vessels must depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in the port. Vessels with COTPs permission to remain in the port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE.* The port is closed to all inbound vessel traffic except unless specifically authorized by the COTP. All oceangoing vessels greater than 500-gross tons without approved applications to remain in port shall depart designated ports within the Sector San Juan COTP zone at this time. Final mooring arrangements for vessels remaining in port. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act.

(4) *Port Condition ZULU.* The port is closed to all vessel traffic except unless specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering. except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Waivers maybe granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Regulation for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector San Juan COTP zone will result in the prohibition of facility operations and vessel traffic transiting or remaining in the affected port.

(6) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the COTP via telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(7) Coast Guard Sector San Juan will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

Dated: June 8, 2023.

Robert M. Pirone,

Captain, U.S. Coast Guard, Alternate Captain of the Port, San Juan.

[FR Doc. 2023–12642 Filed 6–12–23; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AD47

Minerals Cost Recovery

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service proposes regulations to impose new fees to recover the agency's costs for processing proposals related to mineral activity on National Forest System lands. This would include costs for actions such as environmental review and analysis, monitoring authorized activities, and other processing-related costs. The proposed rule would establish a fee schedule based on categories of Federal hours needed to complete processing for most mineral-related actions and charge a fixed fee for low-volume mineral material disposals. This proposal to recover costs is based on statutory authority, which authorizes Federal agencies to charge for work it performs to provide a service or benefit to identifiable entities and on policy guidance from the Office of Management and Budget (OMB) which directs charging these fees. This rulemaking also responds to a Government Accountability Office (GAO) recommendation made in an audit report that the Forest Service recover costs for processing locatable mineral plans of operation. The Forest Service invites written comments on this proposed rule and its supporting economic analysis of impacts to small businesses.

DATES: Comments concerning this proposed rule must be received by August 14, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD47, 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_MGMStaff@usda.gov;*

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

4. *Hand Delivery/Courier:* Director, Minerals and Geology Management Staff, 1st Floor South East, 201 14th Street SW, Washington, DC 20250–1124.

Please confine written comments to issues pertinent to the proposed rule and the supporting economic analysis; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. 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, Minerals and Geology Management, 201 14th Street SW, 1st Floor Southeast, Sidney R. Yates Federal Building, Washington, DC, on business days between 8:30 a.m. and 4:00 p.m. Visitors are encouraged to call ahead at 202–205–1680 to facilitate entry into the building. Comments may also be viewed on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 0596–AD47'' and click the ''Search'' button.

FOR FURTHER INFORMATION CONTACT: Tim Abing, Affiliate to the Minerals and Geology Management Staff at *timothy.abing@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Rule

The Forest Service proposes regulations to recover its costs for processing applications and other proposals related to mineral activity conducted on National Forest System (NFS) lands. The proposed rule would

also recover agency costs for monitoring compliance with construction and reclamation requirements for authorizations issued by the Forest Service pursuant to 36 CFR part 228. Each year the Forest Service processes nearly 3,000 applications and other proposals to use and occupy NFS lands to prospect, explore, develop, and remove mineral resources. NFS lands currently host approximately 138 authorized locatable mineral operations, 47 operations associated with coal and other non-energy solid leasable minerals, 5,490 Federal oil and gas leases, 3,170 active oil and gas wells, 11 geothermal leases, and 4,155 community pits and common use areas for disposal of mineral materials. Each of these activities was subject to a case-specific review, analysis, and decision process before approval and implementation, requiring substantial Forest Service time and expense.

The Forest Service responds to requests from businesses and individuals to prospect, explore, develop, and/or dispose of mineral resources on NFS lands. Depending on the statutory classification of the mineral resource involved, these requests fall into three distinct program areas: locatable minerals, leasable minerals, and mineral materials. The action the Forest Service takes to process these requests varies as does the associated commitment of agency resources to complete their processing. Examples of mineral-related agency actions include approving locatable mineral plans of operation or oil and gas surface use plans of operation, issuing contracts or permits to dispose of mineral materials, and providing surface management agency responses to mineral leases and operating plan proposals that are filed with other government agencies such as the Bureau of Land Management.

Governing statutes related to minerals management on NFS lands include the General Mining Law of 1872; the Mineral Resources on Weeks Act Lands of March 4, 1917; the Mineral Leasing Act of 1920, as amended; the Bankhead-Jones Farm Tenant Act of 1937; the Mineral Leasing Act of 1947 for Acquired Lands; the Materials Act of 1947; the Surface Resources Act of 1955; the Geothermal Steam Act of 1970; the Federal Coal Leasing Amendments Act of 1975; the Surface Mining Control and Reclamation Act of 1977; the Federal Onshore Oil & Gas Leasing Reform Act of 1987; and the Energy Policy Act of 2005. The basic authority of the Secretary of Agriculture to regulate the use and occupancy of NFS lands is the Organic Administration Act of 1897 (16 U.S.C. 551).

Some of the aforementioned statutes provide the Forest Service with direct authority to authorize certain mineral-related activity (such as approving the surface use plan of operations for oil and gas drilling permits under the Federal Onshore Oil and Gas Leasing Reform Act). Other statutes provide that the Forest Service consent, concur, or make recommendations for mineral leases and operating plans filed with another government agency (such as, consent to the Bureau of Land Management [BLM] for coal leasing under the Federal Coal Leasing Amendments Act, and concurring to Federal mine plan decisions made by the Office of Surface Mining Reclamation and Enforcement [OSMRE]). The BLM, which manages federally owned minerals on all Federal lands, including NFS lands, has existing regulations for cost recovery for its minerals program. However, BLM's regulations do not include provisions for the Forest Service to recover its costs for actions where there are joint processing responsibilities.

Requirements of the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, and Executive Order Nos. 11998 (Floodplains) and 11990 (Wetlands) also bear directly on costs the Forest Service incurs in processing mineral-related actions. These statutory authorities and directives require the Forest Service to complete varying levels of analysis and document the effects of proposed activities on environmental, cultural, and historical resources. Oftentimes, specific consultation with agencies overseeing the resource protected under these statutes must also occur. The practical effect of these requirements lengthens the time required and increases the cost associated with processing mineral-related actions. The time and cost impacts weigh on Forest Service staff and financial resources, on proponents seeking authorization for new activity, and on holders of existing authorizations. These impacts are a principal factor in the development of this proposed cost recovery rule.

At current levels of appropriated funding, staffing, and other resources to manage its minerals program, the Forest Service finds it increasingly difficult to provide timely reviews and evaluation of mineral-related proposals and to monitor activity to ensure it is conducted in compliance with applicable requirements. Under current circumstances, the Forest Service is challenged to deliver efficient and effective customer service in its minerals program to meet the needs of proponents and the public.

Some proponents voluntarily fund agency costs and hire third-party contractors to conduct required environmental reviews to help speed the approval process for a particular proposed use. However, without the appropriate regulatory authority, the Forest Service has no means to require a proponent to pay for the agency's costs to process a proposal or monitor compliance with an authorization.

The Independent Offices Appropriations Act of 1952 (IOAA), as amended (31 U.S.C. 9701) authorizes Federal agencies to prescribe regulations to charge fees to recover the government's costs for providing special benefits to recipients beyond those that accrue to the general public.

The IOAA requires agencies to promulgate regulations to charge proponents for the cost of processing documents which the Forest Service is proposing to do through this rulemaking. Charges imposed under the authority of the IOAA must be fair and equitable and take into consideration the costs to the Federal Government, value to the recipient, public interest served, and other pertinent factors. The IOAA acknowledges that other statutes may prohibit or impose limitations on fees that the government may charge.

Government-wide policy for implementing the cost recovery provisions of the IOAA are described in the Office of Management and Budget (OMB) Circular No. A–25 entitled ''User Charges.'' The general Federal policy is that a charge will be assessed against each identifiable recipient for special benefits beyond those received by the general public. Unless prohibited by statute or other authority, the Circular states that agencies must impose a charge against each identifiable recipient that recovers the full cost to the agency of providing the service. Section 7 of the Circular directs that user charges be instituted through promulgation of agency regulations. Adoption of this proposed rule would comply with the requirements of OMB Circular No. A–25.

