority to retain and spend the cost recovery fees it collects to cover those costs.

The Forest Service based its cost recovery regulations on the United States Department of the Interior, Bureau of Land Management (BLM)'s preexisting regulations and adopted the BLM's cost recovery fee schedules, since both agencies use title V of the Federal Land Policy and Management Act (FLPMA) and section 28(l) of the Mineral Leasing Act of 1920 as a cost recovery authority and have comparable land use programs. Both agencies charge flat fees from processing and monitoring fee schedules for special use applications and authorizations that take 50 hours or less to process or monitor. The rates in the cost recovery fee schedules are based on the hourly cost of a Forest Service or BLM employee to process an application or monitor an authorization and are indexed annually based on the Implicit Price Deflator-Gross Domestic Product.

The Forest Service's existing cost recovery regulations at 36 CFR 251.58(i)(2) state that within 5 years of their effective date of March 23, 2006, the Agency must review the rates in the Agency's cost recovery fee schedules to determine whether they are commensurate with the actual costs incurred by the Agency in processing special use applications and monitoring compliance with special use authorizations and to assess consistency with the BLM's cost recovery fee schedules. However, the rates in the Forest Service's cost recovery fee schedules have not been updated other than for inflation since the Forest Service's cost recovery rule was promulgated in 2006, and the rates in the schedules no longer reflect current Agency costs.

In addition, current Forest Service cost recovery regulations do not provide for recovery of Agency processing costs for a special use application that are incurred before it is accepted, including but not limited to costs incurred in meeting with the proponent (36 CFR 251.54(a)) and screening the proponent's proposal (36 CFR 251.54(e)(1) and (5)). These costs are incurred by the Agency in performing work that is a prerequisite to submission of an application, and they are therefore properly covered by processing fees charged by the Agency. The connectivity between special use proposals and applications is further demonstrated by the fact that the same form, SF–299, is used for both special use proposals and applications. Processing costs incurred for a special use application before it is submitted can be significant, especially for complex infrastructure projects such as large-scale powerline facilities or oil and gas pipelines.

Although existing Federal statutes authorize cost recovery fees for commercial recreation special use applications and authorizations that require 50 hours or less to process or monitor, these applications and authorizations are exempt from processing and monitoring fees under current Forest Service regulations. The Agency incurs significant costs in processing and monitoring these applications and authorizations, and non-recreation special use applications and authorizations requiring 50 hours or less to process or monitor are not exempt from cost recovery fees. Without cost recovery fees for commercial recreation special use applications requiring 50 hours or less to process, the processing of some applications for these uses has been deferred. Removal of the exemption would help the Agency collect fees to support a modernized special uses authorization program to more efficiently processes increasing applications triggered by the accelerated recent growth in the outdoor recreation economy; further reduce the backlog of applications for new uses and expired authorizations for existing uses; and facilitate increased access to NFS lands. The updated cost recovery fee schedules and removal of the exemption for minor category commercial recreation special use applications would provide the Agency with sufficient resources to ensure parity in timely processing of all special use applications. The exemption from minor category cost recovery fees would remain in place for proposals, applications, and authorizations for a recreation residence for reasons explained below. The Agency's special uses budget and staff have not kept up with the increasing demand for use and occupancy of NFS lands. There were 168 million visits to NFS lands in 2020, an increase of 18 million visits from 2019. All these factors affect the Agency's ability to process special use applications and monitor compliance with special use authorizations in a manner that meets the needs and customer service expectations of applicants and authorization holders.

Under title V of FLPMA, both the Forest Service and the BLM have authority to impose strict liability in tort up to a limit specified by regulation on holders of right-of-way authorizations for high-risk uses, such as powerline facilities, oil and gas pipelines, and dams with a high hazard assessment classification. However, the strict liability limit for high-risk special uses in the Forest Service's regulations no longer aligns with the strict liability limit for right-of-way authorizations in the BLM's regulations. In 2005, the BLM raised the strict liability limit in its regulations from $1 million to $2 million and provided for adjustments of the increased limit based on inflation. The BLM's strict liability limit is currently $2,884,000 (*https://www.bl.gov/policy/im-2022-005*). The Forest Service's strict liability limit is still $1 million. In addition, the Forest Service's regulations do not expressly provide for requiring holders of a special use authorization to obtain insurance, as needed.

2. Proposed Regulatory Revisions

Updates to the Rates in the Forest Service's and BLM's Cost Recovery Fee Schedules

The Forest Service is proposing to update the rates in its cost recovery fee

schedules to reflect the Agency's current costs to process applications and monitor compliance with land use authorizations. These changes are consistent with the Agency's existing regulations at 36 CFR 251.58(i)(2)(i). There are minor discrepancies between the rates in the Forest Service's proposed cost recovery fee schedule and the rates in the BLM's proposed cost recovery fee schedule, which was published for public comment November 7th, 2022. These discrepancies will be reconciled when the two rules are finalized. Like the Forest Service's current fee schedules, the updated fee schedules would be maintained in the Agency's directive system (36 CFR 200.4, 251.58(i)(1)).

The table below displays the current and proposed rates in the processing and monitoring fee schedules for the Forest Service, which the Forest Service has coordinated with the BLM's national linear right-of-way program manager. To determine the proposed cost recovery fees for categories 1 through 4 and minor cases in category 5, an average hourly wage of $63.71 was calculated (including additions to pay and indirect costs) for processing and monitoring activities during fiscal year (FY) 2019. The average hourly wage of $63.71 was calculated by:

- Dividing the annual salary for a Federal employee at General Schedule grade 11, step 5 (the average General Schedule grade and step for a Federal employee who works on land use applications and authorizations), which is $70,537, by 2,087 hours per year (the divisor on the Office of Personnel Management's website used to compute Federal employees' hourly rates), or $33.80 per hour; and
- Multiplying $33.80 by a surcharge of 1.55 for leave (27% of annual salary) and benefits (28% of annual salary) and by a surcharge of 1.216 for indirect costs (21.6% of annual salary) and rounding to the nearest dollar.

For categories 1 through 4, the average hourly wage of $63.71 was multiplied by the midpoint of the range of hours in each category and rounded to the nearest dollar to determine the fee in that category. Thus, the proposed fee for category 1 is $63.71 × 4 = $255; the proposed fee for category 2 is $63.71 × 16 = $1,019; the proposed fee for category 3 is $63.71 × 32 = $2,039; and the proposed fee for category 4 is $63.71 × 52 = $3,313.

Cost recovery fees in category 5 (master agreements) would continue to vary based on the applicable category (the fee for category 1, 2, 3, or 4 for minor cases or full costs for major cases). Cost recovery fees in category 6 would continue to be based on full costs.

Current category 1, more than 1 hour to 8 hours, would be increased to more than 0 hours to 8 hours to reflect costs incurred by the agencies for less than an hour of work. In addition, current category 3, more than 24 hours to 36 hours, would be increased to more than 24 hours to 40 hours; current category 4, more than 36 hours to 50 hours, would be increased to more than 40 hours to 64 hours; and current category 6, more than 50 hours, would be increased to more than 64 hours. As a result, fewer cases would be subject to full cost recovery.

