

CRS Report for Congress

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Federal Lands Recreation Enhancement Act

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Summary

The Federal Lands Recreation Enhancement Act (in P.L. 108-447) authorizes five federal agencies to charge fees at recreation sites through December 8, 2014. It provides for different kinds of fees, criteria for charging fees, public participation in determining fees, and the establishment of one national recreation pass. The agencies can use the collections without further appropriation, and most of the money is for improvements at the collecting site. This program supersedes, and seeks to improve upon, the Recreational Fee Demonstration Program. Recreation fees continue to be controversial. The agencies have begun implementing the new law, and Congress is overseeing implementation. This report will be updated as circumstances warrant.

Introduction and Background

The 108th Congress established a new recreation fee program for the Bureau of Reclamation (BOR) and the four major federal land management agencies — the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior (DOI), and the Forest Service (FS) in the Department of Agriculture (USDA). The Federal Lands Recreation Enhancement Act (REA)¹ authorizes the agencies to charge and collect fees at federal recreational lands and waters. The act authorizes different kinds of fees, outlines criteria for establishing fees, and prohibits charging fees for certain activities or services. The agencies can spend the revenue collected without further appropriation, with most of the money retained at the collection site, and the collections can be used for specified purposes. The act also authorizes an interagency pass that can be used at federal recreation sites throughout the nation, as well as regional multi-entity passes. The program is to terminate 10 years after enactment — December 8, 2014. Currently, DOI and USDA are beginning to implement the fee program, and Congress is overseeing implementation activities.

¹ The Federal Lands Recreation Enhancement Act was enacted on December 8, 2004, as Title VIII of Division J of P.L. 108-447, the Consolidated Appropriations Act for FY2005.

This new recreation fee program supersedes an earlier one, the Recreational Fee Demonstration Program (“Fee Demo”), which had begun in 1996 as a three-year trial but was extended several times. That program had allowed the four major federal land management agencies, but not the BOR, to test the feasibility of charging fees to generate revenues for improvements at recreation sites. While initially the number of fee sites was limited, the agencies ultimately were allowed to establish any number of fee sites, set fee levels, and retain and spend the revenue collected without further appropriation. At least 80% of the revenue had to be retained and used at the site where it was generated, and agencies had wide latitude to spend the funds on purposes specified in law.

The Fee Demo program was controversial. It was supported by the Administration and others in part for generating revenue; providing flexibility in setting fees and using revenues; having the direct beneficiaries of recreation pay more for benefits; deterring criminal activity, such as littering and vandalism; and ameliorating damage where it did occur. However, the Fee Demo program was criticized as doubly taxing the recreating public; resulting in unfair and confusing fees in some areas; promoting commercial development that damaged federal lands; and discriminating against lower-income people, rural residents, and low-impact recreation. Still other criticisms pertained to program implementation, including the high cost of fee collection and a lack of consistency in implementation within and across agencies.

Recent Congresses considered whether to let the Fee Demo program expire, extend it, or make it permanent, and how to structure any extended or permanent program. Central to the debate was which agencies or types of lands to include in a fee program, and how to determine fee amounts, collect fees, and spend collections. In enacting the REA, Congress created a 10-year program, and extended it to the BOR. Congress sought to eliminate some of the concerns with Fee Demo, in part by simplifying and standardizing the types of fees, authorizing an interagency recreation pass, and providing for public input in establishing fee locations and amounts. Under Fee Demo, a majority of sites did not charge fees — 89% of BLM sites, 78% of FWS (sites open to visitors), 75% of FS, and 40% of NPS.

The new recreation fee program is expected to continue to provide incentives for agency managers to charge and use fees for onsite improvements. Prior to Fee Demo, the agencies had little incentive to develop, monitor, and evaluate fee collection since most fees went to the General Fund of the Treasury;² the agencies did not retain them for resource improvements or management activities. REA monies, like Fee Demo collections, are intended to supplement appropriations. In general, recreation fees have represented a small portion of each agency’s overall financing, with the bulk of agency monies coming from appropriated funds. Total collections under Fee Demo were \$176 million for FY2003, with some 70% (\$123 million) associated with the NPS.

² In 1964, Congress had authorized the four land management agencies to collect recreation fees through the Land and Water Conservation Fund (LWCF) Act. For more information on LWCF, see CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey A. Zinn.

The Recreation Fee Program under the REA Fees

In enacting the REA, Congress sought to reduce or eliminate duplication, inconsistency, and confusion over determining and collecting fees. The law seeks to standardize the types of recreation fees across agencies, differentiate among different types of fees, and minimize the situations where multiple fees can be charged. To alleviate concerns that past fees had been charged for non-developed areas, the law outlines areas and circumstances where fees can and cannot be charged, in some cases specifying the level of services needed to charge a fee.

