

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 251**

RIN 0596-AB83

Special Uses; Managing Recreation Residences and Assessing Fees Under Cabin User Fee Fairness Act**AGENCY:** Forest Service, USDA.**ACTION:** Notice of proposed rulemaking; request for comment.

SUMMARY: The Cabin User Fee Fairness Act of 2000 directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. Accordingly, the Forest Service is proposing changes to its special uses regulations and also to the related agency directives published elsewhere in this issue of the **Federal Register**. The proposed rule and agency directives set out requirements and provide direction to agency personnel for managing recreation residence uses and assessing fees for those uses of National Forest System lands pursuant to the act. Public comment is invited and will be considered in the development of the final rule and directives.

DATES: Comments must be received in writing by August 11, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director of Lands, Mail Stop 1104, Washington, DC 20250-1104; by electronic mail to the World Wide Web/Internet site at <http://www2.srs.fs.fed.us/cuffa/cuffa.html> or by fax to (202) 205-1604. If comments are sent by electronic mail or fax, the public is requested not to send duplicate written comments via regular mail. In addition, only one response is required to address provisions contained in this proposed rule and the proposed directives published elsewhere in this part of today's **Federal Register**. Please confine written comments to issues pertinent to the proposed rule and directives; explain the reasons for any recommended changes; and where possible, reference the specific section or paragraph being addressed. Those responding to the proposed rule, directives, and appraisal guidelines may want to review the provisions of the Cabin User Fee Fairness Act of 2000 before formulating their response. A copy of the act may be viewed and downloaded from the World Wide Web/Internet site previously listed. The Forest Service may not include in the administrative record for the proposed rule and proposed directives those

comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in this **ADDRESSES** section.

All comments, including the names, street addresses, and other contact information about respondents, will be available for public review at the office of the Director, Lands Staff, Forest Service, USDA, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead (202) 205-1256 or (202) 205-1064, to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff (202) 205-1256, Forest Service, USDA.

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1. Background

On August 16, 1988 (53 FR 30924), the Forest Service adopted a policy that set forth procedures for administering term special use permits that authorize privately owned recreation residences on National Forest System (NFS) lands. The 1988 policy included direction concerning the tenure and renewal of recreation residence term special use permits, and described procedures to be followed when a recreation residence site was needed for a higher public purpose. The 1988 policy also established a new procedure for assessing fair market value fees for this type of use and occupancy. In the 1988 policy the Forest Service designated as "base fees" those annual fees for recreation residence special uses permits that had previously been established during the years 1978 through 1982. Those base fees were determined as a result of appraisals of the fee simple fair market value of lots that were completed during that time period. The year of the appraisal during the years 1978 through 1982 served as "year 1" in a 20-year appraisal cycle in the 1988 policy.

That policy was appealed to the Secretary of Agriculture on September 15, 1988. In general, the appellants alleged that certain aspects of the policy were flawed, in that they exceeded limitations in the statute authorizing recreation residence uses of the National

Forests. In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the 1988 policy to the Forest Service for restudy and reformulation, and stayed the implementation of those specific provisions in the policy that were the subject of the appeal. None of the appeal or remand issues involved provisions in the 1988 policy concerning the appraisals of recreation residence lots, nor the determination and assessment of land use fees generally. Rather, the remand directed the agency to reconsider: (1) Nonrenewal provisions in recreation residence special use permits that would be applied when the agency determined a need to convert the use of a recreation residence site to a higher, or alternative, public purpose; (2) the policy's provisions requiring an automatic permit renewal 10 years prior to expiration (unless procedures for nonrenewal had been established); (3) provisions requiring the offering of an in-lieu lot to those permit holders who received nonrenewal notices pursuant to the agency's finding to convert the use of a recreation residence site to some alternative public purpose; and (4) provisions weighted against consideration of commercial uses for sites when nonrenewal of the recreation residence use was contemplated.

A final revised policy for recreation residences was adopted on June 2, 1994 (59 FR 28713). It revised the 1988 policy with new provisions identified in the appeal and remand concerning tenure, and clarified policy for determining the annual fee for recreation residences. However, those provisions that were revised and clarified in 1994 pertained only to annual fees for those permits affected by notices of nonrenewal for an alternative public purpose.

