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H. R. 2386

[Report No. 107-752, Part I]

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

OCTOBER 15, 2002

Reported from the Committee on Resources

OCTOBER 15, 2002

Referral to the Committee on Agriculture extended for a period ending not later than October 15, 2002

OCTOBER 15, 2002

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

14 (2) Such activities constitute an important con-
15 tribution toward meeting the recreational and edu-
16 cational objectives of resource management plans ap-
17 proved and administered by agencies of the Depart-
18 ment of Agriculture and the Department of the Inte-
19 rior.

20 (3) An effective relationship between those
21 agencies and authorized outfitters requires imple-
22 mentation of agency policies and programs that fa-
23 cilitate—

1 (A)(i) quality outfitting services to the
2 public; and

3 (ii) the authorized outfitter having a rea-
4 sonable opportunity to engage in a successful
5 business venture;

6 (B) a return to the United States through
7 appropriate fees;

8 (C) renewal of outfitter permits based on
9 a performance evaluation system that rewards
10 outfitters that meet required performance
11 standards and withdraws authorizations for
12 outfitters that fail to meet those standards; and

13 (D) transfer of an outfitter permit to the
14 qualified purchaser of the operation of an au-
15 thorized outfitter, an heir or assign, or another
16 qualified person or entity.

17 (4) The provision of opportunities for outfitted
18 visitors to Federal land to engage in fishing and
19 hunting is best served by continued recognition that
20 the States retain primary authority over the taking
21 of fish and wildlife on Federal land.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are as follows:

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

4 (2) To establish a stable regulatory climate that
5 encourages a qualified person or entity to provide,
6 and to continue to invest in the ability to conduct
7 outfitted activities on Federal land.

8 (3) To facilitate opportunities for recreational
9 use of public lands by that segment of the public
10 that needs or wants to use the services of outfitters
11 and guides.

12 **SEC. 4. DEFINITIONS.**

13 For the purposes of this Act, the following definitions
14 apply:

15 (1) **ACTUAL USE.**—The term “actual use”
16 means the portion of a principal allocation of out-
17 fitter use that an authorized outfitter uses in con-
18 ducting commercial outfitted activities during a pe-
19 riod, for a type of use, in an area or based on some
20 other measurement.

21 (2) **ALLOCATION OF USE.**—

22 (A) **IN GENERAL.**—The term “allocation of
23 use” means a measurement of use that—

24 (i) is granted by the Secretary to an
25 authorized outfitter for the purpose of fa-

1 cilitating the occupancy and use of Federal
2 land by an outfitted visitor;

3 (ii) takes the form of—

4 (I) an amount or type of com-
5 mercial outfitted activity resulting
6 from an apportionment of the total
7 recreation capacity of a resource area;
8 or

9 (II) in the case of a resource
10 area for which recreation capacity has
11 not been apportioned, a type of com-
12 mercial outfitted activity conducted in
13 a manner that is not inconsistent with
14 or incompatible with an approved re-
15 source management plan; and

16 (iii) is calibrated in terms of amount
17 of use, type of use, or location of a com-
18 mercial outfitted activity, including user
19 days or portions of user days, seasons or
20 other periods of operation, launch dates,
21 assigned camps, hunt, gun, or fish days or
22 other formulations of the type or amount
23 of authorized activity.

24 (B) INCLUSION.—The term “allocation of
25 use” includes the designation of a geographic

1 area, zone, or district in which a limited num-
2 ber of authorized outfitters are authorized to
3 operate.

4 (3) AUTHORIZED OUTFITTER.—The term “au-
5 thorized outfitter” means a person or entity that
6 conducts a commercial outfitted activity on Federal
7 land under an outfitter authorization.

8 (4) COMMERCIAL OUTFITTED ACTIVITY.—The
9 term “commercial outfitted activity” means an au-
10 thorized outfitted activity conducted on Federal
11 lands—

12 (A) that is available to the public;

13 (B) that is conducted under the direction
14 of compensated individuals; and

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

19 (5) FEDERAL AGENCY.—The term “Federal
20 agency” means—

21 (A) the Forest Service;

22 (B) the Bureau of Land Management;

23 (C) the United States Fish and Wildlife
24 Service; and

25 (D) the Bureau of Reclamation.

1 (6) FEDERAL LAND.—

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

5 (B) EXCLUSION.—The term “Federal
6 land” does not include—

7 (i) land held in trust by the United
8 States for the benefit of an Indian tribe or
9 individual; or

10 (ii) land held by an Indian tribe or in-
11 dividual subject to a restriction by the
12 United States against alienation.