In 2016, the Government Accountability Office (GAO) completed a review to assess the Forest Service and BLM processing of mine plans of operation for hardrock minerals under the 1872 Mining Law (GAO–16–165). The GAO recommended the Forest Service issue a rule that establishes a fee structure for hardrock mine plan processing activities and request

authority from Congress to retain any fees it collects. Adoption of this proposed rule would implement GAO's recommendation.

Additionally, Section 40206 of the 2021 Bipartisan Infrastructure Law (Pub. L. 117–58) specified that cost recovery is to be among options considered by the Secretaries of Agriculture and Interior to ensure adequate staffing of federal entities responsible for processing authorizations related to critical mineral activities on Federal land.

This rulemaking is needed for the Forest Service to comply with those statutory requirements and Federal policy as well as to implement GAO's recommendation. The proposed rule aims to increase capacity and improve customer service in the Forest Service minerals program.

The Forest Service expects to use the processing and monitoring fees paid by proponents to fund the costs the agency incurs in the review and decision-making process responding to mineral-related proposals to use and occupy NFS lands; to prepare and issue mineral authorizations in those cases where the agency approves the proposed use and occupancy; to provide required responses to mineral proposals filed with other government agencies; and to monitor compliance with the terms and conditions of mineral authorizations. The recovery of costs from applicants and holders would provide the Forest Service with additional resources to deliver more efficient and timely responses to requests for agency action. Similarly, cost recovery also would increase the Forest Service's ability to monitor on-site activities to adequately protect NFS lands and resources, in accordance with the terms and conditions of mineral authorizations. Upon final adoption, this rule would not provide the agency with the authority to retain and spend any of the funds collected. The agency's retention and expenditure of collected fees pursuant to this rule would need to be authorized by Congress. The Forest Service will seek such authority in conjunction with final adoption of this proposed rule. If Congress does not authorize retention authority, the funds received under this rule will be deposited in the General Treasury.

The proposed rule would require a proponent or holder to pay a processing fee and, where applicable, a monitoring fee. The rule creates a schedule of six categories where fees for a submitted proposal would be based on agency work hours involved to complete processing or to monitor an authorization. The proposed rule would also establish a fixed fee for low-volume mineral material disposals. In determining the appropriate processing fee, the Forest Service will include time needed to collect all data and information needed for the agency to: (1) fully describe the proposed use; (2) identify, evaluate, and prepare documentation of the environmental effects of the proposed use; and (3) make a decision or provide a required response to the proposal. Proponents would be encouraged to fulfill documentation aspects to the extent feasible from sources other than limited agency resources to maintain the agency's ability to process proposals in as efficient and timely a manner as possible. Processing tasks completed by the proponent, or a third party would reduce the amount of time the Forest Service spends on each case, thereby reducing the processing fee assessed to the proponent.

The cost recovery provisions of this proposed rule would apply to requests and applications as specified in the rule and received on or after the effective date of a final rule. The Forest Service may propose future rulemaking to recover other mineral program costs that are recoverable under the IOAA.

The proposed rule would give the authorized Forest Service officer discretion to waive all or part of processing fees in certain circumstances, such as for disposal of mineral materials to a government entity for a public works project.

The proposed rule would specify that a separate monitoring fee would not be charged for proposals subject to the fixed fee. Given the high annual number and minimal impact of these type of disposals, the Forest Service proposes to not collect a monitoring fee in the interest of administrative efficiency.

For authorizations issued by the Forest Service on or after the effective date of a final rule, this rule proposes to charge fees for monitoring compliance during the construction and reclamation phases of the authorization. The agency's experience monitoring over 4,600 mineral operations annually indicates that the cost to process a mineral proposal frequently has no relationship to the cost of monitoring the activity after an authorization is issued. Proposals that can be time consuming to process may require minimal time (or cost) for the agency to monitor. Alternately, an action requiring little time to process may require more time to monitor due to sensitive resource concerns or compliance issues. Therefore, the Forest Service proposes that the processing fee category and amount for each case would be determined independently of the monitoring fee category and amount; that is, the processing fee charged for non-fixed fee authorizations would not dictate the corresponding monitoring fee category or amount.

The processing fee for the fixed fee proposal must be paid at the time the proposal is submitted to the Forest Service. For category 1 through 4 proposals, the authorized officer would determine the processing fee based on the processing fee schedule. For category 5 and 6 proposals, the processing fee would be estimated on a case-by-case basis. The fee for Category 1 through 6 proposals would be due before the Forest Service begins processing the proposal. If the non-fixed fee proposal is approved by the authorized officer, a monitoring fee for the authorization would be the rate for the category determined appropriate for the activity (or estimated on a case-specific basis for category 5 and 6 authorizations). Payment of the monitoring fee would be due at the time the authorization is issued. Payment of monitoring fees for a multiyear project may be established in an agreement between the Forest Service and the operator.

The Forest Service would publish the cost recovery fees for the fee category schedule in the agency's directive system in Forest Service Handbook (FSH), Minerals and Geology Handbook 2809.15 (which can be accessed via the internet at the agency's directives home page: *https://www.fs.usda.gov/im/directives/*). Fees would be adjusted annually for inflation.

The fees collected by the Forest Service under this rule would be in addition to fees that may be due to another government agency for a specific proposal.

Description of Proposed Rule by Section

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

New Subpart F

Proposed § 228.200 Authority. This section identifies the IOAA as the statutory authority for the cost recovery rule.

Proposed § 228.201 Definitions. This section defines terms that have a unique meaning within the context of the proposed rule. The terms defined in this section allow for simplifying references to the variety of terms used throughout mineral regulations associated with the proposed rule.

Proposed § 228.202 Cost recovery. This section implements the authority provided for in the IOAA and OMB

Circular No. A–25 that directs Federal agencies to recover costs for services provided to identifiable recipients beyond those accruing to the general public. This section specifies requirements for the agency to recover costs to process mineral-related proposals and to monitor authorized mineral activities. The proposed rule would not apply to agency costs associated with administering reserved and outstanding mineral rights activities that may be exercised as a property right without an authorization from the Forest Service or under the rules found at 36 CFR 251.15.

Paragraph (a) directs the Forest Service to assess fees to recover the agency's processing and monitoring costs for mineral proposals pursuant to the regulations of Part 228. Fees may either be fixed or determined from one of six processing categories. By definition, a proposal would include applications, plans, or other requests associated with mineral resources on NFS lands, including those proposals filed with another government entity which require input from the Forest Service. It would establish that cost recovery fees payable to the Forest Service under the rule would be separate from fees charged by other government entities. An example would be the fee charged by the Forest Service to process a surface use plan of operations for an oil and gas drilling permit would be separate from, and in addition to, the permit fee the BLM collects for processing the associated Application for Permit to Drill. The provisions of the rule do not apply to or supersede written agreements to recover processing costs executed by the Forest Service and a proponent prior to the effective date of the rule.

Paragraph (b) states that cost recovery requirements of Part 228 would apply to processing proposals received on or after the effective date of the rule (paragraph (b)(1)) and to monitoring of authorizations issued or amended under Part 228 on or after the effective date of the rule (paragraph (b)(2)).

Paragraph (c) outlines processing fee requirements in paragraphs (1) through (7). The introductory paragraph would require a fee for each proposal identified in paragraph (b) processed by the Forest Service and states that processing fees would not include costs incurred by the proponent to prepare information and documentation needed by the authorized officer to take action. The paragraph would also describe the basis for fixed fee proposals as well as for processing category proposals. Six processing categories would be established in this section and are based on the agency work hours needed to process the proposal, as shown in Table 1 below.

TABLE 1—PROPOSED PROCESSING CATEGORIES

Processing category	Federal work hours
1	Up to 8.
2	Over 8 up to 24.
3	Over 24 up to 40.
4	Over 40 up to 64.
5 (Master Agreements).	Varies.
6	Over 64.

Paragraphs (c)(3)(ii)(A) through (F) establish that the Forest Service and the proponent could enter into master agreements (category 5) to recover processing costs associated with a single proposal, group of proposals, or similar proposals filed by the same proponent within a specified geographic area. Each proposal covered by a master agreement would be assigned its own processing fee category and rate. Master agreements may be considered an efficient alternative to case-specific estimates of processing time, particularly when a proponent routinely submits proposals or has several authorizations within a defined area or administrative unit.

