

107TH CONGRESS
1ST SESSION

H. R. 2386

To establish terms and conditions for use of certain Federal lands by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such lands.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2001

Mr. HANSEN (for himself, Mr. OTTER, Mr. YOUNG of Alaska, Mrs. CUBIN, Mr. PICKERING, Mr. HAYES, Mr. SIMPSON, Mr. RADANOVICH, Mr. CANNON, Mr. GIBBONS, Mr. PETERSON of Pennsylvania, Mr. REHBERG, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish terms and conditions for use of certain Federal lands by outfitters and to facilitate public opportunities for the recreational use and enjoyment of such lands.

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 2001”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The experience, skills, trained staff, and in-
4 vestment in equipment that are provided by author-
5 ized outfitters are necessary for members of the pub-
6 lic that need or desire commercial outfitted activities
7 to facilitate their use and enjoyment of recreational
8 or educational opportunities on Federal land.

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

15 (3) An effective relationship between those
16 agencies and authorized outfitters requires imple-
17 mentation of agency policies and programs that
18 facilitate—

19 (A)(i) quality outfitting services to the
20 public; and

21 (ii) the authorized outfitter having a rea-
22 sonable opportunity to engage in a successful
23 business venture;

24 (B) a return to the United States through
25 appropriate fees;

1 (C) renewal of outfitter permits based on
2 a performance evaluation system that rewards
3 outfitters that meet required performance
4 standards and withdraws authorizations for
5 outfitters that fail to meet those standards; and

6 (D) transfer of an outfitter permit to the
7 qualified purchaser of the operation of an au-
8 thorized outfitter, an heir or assign, or another
9 qualified person or entity.

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

15 **SEC. 3. PURPOSES.**

16 The purposes of this Act are as follows:

17 (1) To establish terms and conditions for occu-
18 pancy and use of Federal land by an authorized out-
19 fitter.

20 (2) To establish a stable regulatory climate that
21 encourages a qualified person or entity to provide,
22 and to continue to invest in the ability to conduct
23 outfitted activities on Federal land.

24 (3) To facilitate opportunities for recreational
25 use of public lands by that segment of the public

1 that needs or wants to use the services of outfitters
2 and guides.

3 **SEC. 4. DEFINITIONS.**

4 For the purposes of this Act, the following definitions
5 apply:

6 (1) ACTUAL USE.—The term “actual use”
7 means the portion of a principal allocation of out-
8 fitter use that an authorized outfitter uses in con-
9 ducting commercial outfitted activities during a pe-
10 riod, for a type of use, in an area or based on some
11 other measurement.

12 (2) ALLOCATION OF USE.—

13 (A) IN GENERAL.—The term “allocation of
14 use” means a measurement of use that—

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

19 (ii) takes the form of—

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

1 (II) in the case of a resource
2 area for which recreation capacity has
3 not been apportioned, a type of com-
4 mercial outfitted activity conducted in
5 a manner that is not inconsistent with
6 or incompatible with an approved re-
7 source management plan; and

8 (iii) is calibrated in terms of amount
9 of use, type of use, or location of a com-
10 mercial outfitted activity, including user
11 days or portions of user days, seasons or
12 other periods of operation, launch dates,
13 assigned camps, hunt, gun, or fish days or
14 other formulations of the type or amount
15 of authorized activity.

16 (B) INCLUSION.—The term “allocation of
17 use” includes the designation of a geographic
18 area, zone, or district in which a limited num-
19 ber of authorized outfitters are authorized to
20 operate.

21 (3) AUTHORIZED OUTFITTER.—The term “au-
22 thorized outfitter” means a person or entity that
23 conducts a commercial outfitted activity on Federal
24 land under an outfitter authorization.

1 (4) COMMERCIAL OUTFITTED ACTIVITY.—The
2 term “commercial outfitted activity” means an au-
3 thorized outfitted activity conducted on Federal
4 lands—

5 (A) that is available to the public;

6 (B) that is conducted under the direction
7 of compensated individuals; and

8 (C) for which an outfitted visitor is re-
9 quired to pay more than a strict sharing of ac-
10 tual expenses (including payment to an author-
11 ized outfitter that is a nonprofit organization).