As previously stated, the 1988 policy established base fees pursuant to recreation residence lot appraisals conducted during the years 1978 through 1982. Those base fee amounts were then indexed annually, using the annualized change in the economic indexing factor known as the Implicit Price Deflator-Gross National Product (IPD-GNP) as provided in the 1988 policy. The 1988 policy also established a 20-year appraisal cycle for keeping recreation residence fees current with changes in fair market value.

In accordance with the provisions of the 1988 and 1994 policies, the Forest Service began to appraise recreation residence tracts in 1996, which was year 18 of the 20-year appraisal cycle for those lots appraised in 1978. Appraisals completed in 1997 revealed varying degrees of increases in the fair market

value of recreation residence lots since they were last appraised in the late 1970's and early 1980's. In some locations and markets the increase in value was dramatic. Because annual land use fees are calculated on the basis of 5 percent of the fee simple value of each lot, increases in the appraised fee simple values of some lots exceeded the cumulative effect of 18 to 20 years of annual IPD-GNP indexing of fees, which resulted in corresponding increases in land use fees. Some of the more dramatic fee increases as a result of new appraisals were of significant concern to recreation residence permit holders, and to State and national associations that represent them. In response, recreation residence permit holders and associations of holders began to contact their Congressional representatives, requesting relief from the increased fees.

Congress initially responded to these concerns on November 14, 1997, in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998, Public Law 105-83 (Pub. L. 105-83). Section 343 of this act provided for a three-year phase-in of recreation residence fee increases when a new appraisal of a recreation residence lot results in fees that exceeded 100 percent of the previous land use fees.

In fiscal year 1999, Congress responded to the concerns of recreation residence permit holders on the Sawtooth National Forest in Idaho by directing the Forest Service not to increase recreation residence fees on the Sawtooth National Forest in fiscal year 1999 by more than 25 percent of the fee paid during the prior fiscal year.

In fiscal year 2000, Congress provided additional relief to recreation residence permit holders in section 342 of Public Law 106-113 (Consolidated Appropriations for Fiscal Year Ending September 30, 2000); which directed that recreation residence permit fees assessed during fiscal year 2000 could not exceed the fiscal year 1999 fee amount by more than \$2000.

Congress further addressed concerns with fee assessments for recreation residence uses with the October 12, 2000, passage of the Cabin User Fee Fairness Act of 2000 (CUFFA). One of the primary purposes of CUFFA is to establish a consistent and fair process for appraising the fee simple value of recreation residence lots on NFS lands.

2. Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)

The Cabin User Fee Fairness Act of 2000 (CUFFA) directs the Secretary of Agriculture to promulgate regulations

and policies to implement the provisions of the act within two years of its passage. The major provisions of CUFFA include: (1) Establishment of a base annual fee for recreation residence special use permits that is 5 percent of the appraised fee simple value of the lot; (2) direction for the establishment of new guidelines for conducting appraisals of recreation residence lots; (3) an appraisal cycle shortened from the current 20 years to 10 years; and (4) the right of appeal and judicial review of a base cabin user fee determination.

Section 608 of CUFFA provides for annual adjustments to recreation residence fees based on changes to the Index of Agricultural Land Prices, published by the Department of Agriculture. Currently, the Forest Service adjusts annual fees for recreation residence using the 2nd quarter to 2nd quarter change in the Implicit Price Deflator, Gross Domestic Product (IPD-GDP) with a 10 percent increase cap in any one-year billing period. During the transition period identified in section 614 of CUFFA, the Forest Service is continuing to use the IPD-GDP as the means for annually indexing fees. This direction was provided to agency managers on February 20, 2003, in interim directive 2709.11-2003-1, issued to the Forest Service Handbook (FSH) 2709.11, chapter 30 (68 FR 8197). The Forest Service shall, however, limit annual increases using the IPD-GDP to 5 percent in any one year during the transition period as provided in section 608(d) of CUFFA. When the transition period ends, the Forest Service will use the Index of Agricultural Land Prices to index annual fees as provided in section 608 of CUFFA.