Processing fees for category 5 (master agreements) and category 6 could be assessed and collected in periodic installments. The authorized officer would estimate the processing fees for category 5 and 6 proposals on a case-specific basis and would reconcile the fees based on the ultimate full cost to process. Upon the agency's completion of all processing tasks for category 5 and 6 proposals, any remaining balance of the processing fee would be either refunded to the proponent or credited towards monitoring fee assessments. When the estimated processing fee for category 5 and 6 proposals is lower than the agency's costs for processing a proposal, the proponent would be obligated to pay the difference between the estimated costs and the agency's full costs. For all categories, a proponent's payment of the processing fee would neither ensure nor imply agency approval of the proposed use or occupancy. The proponent would be liable for the agency's processing costs regardless of whether the proposal is subsequently denied by the agency or withdrawn by the proponent.

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

Paragraph (c)(1) provides the basis for processing fees. Paragraph (c)(1)(i) states that fixed fees are based on a projected cost to process proposals that are identified as being subject to a fixed fee. In its agency directives, the Forest Service would specify that fixed fees would apply to mineral material disposals of 25 cubic yards or less from community pits or common use areas. This action was identified for a fixed fee in the interest of administrative efficiency because the Forest Service processes many of these minimal-impact actions annually. The fixed fee amount was based on an assumed processing cost that the Forest Service believes is a reasonable estimate of agency effort expended on these actions. The agency will continue to collect and analyze cost data to assess the reasonableness of the proposed fixed fee.

Paragraph (c)(1)(ii) states that fees for the six processing categories would be based on costs incurred by the agency to formally acknowledge receipt and initial review of a proposal, conduct environmental reviews and analyses, meet with the proponent, and prepare documentation and permits, as applicable. These costs would be specific to a project and would not include the cost of agency services or benefits that are programmatic in nature or benefit the general public. This paragraph would emphasize that processing work conducted by the proponent, or a third party contracted by the proponent, minimizes the costs the Forest Service will incur and thus would reduce the processing fee.

Paragraph (c)(2) provides the Forest Service Handbook reference where the

amounts for the fixed fee action and categories 1 through 4 would be published. Categories 5 and 6 fees are determined on a case-by-case basis.

Table 2 below displays the fees proposed to be implemented under the rule. The table shows proposed fees for both the fixed fee action and for each of the six processing categories.

TABLE 2—PROPOSED MINERAL PROGRAM COST RECOVERY FEES

Action/category	Proposed fee
Low Volume (≤25 cubic yards) Mineral Material Disposal.	$65.
Category 1	$271.
Category 2	$1,084.
Category 3	$2,168.
Category 4	$3,522.
Category 5 (Master Agreements).	Case-by-case; Determined by agreement.
Category 6	Case-by-case.

The proposed fee for low-volume mineral material disposals is based on two Federal work hours of processing time multiplied by an hourly rate of $32.57 per hour. The hourly rate used in the fee calculation includes salary, leave, benefits, and indirect costs. The hourly rate uses the 2019 salary for a Rest-of-US (RUS) General Services (GS) 5, Step 05 Federal employee which is assumed to be representative of the grade level of an employee typically processing low volume mineral material disposals from existing community pits and common use areas.

To determine the proposed cost recovery fee for categories 1 through 4, an average hourly wage was multiplied by the midpoint of the work hour range. The proposed fees are based on an average rate of $67.74 per hour of federal work time. This is the same average hourly wage (which includes pay additives and indirect costs) that was used in BLM's proposed revised fee rates for its right-of-way program published in the **Federal Register** on November 7, 2022 (87 FR 67306). The BLM's processing and monitoring cost data is presumed to reasonably represent costs incurred by the Forest Service within its minerals program because the work involves the same types of tasks at both agencies and is generally performed by employees at similar GS and experience levels. Given the recurring need for minerals projects to sometimes require a Forest Service special use authorization or a BLM right-of-way grant, it is important to have a consistent fee structure across agencies and programs. For this reason, the Forest Service proposes cost recovery fee rates for minerals that will mirror BLM's proposed revised fee rates for its right-of-way program published in the **Federal Register** on November 7, 2022 (87 FR 67306).

Paragraph (c)(3) describes criteria specific to processing fee categories for proposals not subject to a fixed fee. Paragraph (c)(3)(i) presents a table of the six processing fee categories and the associated Federal work hours involved. Paragraph (c)(3)(ii) provides for the use of master agreements as an instrument to recover costs associated with a proposal, a group of proposals, or similar proposals for a specified geographic area. Paragraphs (c)(3)(ii)(A) through (F) contain the minimum content requirements for a master agreement. An example of where a master agreement may be used is in recovering costs for processing an oil and gas Master Development Plan (§ 228.105(a)(1)) for multiple proposed wells. Paragraph (c)(3)(iii) describes requirements for category 6 processing actions which include determining fees on a case-by-case basis and the Forest Service and the proponent entering into a written agreement that consists of a work plan and a financial plan.

Paragraph (c)(4) states that processing costs incurred for processing multiple proposals must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, among the proponents involved.

Paragraph (c)(5) describes procedures for how fees for proposals assigned to a processing category would be billed and revised. Paragraph (c)(5)(i) states that the authorized officer would issue the proponent a bill for the processing fee when the Forest Service is ready to process the action. Paragraph (c)(5)(ii) states that once a proposal is assigned to a processing category, it would not be reclassified into a higher category unless previously undisclosed information is discovered. Should that happen, the authorized officer would notify the proponent in writing before continuing with processing the proposal. The proponent has the option to accept the change, revise the proposal, withdraw the proposal, or invoke the rule's fee dispute procedure at § 220(e).

Paragraph (c)(6) through (6)(iii) provide direction on paying processing fees. The agency would not initiate processing a proposal until the prescribed fee was paid in full. The fee for a proposal subject to a fixed fee is due when the proposal is filed with the Forest Service. For all other proposals, payment of the processing fee is due within 30 days after the Forest Service issues a bill for the fee. When estimated costs are lower than the final processing costs for category 5 and 6 proposals, paragraphs (c)(6)(ii) and (iii) require proponents to pay the difference.

Paragraph (c)(7) addresses refunds of processing fees. Paragraphs (c)(7)(i) through (7)(iv) would specify that that processing fees for fixed fee proposals and for categories 1 through 4 are nonrefundable and would describe under what conditions the processing fee for category 5 and 6 proposals would be refunded to a proponent or credited towards monitoring fees due. If a proponent withdraws a category 5 or 6 proposal, the proponent is responsible for any costs incurred by the Forest Service in terminating processing of the proposal.

Paragraphs (d) through (5)(iii) establish procedures for the Forest Service to recover costs incurred to monitor compliance for authorizations issued by the Forest Service under the 36 CFR part 228 regulations. Monitoring would be conducted at a frequency commensurate with the work necessary to ensure compliance with the surface use requirements of an authorization.

Paragraph (d)(1) describes the basis for monitoring fees. For monitoring fees in categories 1 through 4, holders of approved operating plans are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the approval and rehabilitation of the construction or reconstruction site. Category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the surface use terms and conditions during all phases of the authorized activity, including but not limited to monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

Paragraph (d)(2) states monitoring fees for authorizations assigned to categories 1 through 4 would be assessed from a fee schedule published in the Forest Service directives. Monitoring fees for category 5 and category 6 authorizations would be determined on a case-by-case basis.

Paragraph (d)(3)(i) displays a table of the six monitoring categories and the range of Federal work hours for each. Paragraph (d)(3)(ii) provides

requirements for the use of master agreements for monitoring and paragraph (d)(3)(iii) provides requirements for category 6 cost recovery cases. The monitoring fee categories use the same categories and Federal work hours as the processing fee categories.

Paragraphs (d)(4)(i) through (iii) contain requirements for billing and paying monitoring fees. Paragraph (d)(4)(i) specifies that monitoring fees for categories 1 through 4 must be paid in full at the time the authorization is issued. Estimated monitoring fees for categories 5 and 6 must also be paid in full when the authorization is issued unless the authorized officer and the proponent agree in writing to a payment schedule. Paragraph (d)(4)(ii) provides guidance for reconciling category 5 cases when the estimated monitoring costs are lower than the final actual monitoring costs and similarly, paragraph (d)(4)(iii) provides guidance for reconciling monitoring costs for category 6 cases.

Paragraphs (d)(5)(i) through (iii) contain requirements for refunds of monitoring fees. Paragraph (d)(5)(i) states that monitoring fees for categories 1 through 4 are nonrefundable. Paragraph (d)(5)(ii) addresses reconciling monitoring fee overpayments for category 5 cases and paragraph (d)(5)(iii) addresses reconciling overpayments for category 6 cases.