In addition to the request for public comment on the entire proposed rule, the Forest Service requests specific public comment on alternatives for mitigating impacts on small entities as a result of the updated cost recovery fee schedules and removal of the exemption from cost recovery fees for commercial recreation special uses.

Current cost recovery fee schedules (CY 2020)			Proposed cost recovery fee schedules			
Category	Estimated hours	Fee	Category	Estimated hours	Midpoint	Fee
1	>1 to 8	$130	1	>0 to 8	4	$255.
2	>8 to 24	$459	2	>8 to 24	16	$1,019.
3	>24 to 36	$864	3	>24 to 40	32	$2,039.
4	>36 to 50	$1,239	4	>40 to 64	N/A	$3,313.
5	varies depending on whether master agreement covers minor or major category uses.	varies depending on whether master agreement covers minor or major category uses.	5	varies depending on whether master agreement covers minor or major category uses.		varies depending on whether master agreement covers minor or major category uses.
6	>50	full costs	6	>64		full costs.

Cost Recovery Fees for Proposals

To align the Agency's cost recovery program more closely with the BLM's program, the Forest Service is proposing to expand the scope of processing fees under its existing cost recovery regulations to include costs for a special use proposal that are incurred before a special use application is submitted, including but not limited to costs incurred in meeting with the proponent (36 CFR 251.54(a)) and screening the proponent's proposal (36 CFR 251.54(e)(1) and (e)(5)). To effect this change, the Forest Service would add a reference to proposals wherever applications are mentioned in the Agency's cost recovery regulations at 36 CFR 251.58 and would revise § 251.58(c)(1)(i) to provide that separate processing fees will be charged for processing special use proposals and for processing special use applications.

Under the proposed processing fee schedule based on the updated hourly Agency employee rate, special use proponents would pay $255 to $3,313, depending on the applicable cost recovery fee category, for special use proposals requiring 64 hours or less to process. Special use proposals requiring more than 64 hours to process would be subject to cost recovery fees based on full costs. Special use applicants would pay a separate processing fee of $255 to $3,313, depending on the applicable cost recovery fee category, for special use applications requiring 64 hours or less to process. Special use applications requiring more than 64 hours to process would be subject to cost recovery fees based on full costs.

Removal of the Exemption for Minor Category Commercial Recreation Special Use

The Forest Service is proposing to remove the exemption in the Agency's existing cost recovery regulations at 36 CFR 251.58(g)(4) for commercial recreation special use applications and authorizations that require 50 hours or less to process or monitor. Under the proposed cost recovery fee schedules, processing and monitoring fees for commercial recreation special use proposals, applications, and authorizations requiring 64 hours or less to process or monitor would be $255 to $3,313, depending on the applicable cost recovery fee category. Commercial recreation special use proposals, applications, and authorizations requiring more than 64 hours to process,

or monitor would be subject to cost recovery fees based on full costs.

All applicants for special use permits, regardless of size, will receive the same level of attention and service on a first-come, first-served basis. Removing the exemption for minor category commercial recreation special use applications and authorizations in the existing rule would provide for parity by treating minor category commercial recreation special use applications and authorizations commensurate with minor category non-recreation special use applications and authorizations. In practice, the existing 50-hour exemption for recreation special use applications and authorizations results in Agency staff prioritizing non-recreation special use applications and authorizations, since costs incurred in connection with this work are covered by cost recovery fees and funding for the work is more predictable. By not implementing its cost recovery authority consistently across different types of uses, the Agency has inadvertently reduced its capacity to support a modernized special uses authorization program to more efficiently processes increasing applications triggered by the accelerated growth in the outdoor recreation economy.

Applying cost recovery fees to minor category commercial recreation special use proposals and applications would subject them to the customer service standard in the Forest Service's existing cost recovery regulations at 36 CFR 251.58(c)(7). In addition, proposals are required only for new uses. The categorical exclusions from documentation in an environmental assessment or environmental impact statement in the Forest Service's regulations implementing the National Environmental Policy Act streamline the processing of commercial recreation special use applications for new uses and modifications of existing uses, thereby further reducing processing fees for commercial recreation special uses such as outfitting and guiding and recreation events (36 CFR 220.6(d)(11) and (12)). Without cost recovery fees for minor category commercial recreation special uses, the processing of some applications for these uses has been deferred. Charging processing fees for these applications would help reduce backlogs.

Under the proposed rule, proposals, applications, and authorizations for a recreation residence requiring 64 hours or less to process or monitor would still be exempt from processing and monitoring fees. Charging a processing fee for minor category recreation residence proposals and applications would be redundant because issuance of a recreation residence special use authorization is now subject to an administrative fee of $1,200 under the Cabin Fee Act (16 U.S.C. 6214). Since recreation residences have been in place for many years, and since experience in administering this type of use has shown that continuation of the use does not cause significant environmental impacts, a new special use authorization can typically be issued without incurring extensive processing costs, such as for supplemental environmental analysis. Likewise, monitoring compliance with recreation residence special use authorizations is typically not time-intensive.

Conforming and Clarifying Revisions to the Liability Provisions in the Forest Service's Special Use Regulations

To track the BLM's regulations, the Agency is further proposing to raise the strict liability limit in tort for high-risk special uses in the Forest Service's regulations at 36 CFR 251.56(d)(2) from $1 million to the BLM's current strict liability limit of $2,884,000 and to provide for adjustments of the increased limit based on inflation.

The Forest Service is also proposing to update and clarify the liability provisions at 36 CFR 251.56(d). These liability provisions were promulgated to implement title V of FLPMA, which was enacted in 1976. Since then, other statutes with different liability standards, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.,* have been enacted. Revisions to § 251.56(d) are needed to reflect the liability standards in those subsequent statutes. These revisions are consistent with current liability clauses in the Agency's special use authorization forms.

Specifically, to clarify the scope of existing § 251.56(d) and (d)(1), the Agency is proposing to add the heading ''Damages'' to existing § 251.56(d) and renumber it as § 251.56(d)(1); add the heading ''Indemnification'' in existing § 251.56(d)(1) and renumber it as § 251.56(d)(2); and add the heading ''Strict liability in tort'' to existing § 251.56(d)(2) and renumber it as § 251.56(d)(3). In addition, the Agency is proposing to revise the indemnification provision in existing § 251.56(d)(1) to clarify that it applies to strict liability under environmental laws such as CERCLA, as well as to negligence in tort, consistent with the current liability clauses in the Agency's special use authorization forms. The Agency is proposing to revise the strict liability provision in existing § 251.56(d)(2) to clarify that the strict liability limit applies only to liability in tort, consistent with section 504(h)(2) of FLMPA (43 U.S.C. 1764(h)(2)). The Agency is proposing to add a new paragraph at § 251.56(d)(4), entitled ''Other remedies,'' to clarify that the maximum strict liability limit in tort does not apply to environmental liability, including liability under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), or any other liability that is not subject to a strict liability limit under applicable law.