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

15 (A) such as outfitting, guiding, super-
16 vision, education, interpretation, skills training,
17 assistance, or livery operation conducted for a
18 member of the public in an outdoor environ-
19 ment; and

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

22 (8) OUTFITTED VISITOR.—The term “outfitted
23 visitor” means a member of the public that engages
24 an authorized outfitter to facilitate occupancy and
25 use of Federal land.

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

5 (10) OUTFITTER AUTHORIZATION.—The term
6 “outfitter authorization” means—

7 (A) an outfitter permit;

8 (B) a temporary outfitter authorization; or

9 (C) an authorization to use and occupy
10 Federal land that references this Act as its au-
11 thority.

12 (11) OUTFITTER PERMIT.—The term “outfitter
13 permit” means an outfitter permit under section 6.

14 (12) PRINCIPAL ALLOCATION OF OUTFITTER
15 USE.—The term “principal allocation of outfitter
16 use” means a grant by the Secretary in an outfitter
17 permit for an allocation of use to an authorized out-
18 fitter in accordance with section 9.

19 (13) RESOURCE AREA.—The term “resource
20 area” means a management unit that is described by
21 or contained within the boundaries of—

22 (A) a national forest;

23 (B) an area of public land;

24 (C) a wildlife refuge;

25 (D) a congressionally designated area;

1 (E) a hunting zone or district; or

2 (F) any other Federal planning unit (in-
3 cluding an area in which outfitted activities are
4 regulated by more than one Federal agency).

5 (14) SECRETARY.—The term “Secretary”
6 means—

7 (A) with respect to Federal land adminis-
8 tered by the Forest Service, the Secretary of
9 Agriculture, acting through the Chief of the
10 Forest Service or a designee;

11 (B) with respect to Federal land adminis-
12 tered by the Bureau of Land Management, the
13 Secretary of the Interior, acting through the
14 Director of the Bureau of Land Management or
15 a designee;

16 (C) with respect to Federal land adminis-
17 tered by the United States Fish and Wildlife
18 Service, the Secretary of the Interior, acting
19 through the Director of the United States Fish
20 and Wildlife Service or a designee; and

21 (D) with respect to Federal land adminis-
22 tered by the Bureau of Reclamation, the Sec-
23 retary of the Interior, acting through the Com-
24 missioner of Reclamation or a designee.

1 (15) TEMPORARY ALLOCATION OF USE.—The
2 term “temporary allocation of use” means an alloca-
3 tion of use to an authorized outfitter in accordance
4 with section 9.

5 (16) TEMPORARY OUTFITTER AUTHORIZA-
6 TION.—The term “temporary outfitter authoriza-
7 tion” means an outfitter authorization under section
8 6(f).

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

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

13 **SEC. 6. OUTFITTER AUTHORIZATIONS.**

14 (a) IN GENERAL.—

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

18 (2) CONDUCT OF OUTFITTED ACTIVITY.—An
19 authorized outfitter shall not conduct an outfitted
20 activity on Federal land except in accordance with
21 an outfitter authorization.

22 (3) SPECIAL RULE FOR ALASKA.—With respect
23 to a commercial outfitted activity conducted in the
24 State of Alaska, the Secretary shall not establish or
25 impose a limitation on special access by an author-

1 ized outfitter that is inconsistent with the access en-
2 sured under subsections (a) and (b) of section 1110
3 of the Alaska National Interest Lands Conservation
4 Act (16 U.S.C. 3170).

5 (b) TERMS AND CONDITIONS.—An outfitter author-
6 ization shall specify—

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

9 (2) other terms and conditions of the authoriza-
10 tion.

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

14 (1) recognize skill, experience, knowledge of the
15 resource area, and financial capability of the persons
16 or entity under consideration;

17 (2) consider any or all of the following: safety,
18 quality recreational experience, educational opportu-
19 nities, and conservation of resources for the outfitted
20 visitor;

21 (3) offer a reasonable opportunity for an au-
22 thorized outfitter to engage in a successful business
23 venture;

24 (4) create a stable regulatory climate that en-
25 courages an authorized outfitter to provide and in-

1 vest in the ability to provide quality services to the
2 outfitted visitor; and

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

6 (d) GRANT.—

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

9 (A) the commercial outfitted activity to be
10 authorized is not inconsistent with or incompat-
11 ible with an approved resource management
12 plan applicable to the resource area in which
13 the commercial outfitted activity is to be consid-
14 ered; and

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

17 (2) USE OF COMPETITIVE PROCESS.—

18 (A) IN GENERAL.—Except as otherwise
19 provided by this Act, the Secretary shall use a
20 competitive process to select an authorized out-
21 fitter.

