

for buildings, structures, and facilities for industrial or commercial purposes whenever such purposes are related to or consistent with other use of the national forests, and for facilities to be used by public or nonprofit agencies for education or public use or in connection with any public activity.

ENHANCING FOREST SERVICE ADMINISTRATION OF
RIGHTS-OF-WAY AND LAND USES

Pub. L. 106-113, div. B, §1000(a)(3) [title III, §331], Nov. 29, 1999, 113 Stat. 1535, 1501A-196, as amended, formerly set out as a note under this section, was transferred to section 497e of this title.

§ 497a. Occupancy and use under permit of lands in Alaska for various purposes; period of permit; size of allotment; prohibitions; termination

The Secretary of Agriculture, in conformity with regulations prescribed by him, may permit the use and occupancy of national-forest lands in Alaska for purposes of residence, recreation, public convenience, education, industry, agriculture, and commerce, not incompatible with the best use and management of the national forests, for such periods as may be warranted but not exceeding thirty years and of such areas as may be necessary but not exceeding eighty acres, and after such permits have been issued and so long as they continue in full force and effect the lands therein described shall not be subject to location, entry, or appropriation, under the public land laws or mining laws, or to disposition under the mineral leasing laws: *Provided*, That nothing contained in this section shall prevent the said Secretary from canceling, revoking, or otherwise terminating a permit so issued upon proof of a breach of its terms and conditions or for other just cause.

(Mar. 30, 1948, ch. 162, 62 Stat. 100.)

CODIFICATION

Section was formerly classified to section 341 of Title 48, Territories and Insular Possessions.

§ 497b. Ski area permits

(a) Law applicable to permits

The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of ski areas and associated facilities on National Forest System lands shall on and after October 22, 1986, be governed by this section and other applicable law.

(b) Authority

The Secretary of Agriculture (hereinafter referred to as “the Secretary”) is authorized to issue permits (hereinafter referred to as “ski area permits”) for the use and occupancy of suitable lands within the National Forest System for skiing and other snow sports and recreational uses authorized by this section. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation), or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee’s needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be cancelled by the Secretary in whole or in part for any violation of the permit terms or conditions, for nonpayment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes;

(6) may be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law;

(7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate; and

(8) shall be subject to a permit fee based on fair market value in accordance with applicable law.

(c) Other recreational uses

(1) Authority of Secretary

Subject to the terms of a ski area permit issued pursuant to subsection (b), the Secretary may authorize a ski area permittee to provide such other seasonal or year-round natural resource-based recreational activities and associated facilities (in addition to skiing and other snow-sports) on National Forest System land subject to a ski area permit as the Secretary determines to be appropriate.

(2) Requirements

Each activity and facility authorized by the Secretary under paragraph (1) shall—

(A) encourage outdoor recreation and enjoyment of nature;

(B) to the extent practicable—

(i) harmonize with the natural environment of the National Forest System land on which the activity or facility is located; and

(ii) be located within the developed portions of the ski area;

(C) be subject to such terms and conditions as the Secretary determines to be appropriate; and

(D) be authorized in accordance with—

(i) the applicable land and resource management plan; and

(ii) applicable laws (including regulations).

(3) Inclusions

Activities and facilities that may, in appropriate circumstances, be authorized under paragraph (1) include—

(A) zip lines;

(B) mountain bike terrain parks and trails;

(C) frisbee golf courses; and

(D) ropes courses.

(4) Exclusions

Activities and facilities that are prohibited under paragraph (1) include—

(A) tennis courts;

(B) water slides and water parks;

(C) swimming pools;

- (D) golf courses; and
- (E) amusement parks.

(5) Limitation

The Secretary may not authorize any activity or facility under paragraph (1) if the Secretary determines that the authorization of the activity or facility would result in the primary recreational purpose of the ski area permit to be a purpose other than skiing and other snow-sports.