The Forest Service is also proposing to revise its regulations at 36 CFR 251.56(e) to change the heading to ''Bonding and insurance'' and to expressly provide for requiring holders of a special use authorization to obtain insurance, as needed.

The proposed rule would directly support USDA's strategic goals for FY 2022 through FY 2026 by expanding opportunities for economic development and improving the quality of life in Rural Tribal communities (USDA Strategic Plan, Goal 5). By updating the cost recovery fee schedules to reflect current Agency costs, expanding the scope of processing fees to include Agency costs incurred for applications before they are submitted, and removing the 50-hour exemption from cost recovery fees for commercial recreation special uses, the proposed rule would enable the Agency to respond in a more timely manner to requests for new uses, further reduce the backlog of expired special use authorizations, and avoid deferring action on minor category commercial recreation special use applications and authorizations based on limited funds.

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Agency has developed the proposed rule consistent with E.O. 13563. Comments

are invited on all methods, assumptions, and data used for the cost-benefit analysis completed for the proposed rule, consistent with E.O. 12866 and the invitation and directions for public comment provided in the summary at the beginning of this document.

An estimated 30,695 special use authorizations for which an application was accepted from FY 2015 through FY 2020 would potentially be subject to the proposed rule. The greatest number of authorizations were for recreation special uses, followed by industry and transportation special uses, collectively accounting for almost 80% of the authorizations. The most common types of authorizations were for outfitting and guiding (use code 153) and recreation events (use code 181), while commercial filming (use code 552) and FLPMA authorizations for road rights-of-way (use code 753) are the most common types of special uses in the industry and transportation series, respectively. Together, these four types of special uses account for almost two-thirds (67%) of all authorizations that would potentially be subject to the proposed rule. The next most common types of special uses are still photography (use code 551) and water pipelines of less than 12 inches in diameter (use code 915), which account for an additional 6% of the authorizations.

A total of 22,102 entities with unique names were identified in the Forest Service's Special Uses Data System as holders of the 30,695 authorizations for which an application was accepted from FY 2015 through FY 2020. An estimated 1,596 entities are identified as households. Of the remaining 20,506 business, governmental, and organizational entities that would be subject to the proposed rule per existing authorization data, 25 out of 13,736 business entities (0.2%), 962 out of 2,603 governmental entities, and no organizational entities are assumed to be large. All large governmental entities are associated with state, Federal, or foreign governmental agencies. As a result, the potential economic impacts of the proposed rule on small entities summarized by the initial RFA analysis (see Regulatory Flexibility Act Analysis section in this document) encompasses the vast majority of potential economic impacts of the proposed rule on all entities; economic impacts on large entities are expected to be negligible under the proposed rule.

The greatest number of authorizations are estimated to be held by businesses (62% of entities), followed by organizations (19%), governmental entities (12%), and households (7%). A total of 8,662 unique entities, most of which were businesses (5,587 or 65%), paid cost recovery fees under the current cost recovery rule. Most of the entities were engaged in industry special uses (36% in the 500 series), followed by transportation special uses (27% in the 700 series). The number of unique entities making cost recovery fee payments increases from 8,662 under the current rule to 22,102 under the proposed rule. The increase in the number of entities is due to the addition of entities with authorizations that were not subject to cost recovery fees under current conditions but would be subject to cost recovery fees under the proposed rule.

Annual cost recovery fees under the proposed rule are therefore estimated to range from $3.5 million to $5.4 million (2020). After accounting for annual cost recovery fees under baseline conditions ($780,000), increases in annual cost recovery fees under the proposed rule are projected to be $2.7 million to $4.7 million. The overall magnitude of this increase is a function of the large number of authorizations that would be subject to the proposed rule (*e.g.,* 30,695 special use authorizations for which applications were accepted between FY 2015 and FY 2020 have been identified as being potentially subject to the proposed rule) and relatively large increases in minor cost recovery category fee rates of 100% to 170%, depending on the cost recovery fee category. Each of the three drivers of change in costs associated with the proposed rule (*i.e.,* increases in fixed rates for minor category cost recovery fees; charging cost recovery fees for processing proposals; and removing the exemption from cost recovery fees for commercial recreation special use applications and authorizations requiring 50 hours or less to process or monitor) plays a significant role in the estimated increases in annual cost recovery fees collected. If the proposed processing fees for proposals were eliminated, annual cost increases under the proposed rule might decline by 38%. Annual cost increases might decline by a similar value of 40% if the cost recovery fee exemption for minor category commercial recreation special use applications and authorizations were retained. Annual cost increases are estimated to decline by about 66% if the existing cost recovery fee rates for minor categories were retained (*i.e.,* if the rates were not increased). These percentages do not sum to 100 because the drivers of change in cost recovery fees associated with the proposed rule are not exclusive. The present value of increases in annual cost recovery fees under the proposed rule over a 15-year period is projected to range from $26 million to $45 million, assuming annual cost savings remain constant over that time and a discount rate of 7%, and $33 million to $57 million using a discount rate of 3%. There is a small subset of applications in category 5 or 6 under baseline conditions that would be subject to processing fees for proposals under the proposed rule and that have not been accounted for in the quantified cost results. However, proposals associated with applications that would be assigned to cost recovery category 5 or 6 would account for only approximately 2% to 3% of the estimated costs of the proposed rule, a small fraction when compared to the range of quantified costs described above that vary by as much as 74%. The greatest number of entities would be engaged in recreation special uses (45% in the 100 series) under the proposed rule, compared to industry special uses under baseline conditions, due to new cost recovery fees for minor category commercial recreation special uses.

Most, if not all, of the increases in cost recovery fees resulting from compliance with new cost recovery fee requirements under the proposed rule are transfer payments from the Federal Government to authorization holders, and therefore are not analyzed as costs in the cost-benefit analysis. Given the nature of transfer effects, absent this rulemaking, the foregone fees would instead be paid by taxpayers through budget appropriations from general revenue, and the savings in cost recovery fees to industry would otherwise be used by industry.

By (i) updating the cost recovery fee schedules to reflect current Agency costs; (ii) expanding the scope of processing fees to include Agency costs incurred for applications before they are submitted; and (iii) removing the 50-hour exemption from cost recovery fees for commercial recreation special uses, the proposed rule would establish regulatory conditions for charging cost recovery fees and generating funds necessary to modernize the special uses program. A modernized program would enhance the Agency's ability to provide opportunities more expeditious and equitable opportunities for meeting public demand for goods and services from special use authorizations by:

- Improving customer service and facilitating rural prosperity and economic development (USDA's strategic goals for FY 2018 through FY 2022);
- Enabling the Agency to respond more quickly to requests for new uses;

- Reducing the backlog of expired special use authorizations; and
- Avoiding deferring action on commercial recreation special use applications and authorizations requiring 50 hours or less to process or monitor due to limited availability of appropriated funds and increasing demand for recreational services.

