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To provide for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 1999

Mr. CRAIG (for himself, Mr. MURKOWSKI, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Outfitter Policy Act
5 of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the experience, skills, trained staff, and in-
2 vestment in equipment that are provided by author-
3 ized outfitters are necessary to provide access to
4 Federal land to members of the public that need or
5 desire commercial outfitted activities to facilitate
6 their use and enjoyment of recreational or edu-
7 cational opportunities on Federal land;

8 (2) such activities constitute an important con-
9 tribution toward meeting the recreational and edu-
10 cational objectives of resource management plans ap-
11 proved and administered by agencies of the Depart-
12 ment of Agriculture and the Department of the Inte-
13 rior;

14 (3) an effective relationship between those
15 agencies and authorized outfitters requires imple-
16 mentation of agency policies and programs that pro-
17 vide for—

18 (A) a reasonable opportunity for an au-
19 thorized outfitter to realize a profit;

20 (B) a fair and reasonable return to the
21 United States through appropriate fees;

22 (C) renewal of outfitter permits based on
23 a performance evaluation system that rewards
24 outfitters that meet required performance

1 standards and discontinues outfitters that fail
2 to meet those standards; and

3 (D) transfer of an outfitter permit to the
4 qualified purchaser of the operation of an au-
5 thorized outfitter, an heir or assign, or another
6 qualified person or entity; and

7 (4) the provision of opportunities for outfitted
8 visitors to Federal land to engage in fishing and
9 hunting is best served by continued recognition that
10 the States retain primary authority over the taking
11 of fish and wildlife on Federal land.

12 **SEC. 3. PURPOSES.**

13 The purposes of this Act are—

14 (1) to establish terms and conditions of access
15 to, and occupancy and use of, Federal land by visi-
16 tors who require or desire the assistance of an au-
17 thorized outfitter; and

18 (2) to establish a stable regulatory climate that
19 encourages a qualified person or entity to provide,
20 and to continue to invest in the ability to provide,
21 outfitted visitors with access to, and occupancy and
22 use of, Federal land.

23 **SEC. 4. DEFINITIONS.**

24 In this Act:

1 (1) ACTUAL USE.—The term “actual use”
 2 means the portion of a principal allocation of out-
 3 fitter use that an authorized outfitter uses in con-
 4 ducting commercial outfitted activities during a pe-
 5 riod, for a type of use, for a location, or in terms
 6 of another measurement of the term or outfitted ac-
 7 tivities covered by an outfitter permit.

8 (2) ALLOCATION OF USE.—

9 (A) IN GENERAL.—The term “allocation of
 10 use” means a method or measurement of access
 11 that—

12 (i) is granted by the Secretary to an
 13 authorized outfitter for the purpose of fa-
 14 cilitating the occupancy and use of Federal
 15 land by an outfitted visitor;

16 (ii) takes the form of—

17 (I) an amount or type of com-
 18 mercial outfitted activity resulting
 19 from an apportionment of the total
 20 recreation capacity of a resource area;
 21 or

22 (II) in the case of a resource
 23 area for which recreation capacity has
 24 not been apportioned, a type of com-
 25 mercial outfitted activity conducted in

1 a manner that is not inconsistent with
 2 or incompatible with an approved re-
 3 source management plan; and

4 (iii) is calibrated in terms of amount
 5 of use, type of use, or location of a com-
 6 mercial outfitted activity, including user
 7 days or portions of user days, seasons or
 8 other periods of operation, launch dates,
 9 assigned camps, or other formulations of
 10 the type or amount of authorized activity.

11 (B) INCLUSION.—The term “allocation of
 12 use” includes the designation of a geographic
 13 area, zone, or district in which a limited num-
 14 ber of authorized outfitters are authorized to
 15 operate.

16 (3) AUTHORIZED OUTFITTER.—

17 (A) IN GENERAL.—The term “authorized
 18 outfitter” means a person that conducts a com-
 19 mercial outfitted activity on Federal land under
 20 an outfitter authorization.

21 (B) INCLUSION.—The term “authorized
 22 outfitter” includes an outfitter that conducts a
 23 commercial outfitted activity on Federal land
 24 under an outfitter authorization awarded under
 25 an agreement between the Secretary and a

1 State or local government that provides for the
2 regulation by a State or local agency of com-
3 mercial outfitted activities on Federal land.

4 (4) COMMERCIAL OUTFITTED ACTIVITY.—The
5 term “commercial outfitted activity” means an au-
6 thorized outfitted activity—

7 (A) that is available to the public;

8 (B) that is conducted under the direction
9 of paid staff; and

10 (C) for which an outfitted visitor is re-
11 quired to pay more than shared expenses (in-
12 cluding payment to an authorized outfitter that
13 is a nonprofit organization).

14 (5) FEDERAL AGENCY.—The term “Federal
15 agency” means—

16 (A) the Forest Service;

17 (B) the Bureau of Land Management;

18 (C) the United States Fish and Wildlife
19 Service; and

20 (D) the Bureau of Reclamation.