12 (5) FEDERAL AGENCY.—The term “Federal
13 agency” means—

14 (A) the Forest Service;

15 (B) the Bureau of Land Management;

16 (C) the United States Fish and Wildlife
17 Service; and

18 (D) the Bureau of Reclamation.

19 (6) FEDERAL LAND.—

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

23 (B) EXCLUSION.—The term “Federal
24 land” does not include—

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

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

7 (7) OUTFITTED ACTIVITY.—The term “out-
8 fitted activity” means an activity—

9 (A) such as outfitting, guiding, super-
10 vision, education, interpretation, skills training,
11 assistance, or livery operation conducted for a
12 member of the public in an outdoor environ-
13 ment; and

14 (B) that uses the recreational, natural, his-
15 torical, or cultural resources of Federal land.

16 (8) OUTFITTED VISITOR.—The term “outfitted
17 visitor” means a member of the public that engages
18 an authorized outfitter to facilitate occupancy and
19 use of Federal land.

20 (9) OUTFITTER.—The term “outfitter” means
21 a person or entity that conducts a commercial out-
22 fitted activity, including a person who, by local cus-
23 tom or tradition, is known as a guide.

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

- 1 (A) an outfitter permit;
- 2 (B) a temporary outfitter authorization; or
- 3 (C) an authorization to use and occupy
- 4 Federal land that references this Act as its au-
- 5 thority.

6 (11) OUTFITTER PERMIT.—The term “outfitter

7 permit” means an outfitter permit under section 6.

8 (12) PRINCIPAL ALLOCATION OF OUTFITTER

9 USE.—The term “principal allocation of outfitter

10 use” means a grant by the Secretary in an outfitter

11 permit for an allocation of use to an authorized out-

12 fitter in accordance with section 9.

13 (13) RESOURCE AREA.—The term “resource

14 area” means a management unit that is described by

15 or contained within the boundaries of—

- 16 (A) a national forest;
- 17 (B) an area of public land;
- 18 (C) a wildlife refuge;
- 19 (D) a congressionally designated area;
- 20 (E) a hunting zone or district; or
- 21 (F) any other Federal planning unit (in-
- 22 cluding an area in which outfitted activities are
- 23 regulated by more than one Federal agency).

24 (14) SECRETARY.—The term “Secretary”

25 means—

1 (A) with respect to Federal land adminis-
2 tered by the Forest Service, the Secretary of
3 Agriculture, acting through the Chief of the
4 Forest Service or a designee;

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

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

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

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

23 (16) TEMPORARY OUTFITTER AUTHORIZA-
24 TION.—The term “temporary outfitter authoriza-

1 tion” means an outfitter authorization under section
2 6(f).

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

4 Nothing in this Act is intended to diminish any right
5 or privilege of occupancy and use of Federal land by the
6 public including the nonoutfitted visitor.

7 **SEC. 6. OUTFITTER AUTHORIZATIONS.**

8 (a) IN GENERAL.—

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

12 (2) CONDUCT OF OUTFITTED ACTIVITY.—An
13 authorized outfitter shall not conduct an outfitted
14 activity on Federal land except in accordance with
15 an outfitter authorization.

16 (3) SPECIAL RULE FOR ALASKA.—With respect
17 to a commercial outfitted activity conducted in the
18 State of Alaska, the Secretary shall not establish or
19 impose a limitation on special access by an author-
20 ized outfitter that is inconsistent with the access en-
21 ured under subsections (a) and (b) of section 1110
22 of the Alaska National Interest Lands Conservation
23 Act (16 U.S.C. 3170).

24 (b) TERMS AND CONDITIONS.—An outfitter author-
25 ization shall specify—

1 (1) the rights and privileges of the authorized
2 outfitter and the Secretary; and

3 (2) other terms and conditions of the authoriza-
4 tion.