The benefits derived from revisions to the liability provisions (36 CFR 251.56(d) and (e)) under the proposed rule include greater programmatic transparency, consistency with the BLM, and making it easier for the United States government (the public) to recover damages for high-risk uses of NFS lands by raising the strict liability limit in tort from $1 million to $2,884,000. Revisions to § 251.56(e) providing for requiring holders of a special use authorization to obtain insurance, as needed, are consistent with current insurance clauses in the Agency's special use authorization forms. These revisions therefore constitute a codification of current Agency policy and practice regarding insurance requirements. Changes in costs and benefits are assumed to be negligible and are not evaluated in connection with these revisions.

The benefits of the proposed rule are expected to exceed its costs, given (i) most or all increases in cost recovery fees are transfer payments; (ii) the relatively low economic impacts of the proposed rule on most authorization proponents and holders; (iii) the proposed rule's potential to enhance the Agency's efficiency and consistency in processing special use proposals and applications as well as monitoring compliance with special use authorizations; and (iv) the proposed rule's potential to facilitate the Agency's ability to respond to increasing demand for all types of special uses in a more equitable and expeditious manner and to reduce the backlog of expired authorizations using cost recovery fee revenues generated under the proposed rule.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this proposed rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

This proposed rule would revise the Forest Service's cost recovery regulations to update the Forest Service's processing and monitoring fee schedules based on current BLM and Forest Service costs; to provide for charging cost recovery fees for processing special use proposals; to remove the exemption from cost recovery fees for commercial recreation special uses involving 50 hours or less to process or monitor; to increase the maximum strict liability limit in tort for high-risk special uses; and to provide expressly for requiring holders of a special use authorization to obtain insurance, as needed. Forest Service regulations at 36 CFR 220.6(d)(2) establish a categorical exclusion for ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions,'' which therefore do not require the preparation of an environmental assessment or impact statement. 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 Flexibility Act Analysis

Consistent with the Regulatory Flexibility Act (RFA) and E.O. 13272, a threshold RFA analysis is conducted to determine if a proposed rule would have a significant economic impact on a substantial number of small entities. If the threshold RFA analysis supports a determination that a proposed rule would not have a significant economic impact on a substantial number of small entities, an RFA analysis is not needed. If such a determination cannot be supported, an initial RFA analysis is completed, followed by a final RFA analysis reflecting public comment, to be completed as part of the final rulemaking. Comments are invited on methods, assumptions, and data used to estimate the number of small entities potentially affected by the proposed rule, as well as potential economic impacts on small entities from the proposed rule, consistent with E.O. 13272 and the invitation and directions for public comment provided in the summary at the beginning of this document.

To measure the economic impacts of a proposed rule that would impose fees on small entities, annual projected changes in fees for those entities are divided by their estimated annual gross receipts or expenditures.

The RFA analysis results are presented separately for small governmental entities, small organizations, and small businesses.

Small Governmental Entities

An estimated 1,641 of the 2,603 governmental entities that held an authorization for which an application was accepted from FY 2015 through FY 2020 were identified as small based on the holder (Federal, State, and foreign governmental entities were assumed to be large and were excluded from the threshold RFA analysis). For context, the Forest Service has identified 2,116 counties located within economic impact areas or zones around National Forest units. An estimated 1,400 of the 2,116 counties were determined to have populations of less than 50,000 and therefore were classified as small. The 1,641 governmental entities determined to be small in this analysis could constitute a substantial number when considered in the context of the population of small counties, towns, or communities concentrated in local areas influenced by NFS lands.

Projected increases in cost recovery fees for small governmental entities, annualized at 3% over the term of each authorization, average $215 to $528 per year across small governmental entities and range as high as $1,432 to $1,782 per year for recreation special use authorizations. Annualized increases in cost recovery fees for small governmental entities under the proposed rule are projected to be less than 0.5% of annual salary and wage expenditures for small governmental entities, even assuming higher estimates of annualized cost recovery fee increases ($1,782) and lower estimates of annual governmental expenses (*e.g.,* $400,000). Although numbers of affected small governmental entities could constitute a substantial number of entities in local areas influenced by NFS lands, these results suggest that the proposed rule would not have a significant economic impact on small governmental entities.

Small Organizations

There are an estimated 4,167 unique small organizations with an authorization for which an application was accepted from FY 2015 through FY 2020 that could be subject to the proposed rule. A little more than half of these small organizations (2,199 or 53%) hold an authorization for a recreation special use.

Increases in annualized fees for small organizations average $160 to $497 per year across all types of small organizations and types of uses, and averages range as high as $449 to $1,265 per year for organizations that hold a recreation special use authorization. Annualized increases in cost recovery

fees for small organizations with a recreation special use authorization (53% or 2,199 out of 4,167 small organizations) average 1% to 2.5% of annual gross receipts. Average economic impacts range from less than 0.1% to 2.3% of annual gross receipts for small organizations with authorizations for other types of special uses (47% or 1,959 out of 4,167 organizations), with the exception of a small number of organizations (categorized as associations) (0.2% or 9 out of 4,167) with authorizations for multiple types of special uses where impacts are estimated to average 3.7%.

The estimated number of small organizations (4,167) potentially impacted (particularly in relation to recreation special uses) and the possibility that they might be concentrated in local areas influenced by NFS lands suggest that a substantial number of small organizations could be affected by the proposed rule. However, with the exception of economic impacts of 3.7% for a small number of associations (9 out of 4,167), low potential economic impacts, averaging 0.1% to 2.5% of annual gross receipts for small organizations of all types across all types of uses, suggest that the proposed rule would not have a significant economic impact on small organizations.

Small Businesses

A total of 13,711 small business entities had an authorization for which an application was accepted from FY 2015 through FY 2020 that could be impacted by the proposed rule.

Average annualized cost recovery fee increases are projected to range from $329 to $1,160 for small businesses across different types of special uses. Potential economic impact results indicate that average annualized changes in cost recovery fees under the proposed rule could range from 0.3% to 2.3% of annual gross receipts for small businesses earning $0 to $100,000 in gross receipts per year (with a median of $50,000) for 3,705 (27%) of 13,711 small businesses that could be affected by the proposed rule. The 3,705 small businesses are estimated to account for 0.1% of all U.S. small businesses in the relevant North American Industry Classification System (NAICS) industries. Average economic impacts are estimated to be 0.5% or less of annual gross receipts for the remaining 10,006 (73%) of the 13,711 potentially affected small businesses, which have annual gross receipts greater than $100,000.

The number of small businesses that would be subject to the proposed rule is projected to be less than 0.1% to 15% of all U.S. small businesses in the NAICS industries correlating to the types of special uses conducted by small businesses under their authorizations. On a regional level, in economic impact areas influenced by NFS lands, a substantial number of small businesses conducting recreation special uses could be affected by the proposed rule. Recreation and industry are the only use series in which the number or percentage of businesses as well as potential economic impacts are relatively high compared to those in the other use series. Projected economic impacts average 2.1% to 2.3% for small businesses in the smallest receipt category ($0 to $100,000 in gross receipts per year) with authorizations for recreation and industry special uses. The number of small businesses affected (620 to 1,000) is estimated to be 1.6% to 1.8% of U.S. small businesses in NAICS industries representing businesses with authorizations for those special uses.

