

Showing Current Law as Amended by H.R. 5171

[text to be added highlighted in yellow; text to be deleted is bracketed and highlighted in blue]

Section 701 of division I of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497c)

§497c. Ski area permit rental charge

(a) *In general*

The Secretary of Agriculture shall charge a rental charge for all ski area permits issued pursuant to section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), or the 9th through 20th paragraphs under the heading "SURVEYING THE PUBLIC LANDS" under the heading "UNDER THE DEPARTMENT OF THE INTERIOR" in the Act of June 4, 1897 (30 Stat. 34, chapter 2), on National Forest System lands. Permit rental charges for permits issued pursuant to the National Forest Ski Area Permit Act of 1986 shall be calculated as set forth in subsection (b). Permit rental charges for existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, shall be calculated in accordance with those existing permits: *Provided*, That a permittee may, at the permittee's option, use the calculation method set forth in subsection (b).

(b) *Formula*

(1) The ski area permit rental charge (SAPRC) shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. That amount shall be increased by the gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking and other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit rental charge. The final rental charge shall be calculated by multiplying the AGR by the following percentages for each revenue bracket and adding the total for each revenue bracket:

- (A) 1.5 percent of all adjusted gross revenue below \$3,000,000;
- (B) 2.5 percent for adjusted gross revenue between \$3,000,000 and \$15,000,000;
- (C) 2.75 percent for adjusted gross revenue between \$15,000,000 and \$50,000,000; and
- (D) 4.0 percent for the amount of adjusted gross revenue that exceeds \$50,000,000.

Utilizing the abbreviations indicated in this subsection the ski area permit fee (SAPF) formula can be simply illustrated as:

$$SAPF = ((LT + SS) \times STFP) + GRAF = AGR; AGR \times \% BRACKETS$$

(2) In cases where ski areas are only partially located on national forest lands, the slope transport feet percentage on national forest land referred to in this subsection shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from Nordic ski operations shall be included or excluded from the rental charge calculation according to the percentage of trails physically located on national forest land.

(3) In order to ensure that the rental charge remains fair and equitable to both the United States and the ski area permittees, the adjusted gross revenue figures for each revenue bracket in paragraph (1) shall be

adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year. No later than 3 years after November 12, 1996, and every 5 years thereafter the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives a report analyzing whether the ski area permit rental charge required by this section is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications of the system.

(c) Payment

The rental charge set forth in subsection (b) shall be due on June 1 of each year and shall be paid or prepaid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. Unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to November 12, 1996. To reduce costs to the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual rental charge calculation brackets and rates) to be used for rental charge calculation and submitted with the rental charge payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, United States Forest Service.

(d) Effective date

The ski area permit rental charge set forth in this section shall become effective on June 1, 1996 and cover receipts retroactive to June 1, 1995: *Provided*, That if a permittee has paid rental charges for the period June 1, 1995, to June 1, 1996, under the graduated rate rental charge system formula in effect prior to November 12, 1996, such rental charges shall be credited toward the new rental charge due on June 1, 1996. In order to ensure increasing rental charge receipt levels to the United States during transition from the graduated rate rental charge system formula to the formula of this section, the rental charge paid by any individual permittee shall be-

- (1) for the 1995–1996 permit year, either the rental charge paid for the preceding 1994–1995 base year or the rental charge calculated pursuant to this section, whichever is higher;
- (2) for the 1996–1997 permit year, either the rental charge paid for the 1994–1995 base year or the rental charge calculated pursuant to this section, whichever is higher; and
- (3) for the 1997–1998 permit year, either the rental charge for the 1994–1995 base year or the rental charge calculated pursuant to this section, whichever is higher.

If an individual permittee's adjusted gross revenue for the 1995–1996, 1996–1997, or 1997–1998 permit years falls more than 10 percent below the adjusted gross revenue for the 1994–1995 base year, the rental charge paid shall be the rental charge calculated pursuant to this section.

(e) Non-national forest land operations

Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on non-national forest land be included in the ski area permit rental charge calculation.

(f) "Revenue" and "sales" defined; limitations

To reduce administrative costs of ski area permittees and the Forest Service the terms "revenue" and "sales", as used in this section, shall mean actual income from sales and shall not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets offered for commercial or other promotional purposes) for which the permittee does not receive money.

(g) Minimum rental charge

In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for rental charge payment pursuant to subsection (a), the permittee shall pay an annual minimum rental charge of \$2 for each national forest acre under permit or a percentage of appraised land value, as determined appropriate by the Secretary.

(h) Five-year phase-in of increase

Where the new rental charge provided for in subsection (b)(1) results in an increase in permit rental charge greater than one-half of 1 percent of the permittee's adjusted gross revenue as determined under subsection (b)(1), the new rental charge shall be phased in over a five-year period in a manner providing for increases of approximately equal increments.

(i) Construction with National Environmental Policy Act of 1969

To reduce Federal costs in administering the provisions of this section, the reissuance of a ski area permit to provide activities similar in nature and amount to the activities provided under the previous permit shall not constitute a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

(j) Withdrawal from mining laws

Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on or after November 12, 1996, pursuant to authority of the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), and the Act of June 4, 1897, or the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal thereof. Unless the Secretary requests otherwise of the Secretary of the Interior, such withdrawal shall be canceled automatically upon expiration or other termination of the permit and the land automatically restored to all appropriation not otherwise restricted under the public land laws.

(k) SKI AREA FEE RETENTION ACCOUNT.—

(1) DEFINITIONS.—In this subsection:

(A) ACCOUNT.—The term ‘Account’ means the Ski Area Fee Retention Account established under paragraph (2).