5 (c) CRITERIA FOR GRANT OF AN OUTFITTER PER-
6 MIT.—The Secretary shall establish criteria for grant of
7 an outfitter permit that—

8 (1) recognize skill, experience, knowledge of the
9 resource area, and financial capability of the persons
10 or entity under consideration;

11 (2) consider any or all of the following: safety,
12 quality recreational experience, educational opportu-
13 nities, and conservation of resources for the outfitted
14 visitor;

15 (3) offer a reasonable opportunity for an au-
16 thorized outfitter to engage in a successful business
17 venture;

18 (4) create a stable regulatory climate that en-
19 courages an authorized outfitter to provide and in-
20 vest in the ability to provide quality services to the
21 outfitted visitor; and

22 (5) assure revenue paid to the United States
23 provided this consideration is subordinate to the
24 other criteria of this subsection.

25 (d) GRANT.—

1 (1) IN GENERAL.—The Secretary may grant an
2 outfitter permit under this Act if—

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

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

11 (2) USE OF COMPETITIVE PROCESS.—

12 (A) IN GENERAL.—Except as otherwise
13 provided by this Act, the Secretary shall use a
14 competitive process to select an authorized out-
15 fitter.

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

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

1 (ii) there is no competitive interest in
2 the commercial outfitted activity to be con-
3 ducted.

4 (C) EXCEPTION FOR RENEWALS AND
5 TRANSFERS.—The Secretary shall grant an out-
6 fitter permit to an applicant without conducting
7 a competitive selection process if the authoriza-
8 tion is a renewal or transfer of an existing out-
9 fitter permit under section 11 or 12.

10 (e) PROVISIONS OF OUTFITTER PERMITS.—

11 (1) IN GENERAL.—An outfitter permit shall
12 provide for—

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

14 (B) conservation of resource values;

15 (C) a return to the United States through
16 an authorization fee in accordance with section
17 7;

18 (D) a term of 10 years except as provided
19 in paragraph (3) below;

20 (E) the obligation of an authorized out-
21 fitter to defend and indemnify the United
22 States in accordance with section 8;

23 (F) a principal allocation of outfitter use,
24 and, if appropriate, a temporary allocation of
25 use, in accordance with section 9;

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

3 (H) renewal or revocation of an outfitter
4 permit in accordance with section 11;

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

7 (J) a means of modifying the terms and
8 conditions of an outfitter permit to reflect ma-
9 terial changes in facts and conditions;

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

12 (L) such other terms and conditions as the
13 Secretary may require.

14 (2) EXTENSIONS.—The Secretary may award
15 not more than three temporary one-year extensions
16 of an outfitter permit, unless the Secretary deter-
17 mines that extraordinary circumstances warrant ad-
18 ditional extensions.

19 (3) TENURE.—The Secretary shall generally
20 issue an outfitter authorization for 10 years, with an
21 initial probation period of two years for a new au-
22 thorized outfitter, except that he may, in extraor-
23 dinary circumstances, award an outfitter permit with
24 a term of less than 10 years when—

1 (A) foreseeable amendments in resource
2 management plans will create conditions that
3 would materially impact and necessitate
4 changes in permit terms and conditions in less
5 than 10 years; and

6 (B) an authorized outfitter and the Sec-
7 retary agree to a permit term of less than 10
8 years.

9 (f) TEMPORARY OUTFITTER AUTHORIZATIONS.—

10 (1) IN GENERAL.—The Secretary may issue a
11 temporary outfitter authorization for the purpose of
12 conducting a commercial outfitted activity on a lim-
13 ited basis.

14 (2) TERM.—A temporary outfitter authorization
15 shall have a term not to exceed two years.

16 (3) RENEWAL.—A temporary outfitter author-
17 ization may be reissued or renewed at the discretion
18 of the Secretary.