22 (B) EXCEPTION FOR CERTAIN ACTIVI-
23 TIES.—The Secretary may grant an outfitter
24 permit to an applicant without conducting a

1 competitive selection process if the Secretary
2 determines that—

3 (i) the applicant meets criteria estab-
4 lished by the Secretary under subsection
5 (c); and

6 (ii) there is no competitive interest in
7 the commercial outfitted activity to be con-
8 ducted.

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

15 (e) PROVISIONS OF OUTFITTER PERMITS.—

16 (1) IN GENERAL.—An outfitter permit shall
17 provide for—

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

19 (B) conservation of resource values;

20 (C) a return to the United States through
21 an authorization fee in accordance with section
22 7;

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

1 (E) the obligation of an authorized out-
2 fitter to defend and indemnify the United
3 States in accordance with section 8;

4 (F) a principal allocation of outfitter use,
5 and, if appropriate, a temporary allocation of
6 use, in accordance with section 9;

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

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

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

13 (J) a means of modifying the terms and
14 conditions of an outfitter permit to reflect ma-
15 terial changes in facts and conditions;

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

18 (L) such other terms and conditions as the
19 Secretary may require.

20 (2) EXTENSIONS.—The Secretary may award
21 not more than three temporary one-year extensions
22 of an outfitter permit, unless the Secretary deter-
23 mines that extraordinary circumstances warrant ad-
24 ditional extensions.

1 (3) TENURE.—The Secretary shall generally
2 issue an outfitter authorization for 10 years, with an
3 initial probation period of two years for a new au-
4 thorized outfitter, except that he may, in extraor-
5 dinary circumstances, award an outfitter permit with
6 a term of less than 10 years when—

7 (A) foreseeable amendments in resource
8 management plans will create conditions that
9 would materially impact and necessitate
10 changes in permit terms and conditions in less
11 than 10 years; and

12 (B) an authorized outfitter and the Sec-
13 retary agree to a permit term of less than 10
14 years.

15 (f) TEMPORARY OUTFITTER AUTHORIZATIONS.—

16 (1) IN GENERAL.—The Secretary may issue a
17 temporary outfitter authorization for the purpose of
18 conducting a commercial outfitted activity on a lim-
19 ited basis.

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

22 (3) RENEWAL.—A temporary outfitter author-
23 ization may be reissued or renewed at the discretion
24 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 an au-
5 thorization fee, as determined by the Secretary.

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

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

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

13 (C) the fair market value of the use and
14 occupancy granted by the outfitter authoriza-
15 tion.

16 (b) CONSISTENCY.—The Federal agencies shall use
17 consistent methodologies to determine the outfitter au-
18 thorization fee.

19 (c) PAYMENT OF OUTFITTER AUTHORIZATION
20 FEE.—

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

24 (2) REQUIREMENTS.—The amount of the au-
25 thorization fee—

26 (A)(i) shall be expressed as—

1 (I) a simple charge per day of actual
2 use; or

3 (II) an annual or seasonable flat fee;
4 (ii) if calculated as a percentage of rev-
5 enue, shall be determined based on adjusted
6 gross receipts; or

7 (iii) with respect to a commercial outfitted
8 activity conducted in the State of Alaska, shall
9 be based on a simple charge 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 (C) shall be required to be paid by an au-
18 thorized outfitter to the United States on a rea-
19 sonable schedule during the operating season;
20 and

21 (D) shall set a minimum fee.

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

24 (A) take into consideration revenue from
25 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 one outfitter
23 permit is granted to conduct the same or simi-
24 lar commercial outfitted activities in the same

1 resource area, the Secretary shall establish an
2 identical fee for those 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 grant of a new
7 outfitter permit in 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 paragraph (2)(A)(i)(I)—

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

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

24 (6) ADJUSTMENT OF FEES.—The amount of an
25 authorization fee—

1 (A) shall be determined as of the grant
2 date of the outfitter permit; and

3 (B) may be modified to reflect—

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

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

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

18 (iv) the imposition of new or higher
19 fees assessed under other law; or

20 (v) authorized adjustments made to
21 an allocation of outfitter use.

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

1 (e) OTHER FEES AND COSTS.—Fees for processing
2 applications for outfitter permits or monitoring compli-
3 ance with permit terms and conditions shall not seek to
4 recover costs of agency activities that benefit broadly the
5 general public or are not directly related to or required
6 for processing of applications or monitoring of an author-
7 ization.