The proposed rule could affect a substantial number of small businesses with a recreation special use authorization (6,473) concentrated in local areas influenced by NFS lands, particularly in the case of small businesses conducting outfitting and guiding. However, potential economic impacts are estimated to average less than 0.1% to 2.1% of annual gross receipts for small businesses with recreation special use authorizations. Economic impacts are estimated to range from 1% to 6% of annual gross receipts for small businesses conducting outfitting and guiding or recreation events in the 90th percentile (upper bound) estimates of increases in fees for authorizations for outfitting and guiding or recreational events, depending on the applicable annual receipt category. Impacts in the 90th percentile are projected to occur for 10% of small businesses conducting outfitting and guiding or recreation events (*i.e.,* 63 of 627 small business conducting outfitting and guiding and 25 of 252 small businesses conducting recreation events). For small businesses with an industry special use authorization (in the 500 series), there could be approximately 600 still photography and 2,500 commercial filming small businesses that would be subject to the proposed rule, and approximately 200 still photography small businesses and 800 commercial filming small businesses might fall in the smallest receipt category ($0 to $100,000 in gross receipts per year), where the potential for economic impacts would be highest. These small businesses would account for 5% to 6% of U.S. small businesses in the corresponding NAICS industries. However, average annualized changes in cost recovery fees are projected to be 2.4% of annual gross receipts for these small businesses, suggesting that the proposed rule would not have a significant economic impact on a substantial number of small businesses conducting still photography or commercial filming. Economic impacts are estimated to range from 1% to 6% of annual gross receipts for small businesses conducting still photography or commercial filming in the 90th percentile (upper bound), depending on the applicable annual receipt category. Impacts in the 90th percentile are projected to occur for 10% of affected small businesses conducting still photography or commercial filming or 20 of 200 small businesses conducting still photography and 80 of 800 small businesses conducting commercial filming, accounting for 0.5% to 0.6% of the U.S. population of small businesses in those industries.

Of the 553 small business that could be affected by the proposed rule with authorizations for communications special uses, 109 are projected to have annual gross receipts of $0 to $100,000 and economic impacts averaging 0.4% of annual gross receipts. Economic impacts are estimated to average 0.1% or less of annual gross receipts for the remaining 444 small businesses with communications special use authorizations. The Agency has published a separate proposed rule that would require an annual programmatic administrative fee for communications special use authorizations. Economic impacts for the proposed annual programmatic administrative fee are estimated to range from 3% to 7% of annual gross receipts for small businesses with annual receipts of $0 to $100,000. The cumulative economic impacts of the pending proposed programmatic administrative fee and the proposed special uses cost recovery fees are estimated to range from 3.4% to 7.4% of annual gross receipts for the 109 small businesses in the $0 to $100,000 annual gross receipt category with authorizations for communications special uses. Economic impacts of the proposed programmatic administrative fee are estimated to be 0.7% to 1.4% of annual gross receipts for small businesses with annual gross receipts of greater than $100,000 and to increase only marginally to 0.8% to 1.5% of annual gross receipts when taking into account the proposed special uses cost recovery fees.

Of the 449 small businesses with a research and culture special use authorization that would be subject to the proposed cost recovery rule, 132 are projected to be in the smallest annual gross receipt category (with annual gross receipts of $0 to $100,000), with economic impacts averaging 2.3% of annual gross receipts. The 132 small business are estimated to be 0.5% of U.S. small businesses in the corresponding NAICS industries. Economic impacts average 0.5% or less of annual gross receipts for the remaining 317 small businesses with research and culture special use authorizations. The proposed rule could affect a significant number of small businesses with an energy authorization (228 or 15% of total U.S. small firms in relevant NAICS industries). However, the proposed rule would not have a significant economic impact on these small businesses. Only 13 small businesses with energy special use authorizations are estimated to experience an economic impact of 0.4% of annual gross receipts, while economic impacts are projected to be 0.1% or less of annual gross receipts for the remaining 215 small businesses with energy authorizations. The initial RFA analysis results for small businesses with authorizations in other series (agriculture, community services, transportation, and water) indicate that the proposed rule would not have a significant economic impact on a substantial number of these small businesses.

Although the number of small businesses that could be affected by the proposed rule could be substantial in local areas influenced by NFS lands, particularly in the case of outfitting and guiding small businesses, the potential economic impacts of the proposed rule would be low or insignificant in most cases. Potential economic impacts could be high for small subsets of small businesses, ranging up to 6% of annual gross receipts for 63 businesses with outfitting and guiding permits, 25 businesses with recreation event permits, 20 businesses with still photography permits, and 80 businesses with commercial filming permits. Cumulative economic impacts are estimated to range as high as 3.4% to 7.4% of annual gross receipts for 109 small businesses with authorizations for communications special uses when accounting for the additional economic impacts of a pending proposed rule that would require a programmatic administrative fee for communications special use authorizations.

Based on this analysis of small entities, a substantial number of small governmental entities and small organizations and most small businesses are not expected to experience a significant economic impact from the proposed rule. As noted above, small subsets of small businesses might experience increases in annualized cost recovery fees that range up to 6% of annual gross receipts. In the case of small businesses seeking authorizations for commercial recreation special uses, the proposed rule is expected to generate additional revenue to improve processing of applications and issuance of authorizations for these special uses, thereby generating opportunities for small businesses to generate revenue to help offset, in whole or in part, increases in annualized cost recovery fees under the proposed rule.

For this proposed rule, the Agency could not conclude that costs to small subsets of small businesses are sufficiently low or that net benefits of the proposed rule are sufficiently high to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Instead, the Agency has prepared an initial RFA analysis of the economic impacts of the proposed rule on small entities that seek or hold a special use authorization for use and occupancy of NFS lands. Comments are invited on methods, assumptions, and data used to estimate the number of small entities potentially affected by the proposed rule, as well as potential economic impacts on small entities from the proposed rule, consistent with E.O. 13272 and the invitation and directions for public comment provided in the summary at the beginning of this document.

Section 603(c) of the RFA lists the types of alternatives that must be considered for mitigating economic impacts on small entities. The Agency has considered and is accepting public comment on the following alternatives consistent with that requirement:

1. *Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities.* Providing for a two-year phase-in of the proposed rule for small entities that could experience a significant economic impact has been identified as a legally and programmatically feasible option to mitigate impacts on small entities. This alternative would provide for phasing in the increased cost recovery fee rates, processing fees for proposals, and processing and monitoring fees for minor category commercial recreation special uses for particular types of uses (*e.g.,* outfitting and guiding) to mitigate impacts on types of small entities potentially subject to a significant economic impact from the proposed rule. In the first year, the increased costs would apply to actions in minor categories 1 and 2. In the second year, the increased costs would apply to actions in minor categories 1, 2, and 3. In the third year, the increased costs would apply to actions in all minor categories (1 through 4). Selection of this alternative could result in continued delay in processing or failure to process applications and issue authorizations for commercial recreation special uses during the phase-in period, in contrast to the more efficient processing of applications and issuance of authorizations for non-recreation special uses. While small entities seeking a commercial recreation special use authorization might avoid the cost of processing fees, those entities could experience losses in benefits (*e.g.,* revenue) resulting from processing delays.