19 **SEC. 7. AUTHORIZATION FEES.**

20 (a) AMOUNT OF FEE.—

21 (1) IN GENERAL.—An outfitter permit shall
22 provide for payment to the United States of an au-
23 thorization fee, as determined by the Secretary.

1 (2) FEE DETERMINATION.—In determining the
2 amount of an authorization fee, the Secretary shall
3 take into consideration—

4 (A) the obligations of the outfitter under
5 the outfitter permit;

6 (B) the provision of a reasonable oppor-
7 tunity to engage in a successful business; and

8 (C) the fair market value of the use and
9 occupancy granted by the outfitter authoriza-
10 tion.

11 (b) CONSISTENCY.—The Federal agencies shall use
12 consistent methodologies to determine the outfitter au-
13 thorization fee.

14 (c) PAYMENT OF OUTFITTER AUTHORIZATION
15 FEE.—

16 (1) IN GENERAL.—The amount of the fee paid
17 to the United States for the term of an outfitter per-
18 mit shall be specified in that outfitter permit.

19 (2) REQUIREMENTS.—The amount of the au-
20 thorization fee—

21 (A)(i) shall be expressed as—

22 (I) a simple charge per day of actual
23 use; or

24 (II) an annual or reasonable flat fee;

1 (ii) if calculated as a percentage of rev-
2 enue, shall be determined based on adjusted
3 gross receipts; or

4 (iii) with respect to a commercial outfitted
5 activity conducted in the State of Alaska, shall
6 be based on a simple charge per user day;

7 (B) shall be subordinate to the objectives
8 of—

9 (i) conserving resources;

10 (ii) protecting the health and welfare
11 of the public; and

12 (iii) providing reliable, consistent per-
13 formance in conducting outfitted activities;

14 (C) shall be required to be paid by an au-
15 thorized outfitter to the United States on a rea-
16 sonable schedule during the operating season;
17 and

18 (D) shall set a minimum fee.

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

21 (A) take into consideration revenue from
22 the gross receipts of the authorized outfitter
23 from commercial outfitted activities conducted
24 on Federal land; and

1 (B) exclude from consideration any rev-
2 enue that is derived from—

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

6 (I) hunting or fishing licenses;

7 (II) entrance or recreation fees;

8 or

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

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

16 (iii) operations on non-Federal land.

17 (4) SUBSTANTIALLY SIMILAR SERVICES IN A
18 SPECIFIC GEOGRAPHIC AREA.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), if more than one outfitter
21 permit is granted to conduct the same or simi-
22 lar commercial outfitted activities in the same
23 resource area, the Secretary shall establish an
24 identical fee for those outfitter permits.

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

8 (5) ACTUAL USE.—

9 (A) IN GENERAL.—For the purpose of cal-
10 culating an authorization fee for actual use
11 under paragraph (2)(A)(i)(I)—

12 (i) multiple outfitted activities with
13 separate charges shall count as one actual
14 use day when conducted in one day; and

15 (ii) an activity conducted across agen-
16 cy jurisdictions over the course of one day
17 shall not exceed one actual use day.

18 (B) RECONSIDERATION OF FEE.—The au-
19 thorization fee may be reconsidered during the
20 term of the outfitter permit in accordance with
21 paragraph (6) or section 9(c)(3).

22 (6) ADJUSTMENT OF FEES.—The amount of an
23 authorization fee—

24 (A) shall be determined as of the grant
25 date of the outfitter permit; and

1 (B) may be modified to reflect—

2 (i) changes relating to the terms and
3 conditions of the outfitter permit, including
4 one or more outfitter permits described in
5 paragraph (5);

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

12 (iii) changes affecting operating or
13 economic conditions determined by other
14 governing entities, such as the availability
15 of State fish or game licenses;

16 (iv) the imposition of new or higher
17 fees assessed under other law; or

18 (v) authorized adjustments made to
19 an allocation of outfitter use.

20 (d) ESTABLISHMENT OF AMOUNT APPLICABLE TO A
21 TEMPORARY OUTFITTER AUTHORIZATION.—The Sec-
22 retary shall determine the amount of an authorization fee
23 under a temporary outfitter authorization.