Paragraphs (e)(1) through (5) address proponent disputes of processing or monitoring fee assessments. Paragraph (e)(1) states that the assessment for a fixed fee case is not subject to review under this section. The fixed fee assessment would be established as a part of this rulemaking process and would not subject to adjustment by an administrative review process once the rule is finalized. Paragraph (e)(2) allows proponents who dispute the processing or monitoring fee category assigned by the authorized officer for category 1 through 4 cases or with the estimate of processing or monitoring costs for category 5 and 6 cases. The paragraph states that before the disputed fee is due, the proponent may submit a written request, along with supporting documentation, to the immediate supervisor of the authorized officer who made the determination for the case. Paragraphs (e)(3)(i) and (ii) provide that if the proponent pays the disputed processing fee, processing of the case would continue while the fee is pending the supervisory officer's review; and if the proponent chooses not to pay the disputed fee, the Forest Service will suspend processing the case until the fee dispute is resolved. Paragraphs (e)(4)(i) and (ii) provide that if the proponent pays a disputed monitoring fee, the authorization shall be issued or use and occupancy allowed to continue while the fee is pending the supervisory officer's review; and if the proponent chooses not to pay the disputed fee, the Forest Service will not issue the authorization in question or suspend the activity until the fee dispute is resolved. Paragraph (e)(5) directs the immediate supervisor of the authorized officer to render a decision on a disputed fee within 30 days of receipt of the proponent's written request, otherwise the dispute will be decided in favor of the proponent.

Paragraphs (f)(1) through (2) identify the circumstances under which the authorized officer may waive all or part of a processing or monitoring fee. Waiving all or any part of a fee pursuant to these criteria would be discretionary on the part of the authorized officer and would not be an entitlement of the proponent or holder.

Paragraph (f)(1)(i) provides for waiving fees for a local, State, Federal or tribal governmental entity that waives similar fees for comparable, like-kind service provided to the Forest Service.

Paragraph (f)(1)(ii) allows the authorized officer to waive part of the processing fee when a major portion of the costs results from issues not related to the actual project being proposed. For example, a proposal for a mineral material sale is requested from a community pit that lacks sufficient material to meet the request. The pit in question is expected to experience continued demand for material from the public and local government, so the Forest Service would like to analyze a larger area for a pit expansion. Although the analysis is triggered by the new proposal, the purpose of the analysis is only minimally attributable to the proponent's proposed use and occupancy. Thus, it is inappropriate to assess that proponent for the total cost of such an analysis.

Paragraph (f)(1)(iii) provides for a waiver or partial waiver of processing or monitoring fees when a proposed project is intended to prevent or mitigate damage to real property or to mitigate hazards to public health and safety resulting from an act of God, an act of war, or negligence of the United States. For example, a storm destroys a culvert crossing of a road that was constructed to provide access to an oil and gas well located within a federal lease on NFS land. The operator offers to replace the culvert and mitigate the associated damages that have resulted from the storm, and the repair work requires disturbance beyond what was authorized in the original surface use plan of operations. The fee for processing a proposal for this work may be waived by the authorized officer because of the public and/or agency benefits to be realized by the proposed use (that is, mitigating damages to National Forest System lands and resources by repairing the culvert crossing and adjacent lands to standards established by the Forest Service).

Paragraph (f)(1)(iv) provides for a waiver or partial waiver of processing or monitoring fees when a proposed activity is necessary to move a facility or improvement to a new location to comply with public health and safety or environmental requirements that were not in effect at the time the authorization was issued. For example, the discovery of habitat critical to threatened or endangered species requires an authorized officer to relocate a permitted access road for a mineral project. The authorized officer may waive the fee to process the holder's proposal for relocation of the road to avoid its use within the critical habitat.

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

Paragraph (f)(1)(vi) provides for waiving fees for processing a proposal or monitoring an authorization when studies undertaken in processing the proposal have a public benefit or the proposed facility or project would provide a free service to the public or to a USDA program.

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

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

Paragraph (h)(1) provides that the proposed schedules for processing and monitoring fees applicable to mineral proposals and authorizations would be set out in the Forest Service directive system. This paragraph specifies that the agency will keep fee schedules current with annual adjustments of fee rates in each cost category using the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index and will round up changes in the rates to the nearest dollar. The Forest Service will strive to update fee schedules on a calendar year basis. Fee schedules will remain in effect until updates are published in agency directives. Because the fee recalculations per the IPD–GPD are simply based on a mathematical formula, the Forest Service will update the fees in the directive without opportunity for notice and comment. In accordance with OMB Circular A–25, the Forest Service will review user charges biennially to assure whether existing charges need adjusting to reflect unanticipated changes in costs or market values.

Proposed § 228.203 Information collection requirements. This section states that information collected under Subpart F is required by law or already approved for use under existing information collection approvals for Part 228.

Proposed Changes to the Authority Listing for Part 228

The authority listing would be expanded to include references to other statutes that mandate action by the Forest Service as surface management agency in responding to mineral proposals as well as a reference to the IOAA.

Proposed Changes to Subpart A—Locatable Minerals

Proposed 228.4 Plan of Operations—Notice of Intent—Requirements

Paragraph (a)(3) would be revised to state that an operator submitting a plan of operations must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Paragraph (e) would be revised to state that for each proposed modification to an approved plan of operations an operator must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Proposed 228.5 Plan of Operations—Approval

Paragraph (a)(1) would be revised to state that approval of a plan of operations is conditioned upon the operator paying a monitoring fee as determined by the authorized officer in accordance with the cost recovery requirements of Subpart F.

Proposed Changes to Subpart B—Leasable Minerals

Proposed 228.20 Cost Recovery Fees. New paragraphs (a) through (c) would be added to this Subpart to require cost recovery for costs incurred by the Forest Service to provide responses required by law or regulation for leasable mineral proposals. Paragraph (a) would be specific to recovery of agency costs for responding to lease, exploration license, and prospecting permit proposals for coal and other solid leasable minerals which are filed with the BLM. Paragraphs (a)(1) through (4) would prescribe the process for recovering agency costs when the successful bidder for a competitively bid lease is someone other than the proponent. The process described is like that utilized by the BLM for competitive leasing of these resources. Paragraph (b) would require recovering costs for the Forest Service to review proposals to conduct operations for leasable minerals other than oil and gas. This would include applications required to be filed with the Forest Service under special legislation and those filed with the BLM, OSMRE or a State entity with delegated coal program authority. Oil and gas activity is excluded from this section because it is addressed in proposed changes to Subpart E. Paragraph (c) would direct the authorized officer to charge a monitoring fee for leasable mineral authorizations issued by the Forest Service and required by law, but not addressed elsewhere in Part 228, such as approval of surface use for geothermal activity within the Newberry National Volcanic Monument.

Proposed 228.21 Information Collection. This new section would be added to address information collection requirements of 5 CFR part 1320.

Proposed Changes to Subpart C—Disposal of Mineral Materials

Proposed 228.43 Policy governing disposal. Paragraph (b) would be revised to state that the authorized officer will assess a fee to cover the cost of issuing and administering a contract or permit in accordance with the cost recovery requirements of Subpart F.

Proposed 228.51 Fees and bonding. This section would be retitled to include the topic ''fees'' and add a new paragraph (a) to include authority for recovery of costs for mineral material permits and contracts in accordance with the cost recovery requirements of Subpart F.

Proposed 228.58 Competitive Sales. A new paragraph (b) would be added to establish requirements for competitive mineral material sales. The Forest Service proposes to utilize a cost recovery process that mimics that used by the BLM for its competitive mineral material sales to account for situations where the successful bidder for a sale is someone other than the applicant. Existing paragraphs in the section would be redesignated to accommodate the addition of the new paragraph. Paragraph (b)(2) in the existing rule would be redesignated as paragraph (c)(2) and amended to state that the advertisement of sale must specify the applicable processing and monitoring fees that a successful bidder would be responsible for. Paragraph (d)(4) in the existing rule would be redesignated as paragraph (e)(4) and amended to state that a successful bidder would be required to pay the processing and monitoring fees specified in the sale advertisement within 30 days of receiving the sales contract.