21 (6) FEDERAL LAND.—

22 (A) IN GENERAL.—The term “Federal
23 land” means all land and interests in land ad-
24 ministered by a Federal agency.

1 (B) EXCLUSION.—The term “Federal
2 land” does not include—

3 (i) land held in trust by the United
4 States for the benefit of an Indian tribe or
5 individual; or

6 (ii) land held by an Indian tribe or in-
7 dividual subject to a restriction by the
8 United States against alienation.

9 (7) INSTITUTIONAL RECREATION PROGRAM.—
10 The term “institutional recreation program” means
11 a program of recreational activities on Federal land
12 that may include the conduct of an outfitted activity
13 on Federal land sponsored and guided by—

14 (A) an institution with a membership or
15 limited constituency, such as a religious, con-
16 servation, youth, fraternal, or social organiza-
17 tion; or

18 (B) an educational institution, such as a
19 college or university.

20 (8) LIMITED OUTFITTER AUTHORIZATION.—
21 The term “limited outfitter authorization” means an
22 outfitter authorization under section 6(f).

23 (9) LIVERY.—The term “livery” means the
24 dropping off or picking up of visitors, supplies, or
25 equipment on Federal land.

1 (10) OUTFITTED ACTIVITY.—

2 (A) IN GENERAL.—The term “outfitted ac-
3 tivity” means an activity—

4 (i) such as outfitting, guiding, super-
5 vision, education, interpretation, skills
6 training, assistance, or livery operation
7 conducted for a member of the public in an
8 outdoor environment; and

9 (ii) that uses the recreational, natural,
10 historical, or cultural resources of Federal
11 land.

12 (B) EXCLUSION.—The term “outfitted ac-
13 tivity” does not include a service provided under
14 the National Forest Ski Area Permit Act of
15 1986 (16 U.S.C. 497b).

16 (11) OUTFITTED VISITOR.—The term “out-
17 fitted visitor” means a member of the public that re-
18 lies on an authorized outfitter for access to and oc-
19 cupancy and use of Federal land.

20 (12) OUTFITTER.—The term “outfitter” means
21 a person that conducts a commercial outfitted activ-
22 ity, including a person that, by local custom or tra-
23 dition, is known as a “guide”.

24 (13) OUTFITTER AUTHORIZATION.—The term
25 “outfitter authorization” means—

1 (A) an outfitter permit; or

2 (B) a limited outfitter authorization.

3 (14) OUTFITTER PERMIT.—The term “outfitter
4 permit” means an outfitter permit under section 6.

5 (15) PRINCIPAL ALLOCATION OF OUTFITTER
6 USE.—The term “principal allocation of outfitter
7 use” means a commitment by the Secretary in an
8 outfitter permit for an allocation of use to an au-
9 thorized outfitter in accordance with section 9.

10 (16) RESOURCE AREA.—The term “resource
11 area” means a management unit that is described by
12 or contained within the boundaries of—

13 (A) a national forest;

14 (B) an area of public land;

15 (C) a wildlife refuge;

16 (D) a congressionally designated area;

17 (E) a hunting zone or district; or

18 (F) any other Federal planning unit (in-
19 cluding an area in which outfitted activities are
20 regulated by more than 1 Federal agency).

21 (17) SECRETARY.—The term “Secretary”
22 means—

23 (A) with respect to Federal land adminis-
24 tered by the Forest Service, the Secretary of

1 Agriculture, acting through the Chief of the
2 Forest Service or a designee;

3 (B) with respect to Federal land adminis-
4 tered by the Bureau of Land Management, the
5 Secretary of the Interior, acting through the
6 Director of the Bureau of Land Management or
7 a designee;

8 (C) with respect to Federal land adminis-
9 tered by the United States Fish and Wildlife
10 Service, the Secretary of the Interior, acting
11 through the Director of the United States Fish
12 and Wildlife Service or a designee; and

13 (D) with respect to Federal land adminis-
14 tered by the Bureau of Reclamation, the Sec-
15 retary of the Interior, acting through the Com-
16 missioner of Reclamation or a designee.

17 (18) TEMPORARY ALLOCATION OF USE.—The
18 term “temporary allocation of use” means an alloca-
19 tion of use to an authorized outfitter in accordance
20 with section 9.

21 **SEC. 5. NONOUTFITTER USE AND ENJOYMENT.**

22 Nothing in this Act enlarges or diminishes the right
23 or privilege of occupancy and use of Federal land under
24 any applicable law (including planning process rules and
25 any administrative allocation), by a commercial or non-

1 commercial individual or entity that is not an authorized
2 outfitter or outfitted visitor.

3 **SEC. 6. OUTFITTER AUTHORIZATIONS.**

4 (a) IN GENERAL.—

5 (1) PROHIBITION.—No person or entity, except
6 an authorized outfitter, shall conduct a commercial
7 outfitted activity on Federal land.

