National Forest Homeowners

Advocacy, Education & Stewardship
Strengthening the Cabin Program

Submitted by Email to jody.holzworth@usda.gov, brandon.c.smith@usda.gov, and reply_lands_staff@usda.gov

November 13, 2023

USDA Forest Service
Jody Holzworth
Director, Lands, Minerals, and Geology Management
201 14th Street SW
Washington, DC 20250–1124

RE: Comments on Federal Register Vol.88, No.189
Monday, October 2, 2023, Pages 67694-67697
Subject: RIN 0596–AD56
Dept. of Agriculture, Forest Service Special Uses;
Land Use Fees; Temporary Land Use Fee Reductions for Recreation Residence Permits

Dear Jody:

The following are the comments of the National Forest Homeowners (NFH), a national association representing Recreation Residence permit holders on the National Forests, in response to the above-referenced Federal Register notice. We represent approximately 13,800 recreation residence permit holders with cabins located on 114 National Forests in 24 states. Our mission is to preserve the historic "cabin" program, advocate for permit holders, educate cabin owners and be responsible partners and stewards on our public lands. We very much share the Forest Service's view, as stated in the Forest Service Manual 2347.1, that:

> *"Recreation residences are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation residences, their families, and guests. To the maximum extent practicable, the recreation residence program must be managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service direction to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation residences."*

The proposed regulation published in the Federal Register responds to the direction contained in Section 3024 (f) (3) Access and Occupancy Adjustment of Public Law 113-291, commonly known as the Cabin Fee Act.

Unfortunately, we believe the proposed rule, as drafted, does not embrace the spirit of the policy statement above. The fact that the Forest Service has waited over 8 years to draft this regulation is disappointing, and appears to have contributed to lost institutional knowledge that results in the proposed rule failing to meet the Congressional intent with respect to the Cabin Fee Act ***Access and Occupancy (Fee) Adjustment*** provision. The comments on the following pages address our specific concerns. The new rule

We appreciate your consideration of our comments and invite any questions you might have to clarify our concerns and suggestions. Please respond to me with a copy to Sharon Leach, NFH Executive Director, at sleach@nationalforesthomeowners.org.

Very Sincerely,

Meredith Randall

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Cc: Brandon Smith, Lands, Minerals and Geology Management Staff

Comments on Federal Register Vol. 88, No. 189, Pages 67694-67697

The specific provision of the Cabin Fee Act (CFA) of 2014: 10 U.S. C. 6214 relating to fee reduction or suspension as found at 2(f)(3)(B) reads "….*the annual fee determined in accordance with this section may be suspended or temporarily reduced if access to, or occupancy of, the recreation residence is significantly restricted*." Congress passed the legislation recognizing that the recreation residence program authorizes the rights of use of national forest land, and that the fees charged would be based on the value of the use, which can be very significant.

The proposed rule by the Forest Service seeks to limit the Congressional intent by defining that the fee reduction or suspension only occur for "*significantly restricted access to or occupancy of, a recreation residence"* that is "prohibited by law" due to orders imposed by the federal government, or a state or local government. Had Congress intended the interpretation now being proposed it would have specifically stated "*significantly restricted due to government action*".

Nothing in the CFA legislative history suggests that the suspension of, or temporarily reduced fees apply only in cases of prohibition by law, closing an area or road for public health or safety reasons. In fact, prior iterations of the Cabin Fee Act (H.R.1159, S.1906) passed out of committee more explicitly stating the Congressional intent as:

> "*If a cabin is destroyed or suffers substantial damage amounting to greater than 50 percent of replacement cost, or if access to a cabin is significantly impaired, whether by catastrophic events, natural causes or governmental actions, such that the cabin is rendered unsafe or unable to be occupied as a result, the Secretary shall reduce the cabin user fee for the affected lot to $100 per year. This fee shall be in effect for the remainder of the year in which the destruction occurs and until such time as the cabin may be lawfully reoccupied and normal access has been restored."*

Congress clearly intends for the Temporary Fee Adjustment to be applied comprehensively to any and all circumstances, outside the permit holder's control, that restricts or impairs the use of a cabin for its intended recreation purpose. The new rule is not optional, discretionary or arbitrary. It is guided by the impairment period and requires automatic adjustments to fees that come as a result of the rule.