24 (e) OTHER FEES AND COSTS.—Fees for processing
25 applications for outfitter permits or monitoring compli-

1 ance with permit terms and conditions shall not seek to
2 recover costs of agency activities that benefit broadly the
3 general public or are not directly related to or required
4 for processing of applications or monitoring of an author-
5 ization.

6 **SEC. 8. LIABILITY AND INDEMNIFICATION.**

7 (a) **LIABILITY.**—An authorized outfitter shall be lia-
8 ble to the United States for costs and expenses associated
9 with damage to property of the United States caused by
10 the authorized outfitter’s—

11 (1) negligence;

12 (2) gross negligence; or

13 (3) willful and wanton disregard for persons or
14 property, arising directly out of the authorized out-
15 fitter’s conduct of a commercial outfitted activity
16 under an outfitter authorization.

17 (b) **INDEMNIFICATION.**—An authorized outfitter shall
18 defend and indemnify the United States for costs or ex-
19 penses associated with injury, death, or damage to any
20 person or property caused by the authorized outfitter’s—

21 (1) negligence;

22 (2) gross negligence; or

23 (3) willful and wanton disregard for persons or
24 property, arising proximately from the authorized

1 outfitter’s conduct of a commercial outfitted activity
2 under an outfitter authorization.

3 (c) NO LIABILITY.—An authorized outfitter shall
4 have no responsibility to pay to or defend or indemnify
5 the United States, or its agents, employees, or contractors
6 for costs or expenses associated with injury, death, or
7 damage to any person or property to the extent the injury,
8 death, or damage was caused by the acts, omissions, neg-
9 ligence, gross negligence, or willful and wanton misconduct
10 of the United States, its agents, employees, or contractors;
11 or third parties.

12 (d) FINDING OF LIABILITY.—Before presenting any
13 claim for costs and expenses associated with damage to
14 any property allegedly caused by the authorized outfitter,
15 the Secretary, after providing due process, shall make a
16 finding of negligence, gross negligence, or willful and wan-
17 ton disregard for persons or property on the part of the
18 authorized outfitter and present the finding to the author-
19 ized outfitter.

20 (e) AGREEMENTS.—An authorized outfitter may
21 enter into agreements with outfitted visitors, including
22 for—

23 (1) assumption or allocation of risk; and

24 (2) release or waiver related to inherently dan-
25 gerous activities or conditions, if the agreement also

1 runs in favor of the United States and its agents,
2 employees, or contractors.

3 Copies of any such agreements shall be provided to the
4 Federal agency before being presented to outfitted visitors
5 by an authorized outfitter.

6 **SEC. 9. ALLOCATION OF USE.**

7 (a) IN GENERAL.—

8 (1) an outfitter permit shall include within its
9 terms and conditions a principal allocation of out-
10 fitter use; and

11 (2) a temporary outfitter permit may include a
12 principal allocation of outfitter use.

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

14 Except as provided in subsection (d), upon renewal, trans-
15 fer, or extension of an outfitter permit, the same principal
16 allocation of use shall be included within the terms and
17 conditions of the permit.

18 (c) WAIVER.—

19 (1) IN GENERAL.—At the request of an author-
20 ized outfitter, the Secretary may waive any obliga-
21 tion of the authorized outfitter to use all or part of
22 the amount of allocation of use provided under the
23 outfitter permit, subject to section 7(b), if the re-
24 quest is made in sufficient time to allow the Sec-
25 retary to temporarily reallocate the unused portion

1 of the allocation of use in that season or calendar
2 year.

3 (2) RECLAIMING OF ALLOCATION OF USE.—Un-
4 less the Secretary has reallocated the unused portion
5 of an allocation of use in accordance with paragraph
6 (1), the authorized outfitter may reclaim any part of
7 the unused portion in that season or calendar year.