Section 606(a)(3) of CUFFA directs the Secretary to contract with a professional appraisal organization to develop appraisal guidelines for determining fees for recreation residences. The Forest Service contracted with The Appraisal Foundation (TAF) to assist in the development and review of the proposed appraisal guidelines. TAF is the single authority in the United States for development and interpretation of appraisal standards, such as those referenced in CUFFA. In addition, TAF is the only Congressionally recognized appraisal organization responsible for developing and interpreting the Uniform Standards of Professional Appraisal Practice (USPAP) as provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

TAF assisted the Forest Service in the development of the proposed appraisal guidelines. In its report dated October 8,

2002, TAF also documented that the proposed appraisal guidelines the Forest Service developed are in conformance with section 606 of CUFFA by stating: “* * * they (draft appraisal guidelines) follow exactly the directions in the act.” TAF did recommend minor, mostly editorial changes to the draft of the proposed appraisal guidelines. The revised draft appraisal guidelines are found in the proposed directives to Forest Service Handbook (FSH) 5409.12, Appraisal Handbook, section 6.9, exhibit 06, published elsewhere in this part of today's **Federal Register**.

Section 611 of CUFFA provides for the right of appeal and judicial review for recreation residence permit holders. The Department has reviewed this requirement and has determined that current regulations at Title 36, Code of Federal Regulations, part 251, Land Uses, subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands (36 CFR part 251, subpart C) provide all holders of recreation residence term permits the right to appeal a written decision by an authorized officer regarding the issuance, approval, and administration of their permits. The authorized officer's implementation of a new base fee, pursuant to provisions outlined in the proposed rule and directives published elsewhere in this part of today's **Federal Register**, constitutes a written decision subject to these appeal regulations. Therefore, existing regulations at 36 CFR part 251, subpart C, already provide the right of appeal identified in section 611 of CUFFA, and the Department is not proposing any new or amended appeal regulations for implementing that section of CUFFA.

Section 614 of CUFFA provides for a transition period during which the recreation residence fees in place on September 30, 1995, could not be increased by more than \$3,000 from the amount of the annual fee in effect on October 1, 1996, excluding annual indexing. The transition period ends for a recreation residence permit holder when a base fee for their recreation residence is established through guidelines contained in final regulations, directives, and appraisal guidelines developed pursuant to CUFFA. The Forest Service issued an interim directive implementing these transition provisions for fee determinations on February, 20, 2003 (68 FR 8197) (ID 2709.11-2003-1 to FSH 2709.11).

Pursuant to the provisions of CUFFA previously outlined, the Forest Service is proposing revisions to its special uses regulations at 36 CFR part 251, subpart B, as set out in this notice, and also is

proposing new appraisal guidelines and revisions to administrative procedures set out in proposed directives published elsewhere in this part of today's **Federal Register**.

3. Section-by-Section Explanation of Proposed Revisions to 36 CFR Part 251, Subpart B

Section 251.51—Definitions. This section of the current regulation defines many of the terms and phrases used in subpart B. The proposed rule would add a definition for a recreation residence lot as described in section 604 of CUFFA. Consistent with the act, a recreation residence lot includes all National Forest System (NFS) land on which a cabin owner is authorized to build, use, occupy, and maintain a cabin and related improvements. Therefore, a recreation residence lot is not necessarily confined to the plotted boundaries as shown on a tract map, but may include all of the area occupied by the recreation residence and its related improvements.

Section 251.57—Rental Fees. This section of the current regulation describes how fees for special use authorizations are determined. Proposed paragraph (a)(3) would provide that the base fee for recreation residences would be established by appraisal or other sound business management principles pursuant to the provisions in CUFFA. Proposed paragraph (a)(3) would also state that the base cabin user fee is established as being 5 percent of the market value of the recreation residence lot. Proposed paragraph (i) would require that permits and term permits authorizing recreation residence uses state that the Forest Service shall recalculate the base cabin user fee at least once every 10 years by use an appraisal or other sound business management principles to calculate that fee as provided for in paragraph (a)(3).