1. **<u>Proposed Revisions to 36 CFR Part 214</u>**

   <u>Comments:</u>

   We do not have an objection to the proposed addition of paragraph (6) to the 36 CFR Part 214.4(c) policy. The proposed paragraph appears to address the requirement to make a temporary fee adjustment an administrative appealable decision as required by the Cabin Fee Act. Our lack of objection is subject to a revision to the definition of "**significantly restricted access to, or occupancy of, a recreation residence**" so the definition encompasses any and all circumstances outside the permit holder's control, which is discussed further below.

2. **<u>Proposed Revisions to 36 CFR Part 251.51</u>**

   <u>Comments:</u>

   As stated above, our primary concern is with the proposed definition of the term "***significantly restricted access to, or occupancy of, a recreation residence***." It appears the Forest Service is attempting to restrict use of the Temporary Fee Adjustment to an extremely limited set of circumstances, which is in complete opposition with the Congressional intent of the CFA statute.

   We submit that the definition of "**significantly restricted access to, or occupancy of, a recreation residence**" should encompass the full range of any and all circumstances that prevent the use of a recreation residence for its intended recreation purpose, outside the control of the permit holder. Circumstances would include, but are not limited to when cabins are destroyed, or substantially damaged, by catastrophic events or natural causes, or when access to a cabin is restricted or impaired so as to prevent the use of a cabin for recreation purposes.

   The primary purpose of including the **Access and Occupancy (Fee) Adjustment** provision in the Cabin Fee Act was to address the unsatisfactory and inconsistent experiences cabin owners have suffered with the Forest Service existing Temporary Fee Adjustments policy (FSH 2730.11.31.23). The primary deficiency with the existing policy is that the temporary fee adjustment is not mandatory.

The decision to place a permit into non-use status is at the complete and arbitrary discretion of the authorized officer, which in many cases, has been unreasonably withheld. In addition, the line officer's decision cannot be challenged through administrative appeal, so permit holders have no method for challenging unreasonable decisions, including non-decisions.

In addition, the policy offers no guidance as to when to place a permit in non-use status and when to return a special uses permit to active status. In theory, this existing policy could address all of the circumstances under which the authorized use could be impaired and when the special uses fee should be temporarily adjusted, however our actual experience is that many authorized officers fail to use the existing policy. And when the policy is used, it's applied arbitrarily with regard to when to place a permit in non-use status and when to return it to active status. The Cabin Fee Act provision is intended to replace this policy with a single policy for recreation residence special use permits that mandates a fee adjustment for any and all circumstances outside the control of the permit holder and to provide firm direction regarding when fees should temporarily be adjusted. The proposed rule, as drafted, does not meet the objectives of the Cabin Fee Act. As proposed by the Agency, it addresses only a limited set of restricted access circumstances and none of the impaired occupancy circumstances.

Using the CFA bill language as a guideline, we propose the definition of **significantly restricted access to, or occupancy of, a recreation residence** as:

If a cabin is destroyed or suffers substantial damage amounting to greater than 50 percent of replacement cost, or if access to a cabin is significantly impaired for reasons outside the control of the permit holder such as catastrophic events, natural causes or governmental actions, such that the cabin is rendered unsafe or unable to be occupied as a result, the annual special use fee shall be waived or reduced. This temporary fee adjustment shall begin on the date the restriction or impairment occurs and remain in effect until the date the cabin may be safely and lawfully reoccupied for recreation use and normal access has been restored. The adjustment to the annual special fee shall be prorated per 36 CFR 251.57. This temporary fee adjustment does not apply to periods of less than 30 consecutive calendar days, nor apply to impairments caused by typical or normal seasonal weather conditions.

3. **<u>Proposed Revisions to 36 CFR 251.57</u>**

<u>Comments:</u>

Conceptually, we agree a method for prorating the annual permit fee for the period of temporary fee adjustment is required. We also agree a credit can be accrued for prepaid annual fees and applied to future years when billing is restored. However, based on the poor experience with the current non-use temporary fee adjustment policy, we recommend the rule specifically state when the temporary fee adjustment period begins and ends. We propose that the fee adjustment begin as of the date the access to, or occupancy of a cabin is impaired or restricted and that the fee adjustment end when access to or occupancy of a cabin is fully restored such that a cabin can be used for its intended recreation use.

The proposed prorating method of determining a “daily fee” amount appears to be mathematically supportable, which for the sake of simplicity we are willing to accept. However, we also recognize that many cabins have an established season use of substantially less than 365 days per year, so there is also justification for a denominator based on less than 365 days for those situations.