2. *Clarification, consolidation, or simplification of compliance and reporting requirements for small entities.* This option is already addressed by the proposed rule to the extent it would clarify the rates in the cost recovery fee schedules and would expand the cases subject to a flat cost recovery fee, rather than full cost recovery under major cost recovery categories. The proposed revisions would provide for more current and effective cost recovery, which would translate into better customer service. Existing compliance and reporting requirements associated with processing proposals and applications and monitoring compliance with special use authorizations are necessary to meet the Agency's statutory mission and mandates. The proposed rule would not alter reporting requirements for special use authorizations. Cost recovery fees would not be routinely, much less annually, incurred under the proposed rule. Processing fees would be incurred only when a proposal and application are submitted; a proposal would be submitted only once for each use, and an application for an existing use would typically be subject to a CE, which would greatly minimize the Agency's costs and any associated processing fee. Monitoring fees would typically be charged only for construction, reconstruction, and site rehabilitation. Most of the monitoring activities conducted by the Agency would not be subject to cost recovery fees.

3. *Use of performance rather than design standards.* This option does not apply to this proposed rule, which involves recovery of Agency costs

incurred in providing benefits to identifiable recipients (*i.e.,* proponents and holders of a special use authorization). The proposed rule would revise the Agency's existing cost recovery regulations to provide for charging cost recovery fees commensurate with the Agency's current costs. To the extent performance is an issue, it is addressed in the Agency's existing cost recovery regulations, which establish a customer service standard in connection with processing fees.

4. *Exemption for some or all small entities from the proposed rule, in whole or in part.* Exempting some or all small entities from cost recovery fees in whole or in part is not expected to be feasible. These exemptions would be difficult to implement programmatically and would be inconsistent with the statutory authorities providing for recovery of the Agency's costs incurred in conferring discrete benefits to identifiable recipients, including small entities. Equally important, these exemptions would be inconsistent with the purposes of the proposed rule, which include revising the cost recovery rates commensurate with the Agency's current costs, charging processing fees for proposals, and removing the existing exemption from cost recovery fees for commercial recreation special use applications and authorizations in minor categories.

The public is invited to suggest other alternatives to mitigate economic impacts on small entities that the Agency has not considered that are consistent with the Agency's statutory cost recovery authority and the purposes of the proposed rule.

Federalism

The Agency has considered this proposed rule under the requirements of E.O. 13132, *Federalism.* The Agency has determined that the proposed 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 Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has concluded that this proposed rule would not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.* Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Forest Service has determined that this proposed rule, if finalized, may have substantial direct effects on one or more Tribes and that affording Tribes an opportunity for consultation is therefore warranted. The Forest Service is committed to full compliance with the provisions of Executive Order 13175 and will undertake, through the USDA Office of Tribal Relations, Tribal consultation following publication of this proposed rule and before proceeding with a final rulemaking.

Environmental Justice

The Agency has considered the proposed rule under the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The Forest Service has determined that the proposed rule is not expected to result in disproportionately high and adverse impacts on minority or low-income populations or the exclusion of minority and low-income populations from meaningful involvement in decision-making.

No Takings Implications

The Agency has analyzed this proposed rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protect Property Rights.* The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

Energy Effects

The Agency has reviewed this proposed rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Agency has determined that this proposed rule would not constitute a significant energy action as defined in E.O. 13211.

Civil Justice Reform

The Forest Service has analyzed this proposed rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this proposed rule or that 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), the Agency has assessed the effects of this proposed rule on State, Tribal, and local governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, Tribal, or local 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

The proposed rule does not contain any recordkeeping 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 and therefore imposes no additional paperwork burden on the public. 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, Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 251 of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

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

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

■ 2. In § 251.56, revise paragraphs (d) and (e) to read as follows.

§ 251.56 Terms and conditions.

* * * * *

(d) *Liability*—(1) *Damages.* Holders shall pay the United States in accordance with applicable Federal and State law for all injury, loss, or damage, including fire suppression costs or other

costs associated with rehabilitation or restoration of natural resources, the United States may incur in accordance with existing Federal and State law in connection with the holders' use or occupancy.

(2) *Indemnification.* Holders shall indemnify, defend, and hold harmless the United States for any judgments, liabilities, claims, damages, and costs, including fire suppression costs or other costs associated with rehabilitation or restoration of natural resources, arising from the holders' past, present, and future acts or omissions in connection with their use or occupancy.

(3) *Strict liability in tort.* Holders of a special use authorization for high-risk use and occupancy, including but not limited to powerline facilities, oil and gas pipelines, and dams with a high hazard assessment classification, shall be strictly liable in tort to the United States for all injury, loss, or damage, including fire suppression costs or other costs associated with rehabilitation or restoration of natural resources, arising from the holders' past, present, and future acts or omissions in connection with their use or occupancy, provided that the maximum strict liability in tort shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, and shall not exceed $2,884,000 for any one occurrence, as adjusted annually as prescribed below. The Forest Service shall update the maximum $2,884,000 strict liability limit in tort annually by using the annual rate of change from July to July in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI–U), rounded to the nearest $1,000. The maximum strict liability limit in tort does not apply to environmental liability, including liability under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), or any other liability that is not subject to a strict liability limit under applicable law. Liability in tort for injury, loss, or damage, including fire suppression costs or other costs associated with rehabilitation or restoration of natural resources, exceeding the specified maximum strict liability in tort shall be determined by the laws governing ordinary negligence of the jurisdiction in which the injury, loss, or damage occurred.

(4) *Other remedies.* The provisions of paragraph (d) of this section do not limit or preclude other remedies that may be available to the United States under applicable law.

(e) *Bonding and insurance.* An authorized officer may require the holder of a special use authorization for other than a noncommercial group use to obtain insurance that includes the United States as an additional insured and to furnish a bond or other security acceptable to the authorized officer to secure any of the obligations to the United States imposed by the terms of the authorization or by any applicable law, regulation, or order.

* * * * *

■ 3. In § 251.58, revise paragraphs (a), (b) introductory text, (b)(1), (c), and (e) through (g) to read as follows:

§ 251.58 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess separate fees to recover the agency's processing costs for special use proposals and special use applications and to recover the agency's monitoring costs for special use authorizations. Proponents, applicants, and holders shall submit sufficient information for the authorized officer to estimate the number of hours required to process their proposals or applications or monitor their authorizations. Cost recovery fees are separate from any fees charged for the use and occupancy of National Forest System lands.