8 (3) NO FEE OBLIGATION.—Subject to section
9 7(b), an outfitter permit fee may not be charged for
10 any amount of allocation of use subject to a waiver
11 under paragraph (1).

12 (d) ADJUSTMENT TO ALLOCATION OF USE.—The
13 Secretary—

14 (1) may adjust an allocation of use to reflect—

15 (A) material change arising from approval
16 of an amendment in the resource management
17 plan for the area of operation; or

18 (B) requirements arising under other law;

19 and

20 (2) shall provide an authorized outfitter with
21 documentation supporting the basis for any adjust-
22 ment in the principal allocation of outfitter use, in-
23 cluding new terms and conditions that result from
24 the adjustment.

25 (e) TEMPORARY ALLOCATION OF USE.—

1 (1) IN GENERAL.—A temporary allocation of
2 use may be provided to an authorized outfitter at
3 the discretion of the Secretary for a period up to two
4 years.

5 (2) TRANSFERS AND EXTENSIONS.—A tem-
6 porary allocation of use may be transferred or ex-
7 tended at the discretion of the Secretary.

8 **SEC. 10. EVALUATION OF PERFORMANCE UNDER OUT-**
9 **FITTER PERMITS.**

10 (a) EVALUATION PROCESS.—

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

15 (2) EVALUATION CRITERIA.—Criteria used by
16 the Secretary to evaluate the performance of an au-
17 thorized outfitter shall—

18 (A) be objective, measurable, and attain-
19 able; and

20 (B) include, as deemed appropriate by the
21 Secretary—

22 (i) standards generally applicable to
23 all commercial outfitted activities;

1 (ii) standards specific to a resource
2 area or an individual outfitter operation;
3 and

4 (iii) such other terms and conditions
5 of the outfitter permit.

6 (3) REQUIREMENTS.—In evaluating the level of
7 performance of an authorized outfitter, the Sec-
8 retary shall—

9 (A) appropriately account for factors be-
10 yond the control of the authorized outfitter, in-
11 cluding conditions described in sections
12 7(b)(6)(B) and 9(c); and

13 (B) ensure that the effect of any perform-
14 ance deficiency reflected by the performance
15 rating is proportionate to the severity of the de-
16 ficiency, including any harm that may have re-
17 sulted from the deficiency.

18 (b) LEVELS OF PERFORMANCE.—The Secretary shall
19 define three levels of performance, as follows:

20 (1) Good, indicating a level of performance that
21 fulfills the terms and conditions of the outfitter per-
22 mit.

23 (2) Marginal, indicating a level of performance
24 that, if not corrected, will result in an unsatisfactory
25 level of performance.

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

4 (c) PERFORMANCE EVALUATION.—

5 (1) EVALUATION SYSTEM.—The Secretary shall
6 establish a performance evaluation system that
7 assures the public of continued availability of de-
8 pendable commercial outfitted activities and sus-
9 pends or revokes an authorization for an authorized
10 outfitter that fails to meet the required standards.

11 (2) PROCEDURE.—An authorized outfitter shall
12 be entitled—

13 (A) to be present, or represented, at in-
14 spections of operations or facilities, which in-
15 spections shall be limited to the operations and
16 facilities of the authorized outfitter located on
17 Federal land;

18 (B) to receive written notice of any con-
19 duct or condition that, if not corrected, might
20 lead to a performance evaluation of marginal or
21 unsatisfactory, which shall include an expla-
22 nation of needed corrections and provide a rea-
23 sonable period in which the corrections may be
24 made without penalty; and

1 (C) to receive written notice of the results
2 of the performance evaluation not later than 90
3 days after the end of the authorized outfitter's
4 operating season, including the level of perform-
5 ance and the status of corrections that may
6 have been required.

7 (d) MARGINAL PERFORMANCE.—If an authorized
8 outfitter's annual performance is determined to be mar-
9 ginal, and the authorized outfitter fails to complete the
10 corrections within the time specified under subsection
11 (c)(2)(B), the level of performance shall be determined to
12 be unsatisfactory for the year.