Proposed 228.63 Removal under terms of a timber sale contract. This paragraph would be amended to include language for the authorized officer to charge a processing and monitoring fee in accordance with the cost recovery requirements of Subpart F for operating plans associated with timber sales that require the use of mineral materials from NFS lands for various physical improvements.

Proposed Changes to Subpart E—Oil and Gas Resources

Proposed 228.106 Operator's submission of surface use plan of operations. Paragraph (a) would be amended to include language to state that the authorized officer shall charge a processing fee and, as appropriate, a monitoring fee for each surface use plan of operations in accordance with the cost recovery requirements of Subpart F.

Proposed 228.107 Review of surface use plan of operations. Paragraph (d) would be amended to state that for decisions to approve a surface use plan of operations, the authorized Forest officer's notification to BLM and the operator will include the monitoring fee that the operator must pay, in accordance with the cost recovery requirements of Subpart F, before surface use begins if the BLM approves the permit to drill. Paragraph (e) would be amended to state that a supplemental surface use plan of operation shall be subject to cost recovery and reviewed in the same manner as an initial surface use plan of operations.

Regulatory Certifications

Executive Orders 12866 and 13563 Regulatory Planning and Review

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, on regulatory planning and review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800).

The Forest Service has determined that the proposed rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This determination is based on the Initial Regulatory Flexibility Act (IRFA) analysis the Forest Service prepared in conjunction with this proposed rule. For more detailed information, see the IRFA prepared for this proposed rule. The IRFA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 0596–AD47,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents. Comments are invited on the data, methodology, and results of the Forest Service's IRFA analysis completed for the proposed rule per the invitation and directions for public comment provided in the summary at the beginning of this notice.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This proposed rule does not change the relationships of the Forest Service's minerals programs with other agencies' actions. These relationships are based in law, regulation, agreements, and memoranda of understanding that would not change with this proposed rule.

In addition, this proposed rule would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule does propose to create new fees for processing documents associated with the agency's minerals programs because of the IOAA, 31 U.S.C. 9701 as well as recommendations made by the GAO (Report No. GAO–16–165). As stated earlier in this preamble, the IOAA authorizes the Forest Service to charge proponents the cost of processing documents. In addition, the IOAA states that these charges should cover the agency's costs for these services to the degree practicable. Federal policy per OMB Circular A–25 directs agencies to assess user charges against identifiable recipients of special benefits derived from Federal activities.

Finally, although this rule does not raise novel legal issues, it is possible that it may raise novel policy issues because the agency would charge processing and monitoring fees that the Forest Service does not currently impose for mineral-related activity.

Regulatory Flexibility Act

For this proposed rule, fee increases for some small businesses in the mineral materials sector are estimated to be in the range of 3 percent to 4 percent of annual receipts. The Forest Service could not conclude that costs to that subset 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 Forest Service has prepared an initial RFA (IRFA) analysis of the economic impacts of the proposed rule on small entities that seek or hold mineral-related authorizations for use and occupancy of NFS lands.

For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. The Forest Service notes that this proposed rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The proposed rule is expected to have non-significant effects on a substantial number of entities that conduct activity on NFS lands since most fit SBA's ''small entity'' definition and nearly all of them will face fee increases for activities on NFS lands. As presented in the IRFA analysis prepared by the Forest Service, and available as a supporting document for this proposed rule, except for mineral materials, when the total estimated fees paid by these entities are expressed as a percentage of the sales value of production from NFS land, the relative size and effect of the fees are small and are not expected to have a significant effect on these small entities.

When the total fee increases for leasable actions were compared to receipt data of production from Federal leases in 2017, the fee increases are 0.06 percent of receipts from NFS lands. Assuming the burden of the fee increases are distributed evenly among all firms operating on NFS lands the fee increases amounted to 0.30 percent of receipts attributable to small entities. Similarly, the total fee increases for locatable actions were 0.30 percent of estimated receipts attributable to NFS lands in 2017. Again, assuming fee increases are distributed evenly by active firms, the fee increases would be 2.11 percent of projected annual receipts from small entities engaged in locatable mineral actions on NFS lands. These fee increases are not expected to cause a significant impact on the small entities engaged in leasable or locatable mineral activity on NFS lands.

Within the mineral materials program, the proposed fee increases were estimated to be 61 percent of the total reported production value for mineral materials disposals from NFS lands in 2017. Assuming the burden of the fee increases is distributed evenly among all firms operating on NFS lands, the fee increases for mineral materials disposals amounted to 125 percent of receipts attributable to small entities in 2017. These percentages would suggest the potential of a significant impact on operators, including small entities, operating on NFS lands. However, the unique nature of mineral material production on NFS lands as being a high volume/low value commodity with involvement of high numbers of individuals and small businesses warranted a more detailed analysis beyond the coarse economic filter of comparing total fee collections to total receipts.

The proposed fees for mineral materials are comprised of a fixed fee for low volume disposals, a fee determined from a fee schedule for moderately complex proposals, and a case-by-case fee for the most complex proposals. For the five-year period 2015 through 2019, low volume disposals (that is, less than 25 cubic yards per disposal) made up approximately 83 percent of total number of mineral material disposals from NFS land, but only 0.2 percent of total disposed volume. Low volume disposals are largely made to entities for non-commercial purposes, and when coupled with the low proposed flat fee for this type of disposal, there is not expected to be a significant impact to

small business or governmental entities as a result of implementing the rule.

Analysis of mineral material disposals for 2019 as a representative year found that 240 entities requesting disposals exceeding 25 cubic yards per disposal accounted for more than 99 percent of the total volume of mineral material disposed from NFS lands during the year. Disposal requests made by these 240 entities are expected to have dominated agency time dedicated to processing mineral material requests in 2019. However, within these 240 entities, disposal volumes, and therefore cost recovery fees, are expected to be highly skewed toward a small number of large operators. For example, 93 percent of the mineral material volume disposed in 2019 was allocated to only 11 of the 240 entities, or 1 percent of all entities requesting disposals for the year. Average disposal volume for these 11 entities ranged from 16,000 to 280,000 cubic yards per disposal request. Most of the time needed to satisfy NEPA, and therefore process disposal requests, are expected to be concentrated in this small subset of entities. Five of these 11 entities are large business or large governments with annual revenues over $100 million and therefore not classified as small businesses. Three of the entities have annual revenues between $2.7 million to $10.7 million for whom the average annual cost of preparing an environmental assessment would be less than 2.5 percent of annual revenues. The remaining three entities in this subgroup are small county governments, where proposed fees could entail significant economic impacts but would be eligible to have fees waived under the proposed rule waiver provisions.

The analysis further showed the 225 entities (16 percent of all entities requesting disposals on NFS land in 2019) that requested disposals between 25 and 16,000 cubic yards during 2019, would experience fees amounting from 1 percent to 4 percent of annual receipts for small businesses. Out of 225 entities, only 63 (less than 5 percent of all entities requesting disposals from NFS land in 2019) that submitted multiple disposal requests during the year are expected to be subject to fees in the range of 3 percent to 4 percent of annual receipts. The Forest Service believes this low number of entities would not constitute a substantial number of small entities experiencing a significant economic impact.

We note that in all areas, the proposed fees are charged only once per proposal and, therefore, generally the impact is spread over several years of industry production. This has the effect of lessening the impact of fees even further. In addition, bids at lease and competitive mineral material sales reflect fair market value, so we can expect associated bonus bids may decline in response to the increased processing costs.

The estimate of the proposed fees for processing locatable plans of operation did not include costs associated with a Forest Service certified mineral examiner (CME) preparing reports that sometimes are required to inform the authorized officer's decision on operating plans and may have possible effects on small entities. Although the cost for a CME to complete a mineral examination report (such as, validity exam, mineral classification report, or surface use determination) would increase the fee paid by a proponent to process a plan of operations, it would not be significant compared to the capital expenditures associated with many locatable mineral mining ventures, which may range from hundreds of thousands of dollars for small operations to hundreds of millions of dollars for large ventures. The smaller the entity, the more likely the proposed plan of operations will be less complex or involve fewer mining claims, reducing the time needed for the CME to review and document their findings. Because fees for a proposed plan of operations needing CME engagement are more likely to involve a case-by-case tracking of actual agency time and costs, plans that are less complex or involve fewer claims will generally be charged fees at the low end of the possible range. Impacts to small entities is also less likely because plans of operation needing a CME input are a relatively rare occurrence. The Forest Service estimates only around two percent of the locatable plans of operations that are processed in a year will need a mineral examination report.