8 (2) CONDUCT OF OUTFITTED ACTIVITIES.—An
9 authorized outfitter shall not conduct an outfitted
10 activity on Federal land except in accordance with
11 an outfitter authorization.

12 (3) SPECIAL RULE FOR ALASKA.—With respect
13 to a commercial outfitted activity conducted in the
14 State of Alaska, the Secretary shall not establish or
15 impose a limitation on access by an authorized out-
16 fitter that is inconsistent with the access ensured
17 under subsections (a) and (b) of section 1110 of the
18 Alaska National Interest Lands Conservation Act
19 (16 U.S.C. 3170).

20 (b) TERMS AND CONDITIONS.—An outfitter author-
21 ization shall specify—

22 (1) the rights and obligations of the authorized
23 outfitter and the Secretary; and

24 (2) other terms and conditions of the authoriza-
25 tion.

1 (c) CRITERIA FOR AWARD OF AN OUTFITTER PER-
2 MIT.—The Secretary shall establish criteria for award of
3 an outfitter permit that—

4 (1) identify skilled, experienced, and financially
5 capable persons or entities with knowledge of the re-
6 source area to offer and conduct commercial out-
7 fitted activities;

8 (2) provide a stable regulatory climate in ac-
9 cordance with this Act and other law (including reg-
10 ulations) that encourages a qualified person or enti-
11 ty to provide, and to continue to invest in the ability
12 to provide, commercial outfitted activities;

13 (3) offer a reasonable opportunity for an au-
14 thorized outfitter to realize a profit; and

15 (4) subordinate considerations of revenue to the
16 United States to the objectives of—

17 (A) providing recreational or educational
18 opportunities for the outfitted visitor;

19 (B) providing for the health and welfare of
20 the public; and

21 (C) conserving resources.

22 (d) AWARD.—

23 (1) IN GENERAL.—The Secretary may award
24 an outfitter permit under this Act if—

1 (A) the commercial outfitted activity to be
2 authorized is not inconsistent with or incompat-
3 ible with an approved resource management
4 plan applicable to the resource area in which
5 the commercial outfitted activity is to be con-
6 ducted; and

7 (B) the authorized outfitter meets the cri-
8 teria established under subsection (c)(1).

9 (2) USE OF COMPETITIVE PROCESS.—

10 (A) IN GENERAL.—Except as otherwise
11 provided by this Act, the Secretary shall use a
12 competitive process to select an authorized out-
13 fitter to which an outfitter permit is to be
14 awarded.

15 (B) EXCEPTION FOR CERTAIN ACTIVI-
16 TIES.—The Secretary may award an outfitter
17 permit to an applicant without conducting a
18 competitive selection process if the Secretary
19 determines that—

20 (i) the applicant meets criteria estab-
21 lished by the Secretary under subsection
22 (c); and

23 (ii) there is no competitive interest in
24 the commercial outfitted activity to be con-
25 ducted.

1 (C) EXCEPTION FOR RENEWALS AND
 2 TRANSFERS.—The Secretary shall award an
 3 outfitter permit to an applicant without con-
 4 ducting a competitive selection process if the
 5 authorization is a renewal or transfer of an ex-
 6 isting outfitter permit under section 11 or 12.

7 (e) PROVISIONS OF OUTFITTER PERMITS.—

8 (1) IN GENERAL.—An outfitter permit shall
 9 provide for—

10 (A) the health and welfare of the public;

11 (B) conservation of resource values;

12 (C) a fair and reasonable return to the
 13 United States through an authorization fee in
 14 accordance with section 7;

15 (D) a term of 10 years;

16 (E) the obligation of an authorized out-
 17 fitter to defend and indemnify the United
 18 States in accordance with section 8;

19 (F) a principal allocation of outfitter use,
 20 and, if appropriate, a temporary allocation of
 21 use, in accordance with section 9;

22 (G) a plan to conduct performance evalua-
 23 tions in accordance with section 10;

24 (H) renewal or termination of an outfitter
 25 permit in accordance with section 11;

1 (I) transfer of an outfitter permit in ac-
2 cordance with section 12;

3 (J) a means of modifying an outfitter per-
4 mit to reflect material changes from the terms
5 and conditions specified in the outfitter permit;

6 (K) notice of a right of appeal and judicial
7 review in accordance with section 14; and

8 (L) such other terms and conditions as the
9 Secretary may require.

10 (2) EXTENSIONS.—The Secretary may award
11 not more than 3 temporary 1-year extensions of an
12 outfitter permit, unless the Secretary determines
13 that extraordinary circumstances warrant additional
14 extensions.

15 (f) LIMITED OUTFITTER AUTHORIZATIONS.—

16 (1) IN GENERAL.—The Secretary may issue a
17 limited outfitter authorization to an applicant for in-
18 cidental occupancy and use of Federal land for the
19 purpose of conducting a commercial outfitted activ-
20 ity on a limited basis.