13 (e) DETERMINATION OF ELIGIBILITY FOR RE-
14 NEWAL.—

15 (1) IN GENERAL.—The results of all annual
16 performance evaluations of an authorized outfitter
17 shall be reviewed by the Secretary in the year pre-
18 ceding the year in which the outfitter permit expires
19 in order to determine whether the authorized outfit-
20 ter's overall performance during the term has met
21 the requirements for renewal under section 11.

22 (2) FAILURE TO EVALUATE.—If, in any year of
23 the term of an outfitter permit, the Secretary fails
24 to evaluate the performance of the authorized out-
25 fitter by the date that is 90 days after the end of

1 the authorized outfitter's operating season, the per-
2 formance of the authorized outfitter in that year
3 shall be considered to have been good.

4 (3) NOTICE.—Not later than 90 days after the
5 end of the year preceding the year in which an out-
6 fitter permit expires, the Secretary shall provide the
7 authorized outfitter with the cumulative results of
8 performance evaluations conducted under this sub-
9 section during the term of the outfitter permit.

10 (4) UNSATISFACTORY PERFORMANCE IN FINAL
11 YEAR.—If an authorized outfitter receives an unsat-
12 isfactory performance rating under subsection (d) in
13 the final year of the term of an outfitter permit, the
14 review and determination of eligibility for renewal of
15 the outfitter permit under paragraph (1) shall be re-
16 vised to reflect that result.

17 **SEC. 11. RENEWAL REVOCATION OR SUSPENSION OF OUT-**
18 **FITTER PERMITS.**

19 (a) RENEWAL AT EXPIRATION OF TERM.—

20 (1) IN GENERAL.—On expiration of the term of
21 an outfitter authorization, the Secretary shall renew
22 the authorization in accordance with paragraph (2).

23 (2) DETERMINATION BASED ON ANNUAL PER-
24 FORMANCE RATING.—The Secretary shall renew an
25 outfitter authorization under paragraph (1) at the

1 request of the authorized outfitter and subject to the
2 requirements of this Act if the Secretary determines
3 that the authorized outfitter has received not more
4 than one unsatisfactory annual performance rating
5 under section 10 during the term of the outfitter
6 permit.

7 (b) REVOCATION.—An outfitter permit may be re-
8 voked only if the Secretary determines that—

9 (1) the authorized outfitter has failed to correct
10 a condition for which the authorized outfitter re-
11 ceived notice under section 10(c)(2)(B) and the con-
12 dition is considered by the Secretary to be signifi-
13 cant with respect to permit terms and conditions;

14 (2) the authorized outfitter is in arrears in the
15 payment of fees under section 7 and—

16 (A) has not entered into a payment plan
17 with the agency; or

18 (B) has not sought relief under section 14;

19 and

20 (3) the authorized outfitter's conduct dem-
21 onstrates willful disregard for—

22 (A) the health and welfare of outfitted visi-
23 tors; or

1 (B) the conservation of resources on which
2 the commercial outfitted activities are con-
3 ducted.

4 (c) SUSPENSION.—

5 (1) IN GENERAL.—All or part of the outfitter
6 permit may be suspended, subject to findings made
7 under subsection (b).

8 (2) ADMINISTRATIVE REVIEW.—Subject to sec-
9 tion 17, the Secretary shall provide for an expedited
10 review of suspension cases.

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

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

16 (b) APPROVAL.—

17 (1) IN GENERAL.—The Secretary shall approve
18 a transfer of an outfitter permit unless the Secretary
19 finds that the transferee is not qualified or able to
20 satisfy the terms and conditions of the outfitter per-
21 mit.

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

1 (A) to a purchaser of the operation of the
2 authorized outfitter;

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

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

9 (c) TRANSFER TERMS.—The terms and conditions of
10 any outfitter permit shall not be subject to modification
11 or open to renegotiation by the Secretary because of a
12 transfer described in subsections (a) and (b) unless—

13 (1) it is at the request of the transferee; or

14 (2) the terms and conditions of the outfitter
15 permit proposed to be transferred have become in-
16 consistent or incompatible with an approved resource
17 management plan for the resource area.