Energy Effects

The proposed rule was reviewed under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Forest Service finds the proposed rule is not likely to have a significant effect (positive or negative) on energy supply or distribution. The regulation would be administrative in nature and does not impact agency decisions about leasing and subsequent development of energy resources on NFS lands.

The proposed rule is not expected to have a significant adverse effect on the supply, distribution, or use of energy; competition or prices; other agency actions related to energy; or raise novel issues regarding adverse effects on energy. The proposed rule is therefore not expected to be a significant energy action or require a statement of energy effects, consistent with OMB guidance for implementing E.O. 13211.

Consultation and Coordination With Indian Tribal Governments

Pursuant to E.O. 13175, the agency has assessed the impact of this proposed rule on Indian tribal governments and expects that the proposed rule would not have direct and substantial effects on federally recognized Indian tribes. The proposed rule consists of administrative procedures for recovering costs for processing and monitoring proposals to conduct mineral activity and, as such, has no direct effect on tribal consultation requirements for individual mineral proposals on NFS land.

The Agency has also determined that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments. This proposed rule does not mandate tribal participation in the Forest Service cost recovery process, and allows for waivers of cost recovery for tribal entities under certain circumstances.

Environmental Impact

This proposed rule would establish administrative fee categories and procedures for charging, collecting, and reconciling fees to process notices, requests, and proposals and monitor authorizations on National Forest System lands per the regulations of 36 CFR part 228. The charging of fees would have no bearing on where or how mineral projects are conducted on NFS lands. No environmental impacts are predicted with implementation of the rule. Forest Service National Environmental Policy Act (NEPA) regulations at 36 CFR 220.6(d)(2) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Federalism

The agency has considered this proposed rule under the requirements of E.O. 13132, Federalism, and has made a preliminary assessment that the rule conforms with the Federalism

principles set out in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Moreover, the cost recovery processing and monitoring fees set out in this proposed rule may be waived or partially waived for State and local government entities that waive similar fees they might otherwise assess the Forest Service. The proposed rule may result in a slight decrease in bonus bids for coal and other solid mineral leases, which are shared with the States. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property. The proposed rule has no bearing on property rights, but only concerns recovery of government processing costs for actions that benefit certain entities that acquire rights and seek use and occupancy of NFS lands to extract publicly owned resources. Therefore, the Forest Service has determined that the rule would not cause a taking of private property or require further discussion of takings implications under the Executive Order.

Civil Justice Reform Act

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

Unfunded Mandates

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

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any new record-keeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information that would be collected by the Forest Service as a result of this action have been approved by the Office of Management and Budget (OMB) under existing Control Numbers 0596–0022 (locatable minerals), 0596–0081(mineral materials), and 0596–0101 (oil and gas). In recovering costs for providing responses required by law or regulation for coal and non-energy solid leasable minerals, the Forest Service will utilize information provided under existing OMB clearances issued to the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement. 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 228

Mineral resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 228 of title 36 of the Code of Federal Regulations as follows:

PART 228—MINERALS

■ 1. The authority citation for part 228 is revised to read as follows:

Authority: 16 U.S.C. 478, 551; 30 U.S.C. 191, 201, 207, 226, 352, 601, 611, 1014, 1272; 31 U.S.C. 9701; 94 Stat. 2400.

■ 2. Amend § 228.4 by revising paragraphs (a)(3) and (e) to read as follows:

§ 228.4 Plan of operations—notice of intent—requirements.

(a)* * *

(3) An operator shall submit a proposed plan of operations to the District Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed plan of operations, or a proposed supplemental plan of operations consistent with § 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The operator must pay a processing fee for each proposed plan of operations as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

* * * * *

(e) At any time during operations under an approved plan of operations, the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant disturbance of surface resources. The operator must pay a processing fee for each proposed modification to the plan as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine:

* * * * *

■ 3. Amend § 228.5 by revising paragraph (a)(1) to read as follows:

§ 228.5 Plan of operations—approval.

(a) * * *

(1) Notify the operator that he has approved the plan of operations conditioned upon payment of a monitoring fee as determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F; or

* * * * *

■ 4. Add new § 228.20 to Subpart B—Leasable Minerals to read as follows:

Subpart B—Leasable Minerals

§ 228.20 Cost Recovery Fees.

(a) The authorized officer shall charge applicants a fee to recover costs to process competitive and non-competitive lease, exploration license, and prospecting permit applications for coal or other solid leasable minerals on National Forest System lands that are filed with the Bureau of Land Management and require a response from the Forest Service by law or regulation. Fees are subject to the cost recovery requirements of § 228 Subpart F. The cost recovery process for competitive leases under this section follows:

(1) The applicant nominating coal or other solid mineral lands for competitive leasing under this section must pay a processing fee determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F, modified by the provisions of this section. The authorized officer shall request the Bureau of Land Management to include a statement in the notice of lease sale of the cost recovery fee paid to the Forest Service by the applicant up to 30 days before the competitive lease sale.

(2) The applicant nominating the tract for competitive leasing must pay the cost recovery amount before the Forest Service takes action to provide its response to the Bureau of Land Management.

(3) The successful bidder, if someone other than the applicant, must pay the Forest Service the amount of Forest Service cost recovery specified in the sale notice.

(4) If the successful bidder is someone other than the applicant, the Forest Service will refund to the applicant the amount paid under paragraph (b)(1) of this section.

(b) For all leasable minerals other than oil and gas, the authorized officer shall charge proponents a fee to recover the Forest Service's cost to process proposals to conduct operations on leases, permits or licenses when such proposals are filed with another government agency and require a response from the Forest Service by law or regulation. Fees will be determined by the authorized officer in accordance with the cost recovery requirements of § 228 Subpart F.

(c) The authorized officer shall charge holders a fee to recover monitoring costs for authorizations issued by the Forest Service which are required by law and not addressed elsewhere in part 228. Monitoring fees will be determined in accordance with the cost recovery requirements of § 228 Subpart F.

§ 228.21 Information collection requirements.

The information collection requirements of this subpart are already approved for use through various Office of Management and Budget information collection approvals issued to the Bureau of Land Management for issuing and managing Federal mineral leases and to the Office of Surface Mining Reclamation and Enforcement for managing coal mining operations on Federal lands.

■ 5. Amend § 228.43 by revising paragraph (b) to read as follows:

§ 228.43 Policy governing disposal.

* * * * *

(b) *Price.* Mineral materials may not be sold for less than the appraised value. The authorized officer shall assess a fee to cover costs of issuing and administering a contract or permit in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 6. Amend § 228.51 by:

■ a. Revising the section heading; and

■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a).

The revision and addition read as follows:

§ 228.51 Fees and Bonding.

(a) *Processing fees.* Applications for a permit or contract for mineral materials shall be subject to the cost recovery requirements of § 228 Subpart F modified by the provisions of this Subpart. Applicants will be charged a processing fee and, as applicable, a monitoring fee determined by the authorized officer.

* * * * *

■ 7. Amend § 228.58 by:

■ a. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) and adding new paragraph (b); and

■ b. Revising newly designated paragraphs (c)(2) and (e)(4).

The addition and revisions read as follows:

§ 228.58 Competitive sales.

* * * * *

(b) *Fee requirements for competitive sales.* For competitive sales, the applicant requesting a mineral material sale must pay the total processing fee up to 30 days before the sale. The cost recovery process for a competitive mineral material sale follows:

(1) The applicant requesting the sale must pay the cost recovery fee amount before the authorized officer will publish the invitation for bid required in § 228.58.

(2) Before the contract is issued:

(i) The successful bidder, if someone other than the applicant, must pay to the Forest Service the cost recovery amount specified in the invitation to bid; and

(ii) The successful bidder must pay all processing and monitoring fees the Forest Service incurs after the date of the invitation to bid.

(3) If the successful bidder is someone other than the applicant, the Forest Service will refund to the applicant the amount paid under paragraph (a)(1) of this section.

(c) * * *

(2) *Content of advertising.* The advertisement of sale must specify the location by legal description of the tract or tracts or by any other means identify the location of the mineral material deposit being offered, the kind of material, estimated quantities, the unit of measurement, appraised price (which sets the minimum acceptable bid), applicable processing and monitoring fees, time and place for receiving and opening of bids, minimum deposit required, major special constraints due to environmental considerations, available access, maintenance required over haul routes, traffic controls, required use permits, required qualifications of bidders, the method of bidding, bonding requirement, notice of the right to reject any or all bids, the office where a copy of the contract and additional information may be obtained, and additional information the authorized officer deems necessary.