21 (2) TERM.—A limited outfitter authorization
22 shall have a term of not to exceed 2 years.

23 (3) REISSUANCE OR RENEWAL.—A limited out-
24 fitter authorization may be reissued or renewed at
25 the discretion of the Secretary.

1 **SEC. 7. AUTHORIZATION FEES.**

2 (a) AMOUNT OF FEE.—

3 (1) IN GENERAL.—An outfitter permit shall
4 provide for payment to the United States of a fair
5 and reasonable authorization fee, as determined by
6 the Secretary.

7 (2) DETERMINATION OF AMOUNT OF FEE.—In
8 determining the amount of an authorization fee, the
9 Secretary shall take into consideration—

10 (A) the obligations of the outfitter under
11 the outfitter permit;

12 (B) the provision of a reasonable oppor-
13 tunity for net profit in relation to capital in-
14 vested; and

15 (C) economic conditions.

16 (b) ESTABLISHMENT OF AMOUNT APPLICABLE TO
17 AN OUTFITTER PERMIT.—

18 (1) IN GENERAL.—The amount of the author-
19 ization fee paid to the United States for the term of
20 an outfitter permit shall be specified in the outfitter
21 permit.

22 (2) REQUIREMENTS.—The amount of the au-
23 thorization fee—

24 (A)(i) shall be expressed as—

25 (I) a simple charge per day of ac-
26 tual use; or

1 (II) an annual or seasonable flat
2 fee;

3 (ii) if calculated as a percentage of
4 revenue, shall be determined based on ad-
5 justed gross receipts; or

6 (iii) with respect to a commercial out-
7 fitted activity conducted in the State of
8 Alaska, shall be based on a simple charge
9 per user day;

10 (B) shall be subordinate to the objectives
11 of—

12 (i) conserving resources;

13 (ii) protecting the health and welfare
14 of the public; and

15 (iii) providing reliable, consistent per-
16 formance in conducting outfitted activities;
17 and

18 (C) shall be required to be paid by an au-
19 thorized outfitter to the United States on a rea-
20 sonable schedule during the operating season.

21 (3) ADJUSTED GROSS RECEIPTS.—For the pur-
22 pose of paragraph (2)(A)(ii), the Secretary shall—

23 (A) take into consideration revenue from
24 the gross receipts of the authorized outfitter

1 from commercial outfitted activities conducted
 2 on Federal land; and

3 (B) exclude from consideration any rev-
 4 enue that is derived from—

5 (i) fees paid by the authorized out-
 6 fitter to any unit of Federal, State, or local
 7 government for—

8 (I) hunting or fishing licenses;

9 (II) entrance or recreation fees;

10 or

11 (III) other purposes (other than
 12 commercial outfitted activities con-
 13 ducted on Federal land);

14 (ii) goods and services sold to out-
 15 fitted visitors that are not within the scope
 16 of authorized outfitter activities conducted
 17 on Federal land; or

18 (iii) operations on non-Federal land.

19 (4) SUBSTANTIALLY SIMILAR SERVICES IN A
 20 SPECIFIC GEOGRAPHIC AREA.—

21 (A) IN GENERAL.—Except as provided in
 22 subparagraph (B), if more than 1 outfitter per-
 23 mit is awarded to conduct the same or similar
 24 commercial outfitted activities in the same re-

1 source area, the Secretary shall establish an
2 identical fee for all such outfitter permits.

3 (B) EXCEPTION.—The terms and condi-
4 tions of an existing outfitter permit shall not be
5 subject to modification or open to renegotiation
6 by the Secretary because of the award of a new
7 outfitter permit at the same resource area for
8 the same or similar commercial outfitted activi-
9 ties.

10 (5) ACTUAL USE.—

11 (A) IN GENERAL.—For the purpose of cal-
12 culating an authorization fee for actual use
13 under clauses (ii) and (iii) of paragraph (2)(A),
14 the sum of authorization fees proportionately
15 assessed per outfitted visitor in a single cal-
16 endar day for commercial outfitted activities at
17 more than 1 resource area shall be not greater
18 than the equivalent fee charged for 1 full user
19 day.

20 (B) RECONSIDERATION OF FEE.—The au-
21 thorization fee may be reconsidered during the
22 term of the outfitter permit in accordance with
23 paragraph (6) or section 9(c)(3) at the request
24 of the Secretary or the authorized outfitter.

1 (6) ADJUSTMENT OF FEES.—The amount of an
2 authorization fee—

3 (A) shall be determined as of the date of
4 the outfitter permit; and

5 (B) may be modified to reflect—

6 (i) changes relating to the terms and
7 conditions of the outfitter permit, including
8 1 or more outfitter permits described in
9 paragraph (5);

10 (ii) extraordinary unanticipated
11 changes affecting operating conditions,
12 such as natural disasters, economic condi-
13 tions, or other material adverse changes
14 from the terms and conditions specified in
15 the outfitter permit;

16 (iii) changes affecting operating or
17 economic conditions determined by other
18 governing entities, such as the availability
19 of State fish or game licenses; or

20 (iv) the imposition of new or higher
21 fees assessed under other law.

