

**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.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

1. Background
2. Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)
3. Section-by-Section Explanation of Proposed Revisions to 36 CFR part 251, subpart B
4. Regulatory Certifications

**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