(b) *Special use proposals, applications, and authorizations subject to cost recovery requirements.* Except as exempted in paragraphs (g)(1) through (4) of this section, the cost recovery requirements of this section apply in the following situations to the processing of special use proposals and applications and monitoring of special use authorizations issued pursuant to this subpart:

(1) *Proposals and applications for use and occupancy that require a new special use authorization.* Proposals and applications for a new special use authorization shall be subject to processing fees.

* * * * *

(c) *Processing fee requirements.* A processing fee is required for each proposal and application for or agency action to issue a special use authorization as identified in paragraphs (b)(1) through (3) of this section. Processing fees do not include costs incurred by the proponent or 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 in § 251.54.

(1) *Basis for processing fees.* The processing fee categories 1 through 6 set out in paragraphs (c)(2)(i) through (vi) of this section are based upon the costs that the Forest Service incurs in meeting with the proponent or applicant, reviewing the proposal or application, conducting initial and second-level screening for the proposal, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating a proponent's or 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. The processing fee for a proposal or an application shall be based only on costs necessary for processing that proposal or application. ''Necessary for'' means that but for the proposal or application, the costs would not have been incurred and that the costs cover only those activities without which the proposal or application cannot be processed. The processing fee shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the proposal or application being processed. For example, the processing fee shall not include costs for capacity studies, use allocation decisions, energy corridor or communications site planning, or biological studies that address species diversity, unless they are necessary for the proposal or application. Proportional costs for analyses, such as capacity studies, that are necessary for the proposal or application may be included in the processing fee. The costs incurred for processing a proposal or an application, and thus the processing fee, depend on the complexity of the proposed use and occupancy; the amount of information that is necessary for the authorized officer's decision in response to the proposed use and occupancy; and the degree to which the proponent or applicant can provide this information to the agency. Processing work conducted by the applicant or a third party contracted by the applicant minimizes the costs the Forest Service will incur to process the proposal or application, and thus reduces the processing fee. The total processing time is the total time estimated for all Forest Service personnel involved in processing a proposal or an application and is estimated case by case to determine the fee category for a proposal or an application.

(i) *Processing fee determinations.* Separate processing fees will be charged

for processing proposals and for processing applications. The applicable fee rate for processing proposals and applications in minor categories 1 through 4 (paragraphs (c)(2)(i) through (iv) of this section) shall be assessed from a schedule. The processing fee for proposals and applications in category 5, which may be either minor or major, shall be established in the master agreement (paragraph (c)(2)(v) of this section). For major category 5 (paragraph (c)(2)(v) of this section) and category 6 (paragraph (c)(2)(vi) of this section) cases, the authorized officer shall estimate the agency's full actual processing costs. The estimated processing costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (c)(5)(ii) and (iii) and (c)(6)(ii) and (iii) of this section.

(ii) *Reduction in processing fees for certain category 6 proposals and applications.* For category 6 proposals and applications submitted under authorities other than the Mineral Leasing Act, the proponent or applicant:

(A) May request a reduction of the processing fee based upon the proponent's or applicant's written analysis of actual costs, the monetary value of the rights and privileges sought, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the agency processing involved, and other factors relevant to determining the reasonableness of the costs. The agency will determine whether the estimate of full actual costs should be reduced based upon this analysis and will notify the proponent or applicant in writing of this determination; or

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

(2) *Processing fee categories*—(i) *Category 1: Minimal Impact: More than 0 and up to and including 8 hours.* The total estimated time in this minor category is more than 0 and up to and including 8 hours for Forest Service personnel to process a proposal or an application.

(ii) *Category 2: More than 8 and up to and including 24 hours.* The total estimated time in this minor category is more than 8 and up to and including 24 hours for Forest Service personnel to process a proposal or an application.

(iii) *Category 3: More than 24 and up to and including 40 hours.* The total estimated time in this minor category is more than 24 and up to and including 40 hours for Forest Service personnel to process a proposal or an application.

(iv) *Category 4: More than 40 and up to and including 64 hours.* The total estimated time in this minor category is more than 40 and up to and including 64 hours for Forest Service personnel to process a proposal or an application.

(v) *Category 5: Master agreements.* The Forest Service and the applicant may enter into master agreements for the agency to recover processing costs associated with a particular proposal or application, a group of proposals or applications, or similar proposals or applications for a specified geographic area. This category is minor if 64 hours or less are needed for Forest Service personnel to process a proposal or an application and major if more than 64 hours are needed. In signing a master agreement for a major category proposal or application submitted under authorities other than the Mineral Leasing Act, a proponent or an applicant waives the right to request a reduction of the processing fee based upon the reasonableness factors enumerated in paragraph (c)(1)(ii)(A) of this section. A master agreement shall at a minimum include:

(A) The fee category or estimated processing costs;

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

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

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

(E) Provisions for reconciling differences between estimated and final processing costs; and

(F) Provisions for terminating the agreement.

(vi) *Category 6: More than 64 hours.* In this major category more than 64 hours are needed for Forest Service personnel to process a proposal or an application. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(3) *Multiple proposals or applications other than those covered by master agreements (category 5)*—(i) *Unsolicited proposals or applications where there is no competitive interest.* Processing costs that are incurred in processing more than one of these proposals or applications (such as the cost of environmental analysis or printing an environmental impact statement that relates to all the applications) must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by each proponent or applicant.

(ii) *Unsolicited proposals where competitive interest exists.* When one or more unsolicited proposals are submitted and the authorized officer determines that competitive interest exists, the agency shall issue a prospectus. All proposals submitted pursuant to that solicitation shall be processed as applications. The applicants are responsible for the costs of environmental analyses that are necessary for their applications and that are conducted prior to issuance of the prospectus. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and shall include costs such as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation.

(iii) *Solicited applications.* When the Forest Service solicits applications through the issuance of a prospectus on its own initiative, rather than in response to an unsolicited proposal or proposals, the agency is responsible for the cost of environmental analyses conducted prior to issuance of the prospectus. All proposals submitted pursuant to that solicitation shall be processed as applications. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and shall include costs such as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation.

(4) *Billing and revision of processing fees*—(i) *Billing.* The authorized officer shall provide written notice to a proponent or applicant when a proposal or application has been received. The authorized officer shall not bill the proponent or applicant a processing fee until the agency is prepared to process the proposal or application.

(ii) *Revision of processing fees.* Minor category processing fees shall not be

reclassified into a higher minor category once the processing fee category has been determined. However, if the authorized officer discovers previously undisclosed information that necessitates changing a minor category processing fee to a major category processing fee, the authorized officer shall notify the proponent or applicant in writing of the conditions prompting a change in the processing fee category before continuing with processing the proposal or application. The proponent or applicant may accept the revised processing fee category and pay the difference between the previous and revised processing fee categories; withdraw the proposal or application; revise the project to lower the processing costs; or request review of the disputed fee as provided in paragraphs (e)(1) through (4) of this section.