22 (c) ESTABLISHMENT OF AMOUNT APPLICABLE TO A
23 LIMITED OUTFITTER AUTHORIZATION.—The Secretary
24 shall determine the amount of an authorization fee, if any,
25 under a limited outfitter authorization.

1 **SEC. 8. LIABILITY AND INDEMNIFICATION.**

2 (a) IN GENERAL.—An authorized outfitter shall de-
3 fend and indemnify the United States for costs or ex-
4 penses associated with injury, death, or damage to any
5 person or property caused by the authorized outfitter's
6 negligence, gross negligence, or willful and wanton dis-
7 regard for persons or property arising directly out of the
8 authorized outfitter's conduct of a commercial outfitted
9 activity under an outfitter authorization.

10 (b) NO LIABILITY.—An authorized outfitter—

11 (1) shall have no responsibility to defend or in-
12 demnify the United States, its agents, employees, or
13 contractors, or third parties for costs or expenses as-
14 sociated with injury, death, or damage to any person
15 or property caused by the acts, omissions, neg-
16 ligence, gross negligence, or willful and wanton mis-
17 conduct of the United States, its agents, employees,
18 or contractors, or third parties;

19 (2) shall not incur liability of any kind to the
20 United States, its agents, employees, or contractors,
21 or third parties as a result of the award of an out-
22 fitter authorization or as a result of the conduct of
23 a commercial outfitted activity under an outfitter
24 authorization absent a finding by a court of com-
25 petent jurisdiction of negligence, gross negligence, or

1 willful and wanton disregard for persons or property
2 on the part of the authorized outfitter; and

3 (3) shall have no responsibility to defend or in-
4 demnify the United States, its agents, employees, or
5 contractors, or third parties for costs or expenses as-
6 sociated with injury, death, or damage to any person
7 or property resulting from the inherent risks of the
8 commercial outfitted activity conducted by the au-
9 thorized outfitter under the outfitter authorization
10 or the inherent risks present on Federal land.

11 (c) AGREEMENTS.—An authorized outfitter may
12 enter into contracts or other agreements with outfitted
13 visitors, including agreements providing for release, waiv-
14 er, indemnification, acknowledgment of risk, or allocation
15 of risk.

16 **SEC. 9. ALLOCATION OF USE.**

17 (a) IN GENERAL.—In a manner that is not incon-
18 sistent with or incompatible with an approved resource
19 management plan applicable to the resource area in which
20 a commercial outfitted activity occurs, the Secretary—

21 (1) shall provide a principal allocation of out-
22 fitter use to an authorized outfitter under an out-
23 fitter permit; and

24 (2) may provide a temporary allocation of use
25 to an authorized outfitter under an outfitter permit.

1 (b) RENEWALS, TRANSFERS, AND EXTENSIONS.—

2 The Secretary shall provide a principal allocation of out-
3 fitter use to an authorized outfitter that—

4 (1) in the case of the renewal of an outfitter
5 permit, is not inconsistent with or incompatible with
6 the terms and conditions of an approved resource
7 management plan applicable to the resource area in
8 which the commercial outfitted activity occurs; or

9 (2) in the case of the transfer or temporary ex-
10 tension of an outfitter permit, is the same amount
11 of principal allocation of outfitter use provided to
12 the current authorized outfitter.

13 (c) WAIVER.—

14 (1) IN GENERAL.—At the request of an author-
15 ized outfitter, the Secretary may waive any obliga-
16 tion of the authorized outfitter to use all or part of
17 the amount of allocation of use provided under the
18 outfitter permit, if the request is made in sufficient
19 time to allow the Secretary to temporarily reallocate
20 the unused portion of the allocation of use in that
21 season or calendar year.

22 (2) RECLAIMING OF ALLOCATION OF USE.—Un-
23 less the Secretary has reallocated the unused portion
24 of an allocation of use in accordance with paragraph

1 (1), the authorized outfitter may reclaim any part of
2 the unused portion in that season or calendar year.

3 (3) NO FEE OBLIGATION.—An outfitter permit
4 fee may not be charged for any amount of allocation
5 of use subject to a waiver under paragraph (1).

6 (d) ADJUSTMENT TO ALLOCATION OF USE.—The
7 Secretary—

8 (1) may adjust an allocation of use assigned to
9 an authorized outfitter to reflect—

10 (A) material change arising from approval
11 of a change in the resource management plan
12 for the area of operation; or

13 (B) requirements arising under other law;
14 and

15 (2) shall provide an authorized outfitter with
16 documentation supporting the basis for any adjust-
17 ment in the principal allocation of outfitter use, in-
18 cluding new terms and conditions that result from
19 the adjustment.