4. Regulatory Requirements

Environmental Impact

These proposed revisions establish administrative procedures for determining market value for recreation residences on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which

would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of \$100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed rule would not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of such programs.

No Takings Implications

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

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this proposed rule or that would impede full implementation of the proposed rule. Nonetheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State and local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

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

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply." It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

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

List of Subjects in 36 CFR Part 251

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

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

PART 251—LAND USES**Subpart B—Special Uses**

1. The authority citation for part 251 is revised to read as follows:

Authority: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

2. In § 251.51 add a definition for “recreation residence lot” in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions

* * * * *

Recreation Residence Lot—a parcel of National Forest System land on which a holder is authorized to build, use, occupy, and maintain a recreation residence and related improvements. A recreation residence lot is considered to be in its natural, native state at the time when the Forest Service first permitted its use for a recreation residence. A recreation residence lot is not necessarily confined to the platted boundaries shown on a tract map or permit area map. A recreation residence lot includes the physical area of all National Forest System land being used or occupied by a recreation residence permit holder, including, but not limited to, land being occupied by ancillary uses such as septic systems, water systems, boat houses and docks, major vegetative modifications, and so forth.

* * * * *

3. In § 251.57 add new paragraphs (a)(3) and (i) to read as follows:

§ 251.57 Rental fees

(a) * * *

(3) A base cabin user fee for a recreation residence use shall be 5 percent of the market value of the recreation residence lot, established by an appraisal or other sound business management principles conducted in accordance with the Act of October 12, 2000 (16 U.S.C. 6201–13).

* * * * *

(i) Each permit or term permit for a recreation residence use shall include a clause stating that the Forest Service shall recalculate the base cabin user fee at least every 10 years and shall use an appraisal or other sound business management principles to recalculate that fee as provided in paragraph (a)(3) of this section.

Dated: May 3, 2003.

Dale N. Bosworth,
Chief.

[FR Doc. 03–11694 Filed 5–12–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 251**

RIN 0596–AB83

Procedures for Appraising Recreation Residence Lots and for Managing Recreation Residence Uses Under Cabin User Fee Fairness Act

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for comment.

SUMMARY: In conjunction with a proposed rule published elsewhere in this part of today’s **Federal Register**, the Forest Service is proposing changes to its directives for managing recreation residence special use permits and for determining land use fees for recreation residences as required by the Cabin User Fee Fairness Act of 2000. Guidance to forest officers in the administration of recreation residences and the determination of land use fees is issued in the Forest Service Manual (FSM) Title 2300, Recreation, Wilderness, and Related Resource Management; FSM Title 2700, Special Uses Management; Forest Service Handbook (FSH) 2709.11, Special Uses Handbook; and FSH 5409.12, Appraisal Handbook. Numerous revisions to these directives are necessary to address the changes in administering and determining fees for recreation residence lots pursuant to the act. Comments received in response to this notice will be considered in development of the final directives and final rule.

DATES: Comments must be received in writing by August 11, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director of Lands, Mail Stop 1104, Washington, DC 20250–1140; by electronic mail to the World Wide Web/Internet site at <http://www2.srs.fs.fed.us/cuffa/cuffa.html> or by fax to (202) 205–1604. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Only one response is required to address provisions contained in these proposed directives and in the proposed rule published elsewhere in this part of today’s **Federal Register**. Please confine written comments to issues pertinent to the proposed directives and proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed. Those responding to the proposed rule,

directives, and appraisal guidelines may want to review the provisions of the Cabin User Fee Fairness Act of 2000 before formulating their response. A copy of the act may be viewed and downloaded from the World Wide Web/Internet site previously listed. The Forest Service may not include in the administrative record for the proposed directives and the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in this **ADDRESSES** section.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on these proposed directives in the Office of the Director, Lands Staff, Forest Service, USDA, 4th Floor-South, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. to 4 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1248 or (202) 205–1064 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256, Forest Service, USDA.

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1. Background

An analysis of the history and development of policy and regulations