Types of Fees. The REA provides guidance on establishing entrance, standard amenity, expanded amenity, and special recreation permit fees. An entrance fee may be charged for units managed by the NPS and FWS only, on the grounds that recreation fees at these agencies have enjoyed widespread support and the lands typically have certain kinds of infrastructure and services. The law explicitly states that the BLM, BOR, and FS may not change entrance fees. Rather, these agencies may charge standard amenity fees in certain areas or circumstances, such as at a National Conservation Area, National Volcanic Monument, or visitor or interpretive center that provides a broad range of services. The idea is to preclude fees if a certain level of services or facilities is lacking.

All five agencies also may charge an expanded amenity fee, on the grounds that some fee tiering for specialized services is fair and equitable. The NPS and FWS may charge such a fee when a visitor uses a specific or specialized facility, equipment, or service. The fee may be in addition to an entrance fee or may be the sole fee. The BLM, BOR, and FS may charge an expanded amenity fee only for specified facilities and services, including use of developed campgrounds; use of transportation services; rental of cabins, boats, and historic structures; and participation in special tours. The REA prohibits the BLM, BOR, and FS from charging standard or expanded amenity fees for certain activities and services, such as for parking, accessing (in general) dispersed areas with low or no investment, passing through areas, and using scenic overlooks.

Further, the DOI and USDA Secretaries may charge a special recreation permit fee in connection with a special permit issued for specialized recreation at lands and waters of any of the five agencies. Specialized recreation includes group activities, recreation events, and use of motorized recreational vehicles.

In addition, the law specifies places where entrance and standard fees may not be charged — for example, at NPS units within D.C. It also bars fees from being charged to certain persons, such as those under 16 years old, or for certain purposes, including outings for noncommercial educational purposes by schools and academic institutions.

Criteria for Establishing Fees. To promote fair and consistent fees among agencies and locations, the REA provides criteria for establishing recreation fees. For instance, they are to be commensurate with benefits and services, and the Secretaries are to consider comparable fees charged elsewhere, such as by nearby private providers of recreation services. To minimize confusion, burden, and overlap of fees, the Secretaries are to consider the aggregate effect of recreation fees on recreation users and providers. They are to establish the minimum number of fees and avoid collecting multiple or

layered fees for similar purposes. In establishing new fees and fee sites, the Secretaries are to obtain input from Recreation Resource Advisory Committees (RACs) (see below).

Retention, Use, and Enforcement of Fees. The law allows each agency to retain and spend the revenue collected without further appropriation. Each agency's collections are to be deposited into a special account in the Treasury. In general, at least 80% of the revenue collected is to be retained and used at the site where it was generated. However, the Secretaries of DOI and USDA can reduce that amount to not less than 60% for a fiscal year, if collections exceed reasonable needs. This provision seeks to provide agencies with flexibility in using their revenues, in part to address high-priority needs at areas that do not collect enough revenue. The remaining collections are to be used agency-wide, at the discretion of the agency. However, the law contains other provisions for the distribution of certain collections, including from the sale of the national recreation pass and regional multi-entity passes.

The agencies have broad discretion in using revenues for purposes specified in the REA, which aim to benefit visitors directly. They include facility maintenance, repair, and enhancement; interpretation and visitor services; signs; certain habitat restoration; law enforcement; operation of the recreation fee program; and fee management agreements. The Secretaries may not use collections for employee bonuses or biological monitoring under the Endangered Species Act for listed or candidate species. Further, the Secretaries may not use more than "an average" of 15% of collections for program administration, overhead, and indirect costs. Under the Fee Demo program, agencies reported that a majority of fees were spent on deferred maintenance and various visitor services.

The REA continues a requirement that the Secretaries enforce the payment of fees. It authorizes penalties for nonpayment, with the fine for the first offense capped at \$100.

Public Participation and Collaboration

The Secretaries must provide an opportunity for public participation in establishing fees under the REA. For instance, they are to publish a notice in the *Federal Register* regarding a new fee area six months before its establishment. In addition, for each BLM and FS state or region, the Secretaries are to appoint Recreation RACs to make recommendations regarding standard and expanded amenity fees in accordance with specified procedures. The Secretary, if rejecting a recommendation, is to notify the House Resources and Senate Energy and Natural Resources Committees of the reasons at least 30 days before implementing a decision.

Each Recreation RAC is to be composed of 11 members and broadly representative of the recreation community, as specified in the law. The Secretaries are not to establish RACs if there is insufficient interest to ensure a balance of views. Also, in lieu of creating Recreation RACs, the Secretaries may use RACs established under other authorities (e.g., the RACs established under the grazing regulations.)

The Secretaries are to post notices of fees in areas where fees are being charged, as well as in publications distributed in the area. To the extent practicable, the Secretaries also are to post notices in areas where work is being performed using collections. Communication on how fees are spent is thought to enhance public acceptance of fees.

The law provides for collaboration with other federal and nonfederal entities, with a goal of greater convenience to the public and improved efficiency for the agencies. It authorizes the Secretaries to enter into contracts for various purposes, such as fee collection and processing services and emergency medical services. States or subdivisions of states that enter into such agreements may share in the revenues collected.