20 (e) TEMPORARY ALLOCATION OF USE.—

21 (1) IN GENERAL.—A temporary allocation of
22 use may be provided to an authorized outfitter at
23 the discretion of the Secretary for a period not to
24 exceed 2 years.

1 (2) RENEWALS, TRANSFERS, AND EXTEN-
 2 SIONS.—A temporary allocation of use may be re-
 3 newed, transferred, or extended at the discretion of
 4 the Secretary.

5 **SEC. 10. EVALUATION OF PERFORMANCE UNDER OUT-**
 6 **FITTER PERMITS.**

7 (a) EVALUATION PROCESS.—

8 (1) IN GENERAL.—The Secretary shall develop
 9 a process for annual evaluation of the performance
 10 of an authorized outfitter in conducting a commer-
 11 cial outfitted activity under an outfitter permit.

12 (2) EVALUATION CRITERIA.—Criteria to be
 13 used by the Secretary to evaluate the performance of
 14 an authorized outfitter shall—

15 (A) be objective, measurable, and reason-
 16 ably attainable; and

17 (B) include—

18 (i) standards generally applicable to
 19 all commercial outfitted activities;

20 (ii) standards specific to a resource
 21 area, an individual outfitter operation, or a
 22 type of commercial outfitted activity; and

23 (iii) such other terms and conditions
 24 of the outfitter permit as are agreed to by

1 the Secretary and the authorized outfitter
2 as measurements of performance.

3 (3) SPECIAL RULE FOR ALASKA.—With respect
4 to commercial outfitted activities conducted in the
5 State of Alaska, objectives relating to conservation
6 of natural resources and the taking of fish and game
7 shall not be inconsistent with the laws (including
8 regulations) of the Alaska Department of Fish and
9 Game.

10 (4) REQUIREMENTS.—In evaluating the level of
11 performance of an authorized outfitter, the Sec-
12 retary shall—

13 (A) appropriately account for factors be-
14 yond the control of the authorized outfitter, in-
15 cluding conditions described in section
16 7(b)(6)(B);

17 (B) ensure that the effect of any perform-
18 ance deficiency reflected by the performance
19 rating is proportionate to the severity of the de-
20 ficiency, including any harm that may have re-
21 sulted from the deficiency; and

22 (C) allow additional credit to be earned for
23 elements of performance that exceed the re-
24 quirements of the outfitter permit.

1 (b) LEVELS OF PERFORMANCE.—The Secretary shall
2 define 3 levels of performance, as follows:

3 (1) Good, indicating a level of performance that
4 fulfills the terms and conditions of the outfitter per-
5 mit.

6 (2) Marginal, indicating a level of performance
7 that, if not corrected, will result in an unsatisfactory
8 level of performance.

9 (3) Unsatisfactory, indicating a level of per-
10 formance that fails to fulfill the terms and condi-
11 tions of the outfitter permit.

12 (c) PERFORMANCE EVALUATION.—

13 (1) EVALUATION SYSTEM.—The Secretary shall
14 establish a performance evaluation system that
15 assures the public of continued availability of de-
16 pendable commercial outfitted activities and discon-
17 tinues any authorized outfitter that fails to meet the
18 required standards.

19 (2) PROCEDURE.—An authorized outfitter shall
20 be entitled—

21 (A) to be present, or represented, at in-
22 spections of operations or facilities, which in-
23 spections shall be limited to the operations and
24 facilities of the authorized outfitter located on
25 Federal land;

1 (B) to receive written notice of any con-
 2 duct or condition that, if not corrected, might
 3 lead to a performance evaluation of marginal or
 4 unsatisfactory, which notice shall include an ex-
 5 planation of needed corrections and provide a
 6 reasonable period of time in which the correc-
 7 tions may be made without penalty; and

8 (C) to receive written notice of the results
 9 of the performance evaluation not later than 30
 10 days after the conclusion of the authorized out-
 11 fitter's operating season, including the level of
 12 performance and the status of corrections that
 13 may have been required.

14 (d) MARGINAL PERFORMANCE.—If an authorized
 15 outfitter's level of performance for a year is determined
 16 to be marginal, and the authorized outfitter fails to com-
 17 plete the corrections within the time period specified under
 18 subsection (c)(2)(B), the level of performance shall be de-
 19 termined to be unsatisfactory for the year.

20 (e) DETERMINATION OF ELIGIBILITY FOR RE-
 21 NEWAL.—

22 (1) IN GENERAL.—The results of all annual
 23 performance evaluations of an authorized outfitter
 24 shall be reviewed by the Secretary in the year pre-
 25 ceding the year in which the outfitter permit expires

1 to determine whether the authorized outfitter's over-
2 all performance during the term has met the re-
3 quirements for renewal under section 11.

4 (2) FAILURE TO EVALUATE.—If, in any year of
5 the term of an outfitter permit, the Secretary fails
6 to evaluate the performance of the authorized out-
7 fitter by the date that is 60 days after the conclu-
8 sion of the authorized outfitter's operating season,
9 the performance of the authorized outfitter in that
10 year shall be considered to have been good.