18 (d) CONSIDERATION PERIOD.—

19 (1) THRESHOLD FOR AUTOMATIC APPROVAL.—
20 Subject to paragraph (2), if the Secretary fails to
21 approve or disapprove the transfer of an outfitter
22 permit within 90 days after receiving a complete ap-
23 plication containing the information required with
24 respect to the transfer, the transfer shall be deemed
25 approved unless the transferee requests a modifica-

1 tion of the terms and conditions of the outfitter au-
2 thorization and such modification requires environ-
3 mental analysis under the National Environmental
4 Policy Act of 1969.

5 (2) EXTENSION.—The Secretary and the au-
6 thorized outfitter applying for transfer of an out-
7 fitter permit may agree to extend the period for con-
8 sideration of the application.

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

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

14 (a) IN GENERAL.—An authorized outfitter shall keep
15 such reasonable records as the Secretary may require to
16 enable the Secretary to determine that all the terms of
17 the outfitter authorization are being met.

18 (b) OBLIGATIONS OF THE SECRETARY AND AUTHOR-
19 IZED OUTFITTER.—The recordkeeping requirements es-
20 tablished by the Secretary shall incorporate simplified pro-
21 cedures that do not impose an undue burden on an author-
22 ized outfitter.

23 (c) ACCESS TO RECORDS.—The Secretary, or an au-
24 thorized representative of the Secretary, shall for purposes
25 of audit and performance evaluation have access to and

1 the right to examine for five years following the effective
2 date of an outfitter authorization any books, papers, docu-
3 ments, and records of the authorized outfitter relating to
4 each outfitter authorization held by the authorized out-
5 fitter during the business year.

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

7 (a) APPEALS PROCEDURE.—The Secretary shall by
8 regulation—

9 (1) grant an authorized outfitter full access to
10 administrative remedies; and

11 (2) establish an expedited procedure for consid-
12 eration of appeals of Federal agency decisions to
13 deny, suspend, fail to renew, or revoke an outfitter
14 permit or change a principal allocation of outfitter
15 use.

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

20 **SEC. 15. LACK OF EFFECT ON EXISTING RIGHTS OF THE**
21 **UNITED STATES.**

22 Nothing in this Act limits or restricts any right, title,
23 or interest of the United States in or to any land or re-
24 source.

1 **SEC. 16. REGULATIONS.**

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

5 **SEC. 17. RELATIONSHIP TO OTHER LAW.**

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

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

13 **SEC. 18. TRANSITION PROVISIONS.**

14 (a) OUTFITTERS WITH SATISFACTORY RATING.—An
15 outfitter that holds a permit, contract, or other authoriza-
16 tion to conduct commercial outfitted activities (or an ex-
17 tension of such permit, contract, or other authorization)
18 in effect on the date of promulgation of implementing reg-
19 ulations under section 16 shall be entitled, on expiration
20 of the authorization, to the issuance of an outfitter permit
21 under this Act if the outfitter's aggregate performance
22 under the permit, contract, or other authorization was
23 good or was the equivalent of good, satisfactory, or accept-
24 able under a rating system in use before the date of enact-
25 ment of this Act.

1 (b) OUTFITTERS WITH NO RATINGS.—For the pur-
2 pose of subsection (a), if no recent performance evalua-
3 tions exist to determine the outfitter’s aggregate perform-
4 ance, its aggregate performance shall be deemed to be
5 good.

6 (c) EFFECT OF ISSUANCE OF OUTFITTER PERMIT.—
7 The issuance of an outfitter permit under subsection (a)
8 shall not adversely affect any right or obligation that ex-
9 isted under the permit, contract, or other authorization
10 (or an extension of the permit, contract, or other author-
11 ization) on the date of enactment of this Act.

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