(6) Boundary determination

In determining the acreage encompassed by a ski area permit under subsection (b)(3), the Secretary shall not consider the acreage necessary for activities and facilities authorized under paragraph (1).

(7) Effect on existing authorized activities and facilities

Nothing in this subsection affects any activity or facility authorized by a ski area permit in effect on November 7, 2011, during the term of the permit.

(d) Regulations

Not later than 2 years after November 7, 2011, the Secretary shall promulgate regulations to implement this section.

(e) Construction with Secretary's duties under other laws

Nothing in this section shall be deemed to amend, modify or otherwise affect the Secretary's duties under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), including his duties to involve the public in his decisionmaking and planning for the national forests.

(Pub. L. 99-522, §3, Oct. 22, 1986, 100 Stat. 3000; Pub. L. 112-46, §3, Nov. 7, 2011, 125 Stat. 538.)

REFERENCES IN TEXT

Act of March 4, 1915 (16 U.S.C. 497), referred to in subsec. (a), is act Mar. 4, 1915, ch. 144, 38 Stat. 1086. For complete classification of this Act to the Code, see Tables.

This section, referred to in subsecs. (a), (b), and (e), was in the original "this Act", meaning Pub. L. 99-522, Oct. 22, 1986, 100 Stat. 3000, known as the National Forest Ski Area Permit Act of 1986, which enacted this section and notes set out under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (e), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, which is classified generally to subchapter I (§1600 et seq.) of chapter 36 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of this title and Tables.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-46, §3(1), substituted "ski areas and associated facilities" for "nordic and alpine ski areas and facilities".

Subsec. (b). Pub. L. 112-46, §3(2), substituted "skiing and other snow sports and recreational uses authorized by this section" for "nordic and alpine skiing operations and purposes" in introductory provisions.

Subsec. (c). Pub. L. 112-46, §3(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 112-46, §3(5), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "Within one year after October 22, 1986, the Secretary shall promulgate rules and regulations to implement the provisions of this section, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this section within 3 years of October 22, 1986."

Pub. L. 112-46, §3(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 112-46, §3(6), substituted "the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.)" for "the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act".

Pub. L. 112-46, §3(3), redesignated subsec. (d) as (e).

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112-46, §1, Nov. 7, 2011, 125 Stat. 538, provided that: "This Act [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Ski Area Recreational Opportunity Enhancement Act of 2011'."

SHORT TITLE

Pub. L. 99-522, §1, Oct. 22, 1986, 100 Stat. 3000, provided that: "This Act [enacting this section and provisions set out as a note below] may be cited as the 'National Forest Ski Area Permit Act of 1986'."

EFFECT

Pub. L. 112-46, §4, Nov. 7, 2011, 125 Stat. 540, provided that: "Nothing in the amendments made by this Act [amending this section] establishes a legal preference for the holder of a ski area permit to provide activities and associated facilities authorized by section 3(c) of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b(c)) (as amended by section 3)."

PURPOSES

Pub. L. 112-46, §2, Nov. 7, 2011, 125 Stat. 538, provided that: "The purpose of this Act [see Short Title of 2011 Amendment note above] is to amend the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b)—"

"(1) to enable snow-sports (other than nordic and alpine skiing) to be permitted on National Forest System land subject to ski area permits issued by the Secretary of Agriculture under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b); and

"(2) to clarify the authority of the Secretary of Agriculture to permit appropriate additional seasonal or year-round recreational activities and facilities on National Forest System land subject to ski area permits issued by the Secretary of Agriculture under section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b)."

Pub. L. 99-522, §2, Oct. 22, 1986, 100 Stat. 3000, provided that: "The purposes of this Act [see Short Title note above] are to—"

"(a) provide a unified and modern permitting process for nordic and alpine ski areas on national forest lands;

"(b) provide for ski area permits which more closely reflect the acreage and other physical requirements of modern ski area development; and

"(c) provide a permit system which will be more commensurate with the long-term construction, financing, and operation needs of ski areas on national forest lands."

§ 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:

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

(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.