11 (3) NOTICE.—Not later than 60 days after the
12 end of the year preceding the year in which an out-
13 fitter permit expires, the Secretary shall provide the
14 authorized outfitter with the cumulative results of
15 performance evaluations conducted under this sub-
16 section during the term of the outfitter permit.

17 (4) UNSATISFACTORY PERFORMANCE IN FINAL
18 YEAR.—If an authorized outfitter receives an unsat-
19 isfactory performance rating under subsection (d) in
20 the final year of the term of an outfitter permit, the
21 review and determination of eligibility for renewal of
22 the outfitter permit under paragraph (1) shall be re-
23 vised to reflect that result.

1 **SEC. 11. RENEWAL OR TERMINATION OF OUTFITTER PER-**
 2 **MITs.**

3 (a) **RENEWAL AT EXPIRATION OF TERM.**—

4 (1) **IN GENERAL.**—On expiration of the term of
 5 an outfitter authorization, the Secretary shall renew
 6 the authorization in accordance with paragraph (2).

7 (2) **DETERMINATION BASED ON ANNUAL PER-**
 8 **FORMANCE RATING.**—The Secretary shall renew an
 9 outfitter authorization under paragraph (1) at the
 10 request of the authorized outfitter and subject to the
 11 requirements of this Act if the Secretary determines
 12 that the authorized outfitter has received not more
 13 than 1 unsatisfactory annual performance rating
 14 under section 10 during the term of the outfitter
 15 permit.

16 (b) **TERMINATION.**—An outfitter permit may be ter-
 17 minated only if the Secretary determines that—

18 (1) the authorized outfitter has failed to correct
 19 a condition for which the authorized outfitter re-
 20 ceived notice under section 10(c)(2)(B) and the con-
 21 dition is considered by the Secretary to be signifi-
 22 cant with respect to the health and welfare of out-
 23 fitted visitors or the conservation of resources;

24 (2) the authorized outfitter is repeatedly in ar-
 25 rears in the payment of fees under section 7; or

1 (3) the authorized outfitter's conduct dem-
2 onstrates repeated and willful disregard for—

3 (A) the health and welfare of outfitted visi-
4 tors; or

5 (B) the conservation of resources on which
6 the commercial outfitted activities are con-
7 ducted.

8 **SEC. 12. TRANSFERABILITY OF OUTFITTER PERMITS.**

9 (a) IN GENERAL.—An outfitter permit shall not be
10 transferred (including assigned or otherwise conveyed or
11 pledged) by the authorized outfitter without prior written
12 notification to, and approval by, the Secretary.

13 (b) APPROVAL.—

14 (1) IN GENERAL.—The Secretary shall approve
15 a transfer of an outfitter permit unless the Secretary
16 determines that the transferee does not have suffi-
17 cient professional, financial, and other resources or
18 business experience to be capable of performing
19 under the outfitter permit for the remainder of the
20 term of the outfitter permit.

21 (2) QUALIFIED TRANSFEREES.—Subject to sec-
22 tion 6(d)(1), the Secretary shall approve a transfer
23 of an outfitter permit—

24 (A) to a purchaser of the operation of the
25 authorized outfitter;

1 (B) at the request of the authorized out-
 2 fitter, to an assignee, partner, or stockholder or
 3 other owner of an interest in the operation of
 4 the authorized outfitter; or

5 (C) on the death of the authorized out-
 6 fitter, to an heir or assign.

7 (c) NO MODIFICATION AS CONDITION OF AP-
 8 PROVAL.—The terms and conditions of an outfitter permit
 9 shall not be subject to modification or open to renegoti-
 10 ation by the Secretary because of a transfer described in
 11 subsection (a), unless the terms and conditions of the out-
 12 fitter permit that is proposed to be transferred have be-
 13 come inconsistent or incompatible with an approved re-
 14 source management plan for the resource area as a result
 15 of a modification to the plan.

16 (d) CONSIDERATION PERIOD.—

17 (1) THRESHOLD FOR AUTOMATIC APPROVAL.—
 18 Subject to paragraph (2), if the Secretary fails to
 19 approve or disapprove the transfer of an outfitter
 20 permit within 90 days after the date of receipt of an
 21 application containing the information required with
 22 respect to the transfer, the transfer shall be deemed
 23 to have been approved.

24 (2) EXTENSION.—The Secretary and the au-
 25 thorized outfitter making application for transfer of

1 an outfitter permit may agree to extend the period
2 for consideration of the application.

3 (e) CONTINUANCE OF OUTFITTER PERMIT.—If the
4 transfer of an outfitter permit is not approved by the Sec-
5 retary or if the transfer is not subsequently made, the out-
6 fitter permit shall remain in effect.