(e) * * *

(4) Within 30 days after receipt of the contract, the successful bidder must sign and return the contract, pay the processing and monitoring fees specified in the sale advertisement, and provide any required bond, unless the authorized officer has granted an extension for an additional 30 days. The bidder must apply for the extension in writing within the first 30-day period. If the successful bidder fails to return the contract within the first 30-day period or within an approved extension, the bid deposit, less the costs of re-advertising and damages, may be returned without prejudice to any other rights or remedies of the United States.

* * * * *

■ 8. In § 228.63 revise the introductory paragraph to read as follows:

§ 228.63 Removal under terms of a timber sale or other Forest Service contract.

In carrying out programs such as timber sales that involve construction

and maintenance of various physical improvements, the Forest Service may specify that mineral materials be mined, manufactured, and/or processed for incorporation into the improvement. Where the mineral material is located on National Forest lands and is designated in the contract calling for its use, no permit is required as long as an operating plan as described in § 228.56 is required by the contract provisions. The authorized officer shall charge a fee to process the operating plan and monitor activity under the approved operating plan in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 9. Amend § 228.106 by revising paragraph (a) to read as follows:

§ 228.106 Operator's submission of surface use plan of operations.

(a) *General.* No permit to drill on a Federal oil and gas lease for National Forest System lands may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities. An operator must obtain an approved surface use plan of operations before conducting operations that will cause surface disturbance. The operator shall submit a proposed surface use plan of operations as part of an Application for a Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed plan of operations is submitted. The authorized Forest officer shall charge the operator a processing fee and, as appropriate, a monitoring fee, for each surface use plan of operations in accordance with the cost recovery requirements of § 228 Subpart F.

* * * * *

■ 10. Amend § 228.107 by revising paragraphs (d) and (e) to read as follows:

§ 228.107 Review of surface use plan of operations.

* * * * *

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. If the decision is to approve the plan, this transmittal shall include:

(1) The monitoring fee that would be required of the operator if the Bureau of Land Management approves the application for permit to drill; and

(2) The estimated cost of reclamation and restoration (§ 228.109(a)) if the authorized forest officer believes that additional bonding is required.

* * * * *

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be subject to cost recovery and reviewed in the same manner as an initial surface use plan of operations.

* * * * *

■ 11. Add new Subpart F—General Cost Recovery Requirements for Minerals to read as follows:

■ Subpart F—General Cost Recovery Requirements for Minerals

§ 228.200 Authority.

Authority to charge processing costs is provided by the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701.

§ 228.201 Definitions.

Authorization—an approval, permit, contract, or sale issued by the Forest Service per regulations at 36 CFR part 228.

Holder—an individual or entity that holds a valid authorization issued by the Forest Service to conduct activity under the regulations of this Part.

Monitoring—Actions needed to ensure compliance with the terms and conditions of an authorization issued by the Forest Service under regulations at 36 CFR part 228.

Operating plan—A plan of operations as provided for in 36 CFR 228, subparts A and D, and 36 CFR 292, subparts C and G; a supplemental plan of operations as provided for in 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; an operating plan as provided for in 36 CFR part 228, subpart C, and 36 CFR 292, subpart G; an amended operating plan and a reclamation plan as provided for in 36 CFR part 292, subpart G, a surface use plan of operations as provided for in 36 CFR part 228, subpart E; a supplemental surface use plan of operations as provided for in 36 CFR part 228, subpart E; an operating plan and a letter of authorization as provided for in 36 CFR part 292, subpart D; a Notice of Intent to Conduct Geothermal Resource Exploration Operations, a geothermal drilling permit, a utilization plan, a site license as provided for in 43 CFR 3273; or a commercial use permit as provided for in 43 CFR part 3200; an exploration plan or a resource recovery and protection plan as provided for in 43 CFR, part 3400; an exploration plan or operating plan as provided for in 43 CFR, part 3500.

Proponent—an individual or entity proposing an action associated with mineral resources on National Forest System lands governed by the regulations of 36 CFR part 228, 43 CFR 43 CFR part 3000, or 30 CFR Chapter VII.

Proposal—An application, plan, or request to acquire, modify, renew, or readjust the right to conduct activity to prospect, explore, develop, produce, or remove mineral resources from National Forest System lands.

§ 228.202 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's costs for processing proposals and monitoring authorizations pursuant to the regulations of Part 228. Fees may be either a fixed fee or determined from a fee category. Proponents shall submit sufficient information for the authorized officer to estimate the number of hours required to process their proposals or monitor their authorizations. Cost recovery fees payable to the Forest Service under this subpart are separate from fees that may be charged by other government entities for mineral activity conducted on National Forest System lands such as, but not limited to, fees collected by the Bureau of Land Management for oil and gas Applications for Permits to Drill (APDs). The cost recovery provisions of this section shall not apply to or supersede written agreements providing for recovery of processing costs executed by the agency and proponents prior to *(the effective date of the rule).*

(b) *Proposals subject to cost recovery requirements.* Cost recovery requirements of this Part apply to:

(1) Processing of proposals received on or after *(the effective date of the rule);* and

(2) Monitoring of authorizations issued or amended under this Part on or after (*effective date of the rule*).

(c) *Processing fee requirements.* A processing fee is required for each proposal as identified in paragraph (b)(1) of this section. Processing fees do not include costs incurred by the proponent in providing information, data, and documentation necessary for the authorized officer to take action on a proposal.

(1) *Basis for processing fees.*

(i) *Fixed fee proposals:* A fixed fee is based on a projected cost the Forest Service incurs to process proposals identified as being subject to a fixed fee.

(ii) *Processing category proposals:* Processing category proposals have fees based on an estimate of the total time for all involved Forest Service personnel to process a proposal. The time bands for processing categories 1 through 6 set out

in paragraph (c)(3)(i) of this section are based upon the costs incurred by the Forest Service to meet with the proponent, review the proposal, prepare or cooperate in preparing environmental analyses of the effects of the proposal, review any applicant-generated environmental documents and studies, conduct site visits, coordinate with other government entities, make a determination, recommendation, or decision on the proposal, and prepare documentation of analyses, decisions, and authorizations. The processing fee for a proposal shall be based only on costs necessary for processing that proposal. ''Necessary for'' means that, but for the proposal, the costs would not have been incurred and that the costs cover only those activities without which the proposal 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 being processed. Proportional costs for analyses that are necessary for the proposal, such as one analysis prepared for proposals from multiple proponents, may be included in the processing fee. The costs incurred for processing a proposal and thus the processing fee, depend on the complexity of the proposal; the amount of information that is necessary for the authorized officer's decision or response to the proposal; and the degree to which the proponent can provide this information to the agency. Processing work conducted by the proponent, or a third party contracted by the proponent, minimizes the costs the Forest Service will incur to process the proposal, and thus reduces the processing fee.

(2) *Processing fee determinations.* The applicable fee for processing a proposal with a fixed fee or in categories 1 through 4 shall be assessed from a schedule published in the Forest Service Handbook at 2809.15 (*https://www.fs.usda.gov/im/directives/*). The processing fee for proposals in category 5 shall be established in the master agreement (paragraph (c)(3)(ii) of this section). For category 5 and category 6 proposals, the authorized officer shall estimate the agency's full actual processing costs on a case-by-case basis. The estimated processing costs for category 5 and category 6 proposals shall be reconciled as provided in paragraphs (c)(6)(ii) and (iii) and (c)(7)(ii) and (iii) of this section.

(3) *Processing fee categories for proposals not subject to a fixed fee.*

(i) Proposals are assigned to one of the fee categories 1 through 6 as follows:

TABLE 3—PROCESSING CATEGORIES

Processing category	Federal work hours involved
1	Estimated Federal work hours are ≤8.
2	Estimated Federal work hours are >8 and ≤24.
3	Estimated Federal work hours are >24 and ≤40.
4	Estimated Federal work hours are >40 and ≤64.
5 (Master agreements).	Varies.
6	Estimated Federal work hours are >64.

(ii) *Category 5: Master agreements.* The Forest Service and the proponent may enter into master agreements for the agency to recover processing costs associated with a particular proposal, a group of proposals, or similar proposals for a specified geographic area. 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.