(5) *Payment of processing fees.* (i) Payment of a processing fee shall be due within 30 days of issuance of a bill for the fee, 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 a proposal or an application. Payment of the processing fee by the proponent or applicant does not obligate the Forest Service to authorize the proponent's or applicant's proposed use and occupancy.

(ii) For category 5 cases, when the estimated processing costs are lower than the final processing costs for proposals or applications covered by a master agreement, the proponent or applicant shall pay the difference between the estimated and final processing costs.

(iii) For category 6 cases, when the estimated processing fee is lower than the full actual costs of processing a proposal or an application submitted under the Mineral Leasing Act, or lower than the full reasonable costs (when the proponent or applicant has not waived payment of reasonable costs) of processing a proposal or an application submitted under other authorities, the proponent or applicant shall pay the difference between the estimated and full actual or reasonable processing costs.

(6) *Refunds of processing fees.* (i) Processing fees in minor categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the processing fee exceeds the agency's final processing costs for the proposals or applications covered by a master agreement, the authorized officer either shall refund the excess payment to the proponent or applicant or, at the proponent's or applicant's request, shall credit it towards monitoring fees due.

(iii) For category 6 cases, if payment of the processing fee exceeds the full actual costs of processing a proposal or an application submitted under the Mineral Leasing Act, or the full reasonable costs (when the proponent or applicant has not waived payment of reasonable costs) of processing a proposal or an application submitted under other authorities, the authorized officer either shall refund the excess payment to the proponent or applicant or, at the proponent's or applicant's request, shall credit it towards monitoring fees due.

(iv) For major category 5 and category 6 proposals and applications, a proponent or an applicant whose proposal or application is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in processing the proposal or application up to and including the date the agency rejects the proposal, denies the application, or receives written notice of the proponent's or applicant's withdrawal. When a proponent or an applicant withdraws a major category 5 or category 6 proposal or application, the proponent or applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the proposal or application.

(7) *Customer service standards.* The Forest Service shall endeavor to make a decision on a proposal or an application that falls into minor processing category 1, 2, 3, or 4 and, in the case of an application, that is subject to a categorical exclusion pursuant to the National Environmental Policy Act, within 60 calendar days from the date of receipt of the processing fee. If the proposal or application cannot be processed within the 60-day period, then prior to the 30th calendar day of the 60-day period, the authorized officer shall notify the proponent or applicant in writing of the reason why the proposal or application cannot be processed within the 60-day period and shall provide the proponent or applicant with a projected date when the agency plans to complete processing the proposal or application. For all other proposals and applications, including all applications that require an environmental assessment or an environmental impact statement, the authorized officer shall, within 60 calendar days of acceptance of the proposal or application, notify the proponent or applicant in writing of the anticipated steps that will be needed to process the proposal or application. These customer service standards do not apply to proposals or applications that are subject to a waiver of or are exempt from cost recovery fees under (f) or (g) of this section.

* * * * *

(e) *Proponent, applicant, or holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated costs.* (1) If a proponent, an applicant, or a holder disagrees with the processing or monitoring fee category assigned by the authorized officer for a minor category or, in the case of a major processing or monitoring category, with the estimated dollar amount of the processing or monitoring costs, the proponent, applicant, or holder may submit a written request before the disputed fee is due for substitution of an alternative fee category or alternative estimated costs to the superior of the authorized officer who determined the fee category or estimated costs. The proponent, applicant, or holder must provide documentation that supports the alternative fee category or estimated costs.

(2) In the case of a disputed processing fee:

(i) If the proponent or applicant pays the full disputed processing fee, the authorized officer shall continue to process the proposal or application during the superior officer's review of the disputed fee, unless the proponent or applicant requests that the processing cease.

(ii) If the proponent or applicant fails to pay the full disputed processing fee, the authorized officer shall suspend further processing of the proposal or application pending the superior officer's determination of an appropriate processing fee and the proponent's or applicant's payment of that fee.

(3) In the case of a disputed monitoring fee:

(i) If the applicant or holder pays the full disputed monitoring fee, the authorized officer shall issue the authorization or allow the use and occupancy to continue during the superior officer's review of the disputed fee, unless the applicant or holder elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

(ii) If the applicant or holder fails to pay the full disputed monitoring fee, the authorized officer shall not issue the applicant a new authorization or shall suspend the holder's existing authorization in whole or in part pending the superior officer's determination of an appropriate monitoring fee and the applicant's or holder's payment of that fee.

(4) The superior officer shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the proponent, applicant, or holder. The superior officer's decision is the final level of administrative review. The dispute shall be decided in favor of the proponent, applicant, or holder if the superior officer does not respond to the written request within 30 days of receipt.

(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 proponent, applicant, or holder is a local, State, or Federal governmental entity that does not or would not charge processing or monitoring fees for comparable services the proponent, applicant, or holder provides or would provide to the Forest Service;

(ii) A major portion of the processing costs results from issues not related to the proposed use or activity;

(iii) The proposal or application is for a proposed use or activity that is 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 nature, an act of war, or negligence of the United States;

(iv) The application is for a new special use authorization to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the existing special use authorization was issued;

(v) The application is for a new special use authorization to relocate facilities or activities because the land is needed by a Federal agency or for a Federally funded project for an alternative public purpose; or

(vi) The proposed use or activity will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

(2) A proponent's, an applicant's, or a 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 paragraphs (f)(1)(i) through (vi) of this section apply.

(g) *Exemptions from processing or monitoring fees.* No processing or monitoring fees shall be charged when the proposal, application, or authorization is for a:

(1) Noncommercial group use as defined in § 251.51;

(2) Water system authorized by section 501(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c));

(3) Use or activity conducted by a Federal agency that is not authorized under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1772); the Mineral Leasing Act of 1920 (30 U.S.C. 185); the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d); or

(4) Recreation residence as defined in the Forest Service's directive system (36 CFR 200.4) and requires 64 hours or less for Forest Service personnel to process or monitor.

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Dated: February 22, 2023.

Meryl Harrell,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 2023–04180 Filed 3–8–23; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 02–6, 96–45, 97–21; FCC 23–10; FR ID 128840]

In the Matter of Schools and Libraries Universal Support Mechanism, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on ways to further improve E-Rate program rules and encourage greater Tribal participation in the E-Rate program. The Commission also seeks comment on whether there are other small or rural non-Tribal applicants that face similar barriers that impact their equitable access to the E-Rate program.

DATES: Comments are due on or before April 24, 2023, and reply comments are due on or before May 23, 2023.

ADDRESSES: All filings should refer to CC Docket Nos. 02–6, 96–45, and 97–21. Comments may be filed by paper or by using the Federal Communications Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically by using the internet by accessing ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Federal Communications Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.
- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

FOR FURTHER INFORMATION CONTACT: Johnny Roddy, Wireline Competition Bureau, (202) 418–7400 or by email at *Johnny.Roddy@fcc.gov.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket Nos. 02–6, 96–45, and 97–21; FCC 23–10, adopted February 16, 2023 and released on February 17, 2023. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the