7 **SEC. 13. RECORDKEEPING REQUIREMENTS.**

8 (a) IN GENERAL.—An authorized outfitter shall keep
9 such reasonable records as the Secretary may require to
10 enable the Secretary to determine that all the terms of
11 the outfitter authorization have been and are being carried
12 out.

13 (b) BURDEN ON AUTHORIZED OUTFITTER.—The
14 recordkeeping requirements established by the Secretary
15 shall incorporate simplified procedures that do not impose
16 an undue burden on an authorized outfitter.

17 (c) ACCESS TO RECORDS.—The Secretary, or an au-
18 thorized representative of the Secretary, shall, until the
19 end of the fifth calendar year beginning after the end of
20 the business year of an authorized outfitter, have access
21 to and the right to examine any books, papers, documents,
22 and records of the authorized outfitter relating to each
23 outfitter authorization held by the authorized outfitter
24 during the business year.

1 **SEC. 14. APPEALS AND JUDICIAL REVIEW.**

2 (a) APPEALS PROCEDURE.—The Secretary shall by
3 regulation—

4 (1) grant an authorized outfitter full access to
5 administrative remedies under the Secretary's au-
6 thority at the time of an appeal; and

7 (2) establish an expedited procedure for consid-
8 eration of appeals of Federal agency decisions to
9 deny, suspend, fail to renew, or terminate an out-
10 fitter permit.

11 (b) JUDICIAL REVIEW.—An authorized outfitter that
12 is adversely affected by a final decision of the Secretary
13 under this Act may commence a civil action in United
14 States district court.

15 **SEC. 15. INSTITUTIONAL RECREATION PROGRAMS.**

16 (a) IN GENERAL.—The Secretary shall manage the
17 occupancy and use of Federal land by institutional recre-
18 ation programs that conduct outfitted activities under this
19 Act.

20 (b) REQUIREMENTS.—In managing an institutional
21 recreation program authorized under this Act, the Sec-
22 retary shall require that the program—

23 (1) operate in a manner that is not inconsistent
24 with or incompatible with an approved resource
25 management plan applicable to the resource area in
26 which the outfitted activity is conducted;

1 (2) provide for the health and welfare of mem-
2 bers of the sponsoring organization or affiliated par-
3 ticipants; and

4 (3) ensure the conservation of resources.

5 **SEC. 16. CONSISTENCY WITH OTHER LAW AND RIGHTS.**

6 (a) CONSISTENCY WITH OTHER LAW.—Each pro-
7 gram of outfitted activities carried out on Federal land
8 shall be consistent with the mission of the administering
9 Federal agency and all laws (including regulations) appli-
10 cable to the outfitted activities.

11 (b) CONSISTENCY WITH RIGHTS OF UNITED
12 STATES.—Nothing in this Act limits or restricts any right,
13 title, or interest of the United States in or to any land
14 or resource.

15 **SEC. 17. REGULATIONS.**

16 Not later than 2 years after the date of enactment
17 of this Act, the Secretary shall promulgate such regula-
18 tions as are appropriate to carry out this Act.

19 **SEC. 18. RELATIONSHIP TO OTHER LAW.**

20 (a) NATIONAL PARK OMNIBUS MANAGEMENT ACT
21 OF 1998.—Nothing in this Act supersedes or otherwise
22 affects any provision of title IV of the National Park Om-
23 nibus Management Act of 1998 (16 U.S.C. 5951 et seq.).

1 (b) STATE OUTFITTER LICENSING LAW.—This Act
 2 does not preempt any outfitter or guide licensing law (in-
 3 cluding any regulation) of any State or territory.

4 **SEC. 19. TRANSITION PROVISIONS.**

5 (a) IN GENERAL.—

6 (1) OUTFITTERS WITH SATISFACTORY RAT-
 7 INGS.—An outfitter that holds a permit, contract, or
 8 other authorization to conduct commercial outfitted
 9 activities (or an extension of such a permit, contract,
 10 or other authorization) in effect on the date of en-
 11 actment of this Act shall be entitled, on request or
 12 on expiration of the authorization, to the issuance of
 13 an outfitter permit under this Act if a recent per-
 14 formance evaluation determined that the outfitter’s
 15 aggregate performance under the permit, contract,
 16 or other authorization was good or was the equiva-
 17 lent of good, satisfactory, or acceptable under a rat-
 18 ing system in use before the date of enactment of
 19 this Act.

20 (2) OUTFITTERS WITH NO RATINGS.—For the
 21 purpose of paragraph (1), if no recent performance
 22 evaluation exists with respect to an outfitter, the
 23 outfitter’s aggregate performance under the permit,
 24 contract, or other authorization shall be deemed to
 25 be good.

1 (b) EFFECT OF ISSUANCE OF OUTFITTER PERMIT.—
2 The issuance of an outfitter permit under subsection (a)
3 shall not adversely affect any right or obligation that ex-
4 isted under the permit, contract, or other authorization
5 (or an extension of the permit, contract, or other author-
6 ization) on the date of enactment of this Act.

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