Recreation Passes

The law authorizes the establishment of a single national pass for recreation at a variety of sites managed by different agencies. One goal is to facilitate recreation by consolidating existing passes and reducing confusion over which passes can be accepted where, and another is to increase the convenience of visiting adjacent sites managed by different agencies. Specifically, the National Parks and Federal Recreational Lands Pass, also known as the America the Beautiful Pass, is to cover the entrance fee and standard amenity fee at all areas where such fees are charged. The Secretaries are to establish the price of the pass, which generally is to be valid for one year. However, they are to provide free or reduced-cost passes to certain individuals, such as volunteers and senior or disabled visitors, and may provide for a discounted or free day for visitors generally. They are to issue guidelines on the administration of the pass, including on the sharing of costs and revenues among the agencies. Further, the Secretaries may enter into cooperative agreements with governmental and nongovernmental entities for developing and implementing the pass program.

The law also provides authority to develop site-specific and regional multientity passes. A site-specific pass is to cover the entrance or standard amenity fee for a particular site for up to a year. A regional multientity pass is to be accepted by one or more of the five agencies or one or more governmental or nongovernmental entities. In establishing multientity passes, the Secretary is to enter into an agreement with all participating agencies or entities as to the price of the pass and the sharing of costs and revenues, among other issues.

Implementation and Issues

The 109th Congress is overseeing agency efforts to establish, collect, and spend recreation fees under the new program. On February 17, 2005, a Senate subcommittee held a hearing on NPS implementation of the program, with a focus on the development of the America the Beautiful Pass.

DOI and USDA are in transition to the new fee program. During transition, the agencies have agreed that existing passes will be honored, fees will not be extended to new areas, and existing fees will be evaluated against the criteria and prohibitions in the new program. The Recreation Fee Leadership Council is overseeing agency implementation of the new fee program. This interagency group was established in 2002 to enhance coordination and consistency of fees under Fee Demo. Current responsibilities include ensuring national consistency of fees; developing fee policies, such as with regard to passes and collections; and program evaluation. A Steering Group of the Fee Council has set up teams to implement provisions of the new law, such as those related to Recreation RACs, communications, passes, and fee collections and expenditures.

On December 17, 2004, the Fee Council adopted a draft implementation plan with short-, medium-, and long-term goals. Short-term goals, generally to be undertaken within three months of enactment, include creating the special accounts in the Treasury, conducting a rough analysis of whether sites that currently charge fees meet the criteria in the REA, and making preliminary assessments as to whether existing RACs could serve the role provided for in the REA. These particular short-term actions have been undertaken. Medium-term goals, to be accomplished within approximately 6-12 months of enactment, include conducting a more detailed analysis of whether existing fee sites meet the requirements in the REA; establishing interagency guidance in various areas, such as regarding the criteria for charging fees; and developing procedures for gathering the data needed for periodic reports to Congress. Specifically, under the REA, not later than May 1, 2006, and every three years thereafter, the Secretaries are to submit to Congress a report on the recreation fee program. The report is to include an evaluation of the program and any recommendations for changes to the fee system. Long-term goals, targeted for completion in a year or more following enactment, include establishing Recreation RACs; bringing the BOR into the fee program; and issuing the America the Beautiful Pass, tentatively scheduled to be available in January 2007.

Pending interagency policy guidance, some of the agencies have issued their own guidance on the intention and requirements of the new recreation fee program. The Fee Council expects such policies to be consistent across agencies. In addition, some of the agencies have formed internal workgroups to evaluate policies, requirements, and program needs. The agencies in the former Fee Demo program have been evaluating whether existing fee sites are in compliance with the new law.

Many assert that the new recreation fee program will improve recreation and visitor services, and is needed to supplement appropriations. They believe that the new program retains the benefits of the former Fee Demo program, such as by keeping most fees on site to provide improvements desired by visitors. They also contend that the new program improves upon the former one, for instance, by seeking to establish fair and similar fees among agencies. The criteria in the REA for determining fees are intended to ensure that they are charged in appropriate circumstances, namely where infrastructure and services directly benefit the public. Among other improvements, fee supporters note that the new program provides for more public involvement in determining fee sites and setting fees, such as through RACs, and for increased coordination with local communities, such as through fee management agreements. They also view the establishment of a single national pass as increasing consistency, convenience, and clarity.

However, some concerns with recreation fees continue to be expressed. They include that the new program does not go far enough in simplifying fees; that it does not allow for fee experimentation to adapt to change; and that it fails to ensure that most collections will be used for maintenance backlogs of agencies, which many regard as a priority. Other concerns are that federal lands will be overdeveloped to attract fee-paying tourists, and that one national pass will be difficult to implement given differences in agency lands and complex issues regarding pricing and sharing revenues. Some charge that the authority to reduce the funds a site retains to 60% could make planning difficult, reduce incentives to collect fees, and weaken visitor support for fees. Other critics continue to oppose recreation fees in general, including on the grounds that appropriations should cover the costs of operating and maintaining federal lands. Some counties and states (e.g., Montana and Colorado) have passed resolutions opposing recreation fees and seeking to repeal the REA.