(B) COVERED UNIT.—The term ‘covered unit’ means a National Forest which collects a rental charge under this section.

(C) REGION.—The term ‘Region’ means a Forest Service Region.

(D) RENTAL CHARGE.—The term ‘rental charge’ means a permit rental charge that is charged under subsection (a).

(E) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

(2) ESTABLISHMENT.—The Secretary of the Treasury shall establish in the Treasury a special account, to be known as the ‘Ski Area Fee Retention Account’, into which there shall be deposited—

(A) in the case of a covered unit at which not less than \$15,000,000 is collected by the covered unit from rental charges in a fiscal year, an amount equal to 50 percent of the rental charges collected at the covered unit in the fiscal year; or

(B) in the case of any other covered unit, an amount equal to 65 percent of the rental charges collected at the covered unit in a fiscal year.

(3) AVAILABILITY.—Subject to paragraphs (4), (5), and (6), any amounts deposited in the Account under paragraph (2) shall remain available for expenditure, without further appropriation, until expended.

(4) LOCAL DISTRIBUTION OF AMOUNTS IN THE ACCOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), 100 percent of the amounts deposited in the Account from a specific covered unit shall remain available for expenditure at the covered unit at which the rental charges were collected.

(B) REDUCTION.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary may reduce the percentage of amounts available to a covered unit under subparagraph (A) if the Secretary determines that the rental charges collected at the covered unit exceed the reasonable needs of the covered unit for that fiscal year for authorized expenditures described in paragraph (5)(A).

(ii) LIMITATION.—The Secretary may not reduce the percentage of amounts available under clause (i)—

(I) in the case of a covered unit described in paragraph (2)(A), to less than 35 percent of the amount of rental charges deposited in the Account from the covered unit in a fiscal year; or

(II) in the case of any other covered unit, to less than 50 percent of the amount of rental charges deposited in the Account from the covered unit in a fiscal year.

(C) TRANSFER TO OTHER COVERED UNITS.—

(i) DISTRIBUTION.—If the Secretary determines that the percentage of amounts otherwise available to a covered unit under subparagraph (A) should be reduced under subparagraph (B), the Secretary may transfer to other covered units, for allocation in accordance with clause (ii), the percentage of the amounts withheld from the covered unit under subparagraph (B), to be expended by the other covered units in accordance with paragraph (5).

(ii) CRITERIA.—In determining the allocation of amounts to be transferred under clause (i) among other covered units, the Secretary shall consider—

(I) the number of proposals for ski area improvements in the other covered units;

(II) any backlog in ski area permit administration or the processing of ski area proposals in the other covered units; and

(III) any need for services, training, staffing, or streamlining programs in the other covered units or the Region in which they are located that would improve the administration of the Forest Service Ski Area Program.

(5) AUTHORIZED EXPENDITURES.—

(A) IN GENERAL.—Amounts distributed from the Account to a covered unit under this subsection may be used for—

(i) ski area special use permit administration and processing of proposals for ski area improvement projects in the covered unit, including staffing and contracting for such administration, process, or services through the unit or the Region;

(ii) any expenses that the Forest Service would have otherwise applied to ski area permittees through cost recovery pursuant to part 251 of title 36, Code of Federal Regulations;

(iii) training programs on processing ski area applications, administering ski area permits, or ski area process streamlining in the covered unit or the Region in which the unit is located; and

(iv) interpretation activities, visitor information, visitor services, and signage in the covered unit to enhance—

(I) the ski area visitor experience on National Forest System land; and

(II) avalanche information and education activities carried out by the Forest Service.

(B) OTHER USES.—If any amounts are still available in the Account after all ski area permit-related expenditures under subparagraph (A) are made, including amounts transferred to other covered units pursuant to paragraph (4)(C), such remaining amounts in the Account may be applied to permit administration for other (non-ski area) Forest Service recreation special use permits at the discretion of the Secretary. The Secretary shall first determine that all ski area-related permit administration, processing and interpretation needs have been met in all covered units and Regions before applying any remaining amounts in the Account to non-ski area uses.

(C) LIMITATION.—Amounts in the Account may not be used for—

(i) the conduct of wildfire suppression or preparedness activities;

(ii) the conduct of biological monitoring on National Forest System land under the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) et seq.) for listed species or candidate species, except as required by law for environmental review of ski area projects;

(iii) the acquisition of land for inclusion in the National Forest System; or

(iv) Forest Service administrative sites.

(6) SAVINGS PROVISIONS.—

(A) IN GENERAL.—Nothing in this subsection affects the applicability of section 7 of the Act of April 24, 1950 (commonly known as the ‘Granger-Thye Act’) ([16 U.S.C. 580d](#)), to ski areas on National Forest System land.

(B) REVENUE ALLOCATION PAYMENTS.—Rental charges deposited in the Account under paragraph (2) shall be considered to be amounts received from the National Forest System for purposes of calculating amounts to be paid under—

(i) the Secure Rural Schools and Community Self-Determination Act of 2000 ([16 U.S.C. 7101](#) et seq.);

(ii) the sixth paragraph under the heading ‘forest service’ in the Act of May 23, 1908 (35 Stat. 260; [16 U.S.C. 500](#));

(iii) section 13 of the Act of March 1, 1911 (36 Stat. 963; [16 U.S.C. 500](#)); and

(iv) [chapter 69](#) of title 31, United States Code.

(C) SUPPLEMENTAL FUNDING.—Rental charges retained and expended under this subsection shall supplement (and not supplant) appropriated funding for the operation and maintenance of each covered unit.