(iii) *Category 6: More than 64 hours.* Processing fees for category 6 proposals are determined on a case-by-case basis. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(4) *Multiple proposals other than those covered by master agreements (category 5).* Where processing costs benefit multiple proposals (for example, the cost of conducting an environmental analysis or printing an Environmental Impact Statement that relates to multiple proposals), the costs must be paid in equal shares or on a prorated basis by each proponent involved, as deemed appropriate by the authorized officer.

(5) *Billing and revision of processing fees.*

(i) *Billing.* For proposals assigned to a processing category, the authorized officer will issue a bill to the proponent for the processing fee that is due. The authorized officer shall not bill the proponent a processing fee until the agency is prepared to process the proposal.

(ii) *Revision of processing fees.* Processing fees shall not be reclassified into a higher category once the processing fee category has been determined. However, if the authorized officer discovers previously undisclosed information that necessitates changing to a higher category processing fee, the authorized officer shall notify the proponent of the conditions prompting a change in the processing fee category in writing before continuing with processing the proposal. The proponent may accept the revised processing fee category and pay the difference between the previous and revised processing categories; withdraw the proposal; revise the project to lower the processing costs; or request a review of the disputed fee as provided in paragraphs (e)(1) through (4) of this section.

(6) *Payment of processing fees.* (i) Payment of the processing fee for a fixed fee proposal is due when the proposal is filed with the Forest Service. For all other proposals, payment of a processing fee shall be due within 30 days of issuance of a bill for the fee, pursuant to paragraph (c)(5) 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. Payment of the processing fee by the proponent does not obligate the Forest Service to authorize, approve, or consent to, or otherwise make determinations in favor of the proponent's activity as proposed.

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

(7) *Refunds of processing fees.* (i) Processing fees for fixed fee proposals or for proposals designated in 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 covered by a master agreement, the authorized officer either shall refund the excess payment to the proponent or, at the proponent'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, the authorized officer either shall refund the excess payment to the proponent or,

at the proponent's request, shall credit it towards monitoring fees due.

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

(d) *Monitoring fee requirements.* A monitoring fee will not be charged for proposals subject to a fixed fee. For all other proposals that are authorized by the Forest Service under this part, the monitoring fee for an authorization shall be assessed independently of any fee charged for processing the proposal pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization or per the terms of a master agreement.

(1) *Basis for monitoring fees.* For monitoring fees in categories 1 through 4, holders of authorizations are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the surface use terms and conditions during all phases of the authorized activity, including but not limited to monitoring to ensure compliance with surface use requirements during the construction or reconstruction phase of the authorization and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

(2) *Monitoring fee determinations.* The applicable fee for monitoring compliance with authorizations in categories 1 through 4 (paragraphs (d)(3)(i) of this section) shall be assessed from a schedule published in the Forest Service Handbook at 2809.15. The monitoring fee for authorizations in category 5 shall be established in the master agreement (paragraph (d)(3)(ii) of this section). For category 5 and category 6 (paragraph (d)(3)(iii) of this section) cases, the authorized officer shall estimate the agency's monitoring costs on a case-by-case basis. The estimated monitoring costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (d)(4)(ii) and (iii) and (d)(5)(ii) and (iii) of this section.

(3) *Monitoring fee categories.* (i) Authorizations are assigned to a fee category as follows:

TABLE 4—MONITORING CATEGORIES

Monitoring category	Federal work hours involved
1	Estimated Federal work hours are ≤8.
2	Estimated Federal work hours are >8 and ≤24.
3	Estimated Federal work hours are >24 and ≤40.
4	Estimated Federal work hours are >40 and ≤64.
5 (Master agreements).	Varies.
6	Estimated Federal work hours are >64.

(ii) *Category 5: Master agreements.* The Forest Service and the holder of an authorization may enter into a master agreement for the agency to recover monitoring costs associated with a particular authorization or by a group of authorizations for a specified geographic area. A master agreement shall at a minimum include:

(A) The fee category or estimated monitoring costs;

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

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

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

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

(F) Provisions for terminating the agreement.

(iii) *Category 6: More than 64 hours.* The Forest Service shall develop a preliminary work plan and financial plan on agency resources needed to monitor compliance with the terms and conditions of the authorization during all phases of its term, including any additional time for rehabilitation of the site. The Forest Service and the proponent must enter into a written agreement that describes the Forest Service monitoring activity for the authorization. The final agreement will consist of a work plan and a financial plan.

(4) *Billing and payment of monitoring fees.*

(i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. Monitoring fees in categories 1 through 4 must be paid in full before or at the same time the authorization is issued. For authorizations in category 5 and category 6, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to a payment schedule.

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

(iii) For category 6 cases, when the estimated monitoring fee is lower than the full actual costs of monitoring an authorization, the proponent shall pay the difference in the next scheduled payment, or the authorized officer shall bill the holder for the difference between the estimated and full actual monitoring costs. Payment shall be due within 30 days of receipt of the bill.

(5) *Refunds of monitoring fees.*

(i) Monitoring fees for categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the monitoring fee exceeds the agency's final monitoring costs for the activities covered by a master agreement, the authorized officer shall either adjust the next scheduled payment to reflect the overpayment or refund the excess payment to the holder.

(iii) For category 6 cases, if payment of the monitoring fee exceeds the full actual costs of monitoring an authorization, the authorized officer shall either adjust the next scheduled payment to reflect the overpayment or refund the excess payment to the holder.

(e) *Proponent or holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated costs.*

(1) The amount of a fixed fee assessment is not subject to review under this section.

(2) If a proponent or holder disagrees with the processing or monitoring fee category assigned by the authorized officer for categories 1 through 4 or, in the case of processing or monitoring for categories 5 and 6, with the estimated dollar amount of the processing or monitoring costs, the proponent or holder may submit a written request before the disputed fee is due for

substitution of an alternative fee category or alternative estimated costs. The written request must be submitted to the immediate supervisor of the authorized officer who determined the fee category or estimated costs. The proponent or holder must provide documentation that supports the alternative fee category or estimated costs.

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

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

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

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

(i) If the proponent 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 supervisory officer's review of the disputed fee, unless the proponent or holder elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

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

(5) The authorized officer's immediate supervisor shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the proponent or holder. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the proponent if the supervisory 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 is a local, State, Federal, or tribal governmental entity that does not charge processing or monitoring fees for comparable services the proponent provides to the Forest Service;

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

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

(iv) The proposal is for a new 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 authorization was issued;

(v) The proposal is for a new 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 facility, project, or use 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 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) *Appeal of decisions.* (1) A decision by the authorized officer to assess a processing or monitoring fee or to determine the fee category or estimated costs is not subject to administrative appeal.

(2) A decision by an authorized officer's immediate supervisor in response to a request for substitution of an alternative fee category or alternative estimated costs likewise is not subject to administrative appeal.

(h) *Processing and monitoring fee schedules.* The Forest Service shall maintain schedules for processing and monitoring fees in its directive system at Forest Service Handbook 2809.15 (*https://www.fs.usda.gov/im/directives/dughtml/fsh.html*). The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index. The Forest Service shall round the changes in the rates either up or down to the nearest dollar. In the event the schedules are not updated in a particular year, the fee schedules published in the directives will remain in effect until the updates are published in the agency directives.

§ 228.203 Information collection requirements.

The rules of this subpart specify information that proponents or applicants for mineral authorizations or holders of existing authorizations must provide to allow an authorized officer to recover costs to process a request or to monitor an authorization. The information collected under this subpart is already required by law or approved for use through the information collection requirements under Subparts A through E of this part. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. Forest Service information collection requirements for its minerals regulations have been assigned Office of Management and Budget (OMB) Control Numbers 0596–0022, 0596–0081, and 0596–0101.

Dated: May 25, 2023

Andrea Delgado,

Chief of Staff, Natural Resources and Environment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0457; FRL–11008–01–R4]

Air Plan Approval; Georgia; Miscellaneous Rule Revisions to Gasoline Dispensing Facility—Stage I

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP), submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) via a letter dated November 4, 2021. The SIP revision revises Georgia's Stage I vapor recovery rules primarily by removing outdated references and making several clarifying edits. The revision also updates several definitions and makes two substantive changes. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before July 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0457 at *www.regulations.gov.* Follow the online instructions for submitting comments.