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

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

13 (1) negligence;

14 (2) gross negligence; or

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

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

23 (1) negligence;

24 (2) gross negligence; or

1 (3) willful and wanton disregard for persons or
2 property, arising proximately from the authorized
3 outfitter's conduct of a commercial outfitted activity
4 under an outfitter authorization.

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

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

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

25 (1) assumption or allocation of risk; and

1 (2) release or waiver related to inherently dan-
2 gerous activities or conditions, if the agreement also
3 runs in favor of the United States and its agents,
4 employees, or contractors.

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

8 **SEC. 9. ALLOCATION OF USE.**

9 (a) IN GENERAL.—

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

13 (2) a temporary outfitter permit may include a
14 principal allocation of outfitter use.

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

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

20 (c) WAIVER.—

21 (1) IN GENERAL.—At the request of an author-
22 ized outfitter, the Secretary may waive any obliga-
23 tion of the authorized outfitter to use all or part of
24 the amount of allocation of use provided under the
25 outfitter permit, subject to section 7(b), if the re-

1 quest is made in sufficient time to allow the Sec-
2 retary to temporarily reallocate the unused portion
3 of the allocation of use in that season or calendar
4 year.

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

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

14 (d) ADJUSTMENT TO ALLOCATION OF USE.—The
15 Secretary—

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

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

20 (B) requirements arising under other law;
21 and

22 (2) shall provide an authorized outfitter with
23 documentation supporting the basis for any adjust-
24 ment in the principal allocation of outfitter use, in-

1 cluding new terms and conditions that result from
2 the adjustment.

3 (e) TEMPORARY ALLOCATION OF USE.—

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

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

11 **SEC. 10. EVALUATION OF PERFORMANCE UNDER OUT-**
12 **FITTER PERMITS.**

13 (a) EVALUATION PROCESS.—

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

18 (2) EVALUATION CRITERIA.—Criteria used by
19 the Secretary to evaluate the performance of an au-
20 thorized outfitter shall—

21 (A) be objective, measurable, and attain-
22 able; and

23 (B) include, as deemed appropriate by the
24 Secretary—

- 1 (i) standards generally applicable to
2 all commercial outfitted activities;
3 (ii) standards specific to a resource
4 area or an individual outfitter operation;
5 and
6 (iii) such other terms and conditions
7 of the outfitter permit.

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

11 (A) appropriately account for factors be-
12 yond the control of the authorized outfitter, in-
13 cluding conditions described in sections
14 7(b)(6)(B) and 9(c); and

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

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

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

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

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

7 (c) PERFORMANCE EVALUATION.—

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

14 (2) PROCEDURE.—An authorized outfitter shall
15 be entitled—

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

21 (B) to receive written notice of any con-
22 duct or condition that, if not corrected, might
23 lead to a performance evaluation of marginal or
24 unsatisfactory, which shall include an expla-
25 nation of needed corrections and provide a rea-

1 sonable period in which the corrections may be
2 made without penalty; and

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

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

15 (e) DETERMINATION OF ELIGIBILITY FOR RE-
16 NEWAL.—

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

24 (2) FAILURE TO EVALUATE.—If, in any year of
25 the term of an outfitter permit, the Secretary fails

1 to evaluate the performance of the authorized out-
2 fitter by the date that is 90 days after the end of
3 the authorized outfitter's operating season, the per-
4 formance of the authorized outfitter in that year
5 shall be considered to have been good.

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

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

19 **SEC. 11. RENEWAL REVOCATION OR SUSPENSION OF OUT-**
20 **FITTER PERMITS.**

21 (a) RENEWAL AT EXPIRATION OF TERM.—

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

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

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

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

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

19 (A) has not entered into a payment plan
20 with the agency; or

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

22 and

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

1 (A) the health and welfare of outfitted visi-
2 tors; or

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

6 (c) SUSPENSION.—

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

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

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

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

18 (b) APPROVAL.—

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

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

4 (A) to a purchaser of the operation of the
5 authorized outfitter;

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

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

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

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

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

21 (d) CONSIDERATION PERIOD.—

22 (1) THRESHOLD FOR AUTOMATIC APPROVAL.—
23 Subject to paragraph (2), if the Secretary fails to
24 approve or disapprove the transfer of an outfitter
25 permit within 90 days after receiving a complete ap-

1 plication containing the information required with
2 respect to the transfer, the transfer shall be deemed
3 approved unless the transferee requests a modifica-
4 tion of the terms and conditions of the outfitter au-
5 thorization and such modification requires environ-
6 mental analysis under the National Environmental
7 Policy Act of 1969.

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

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

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

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

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

1 (c) ACCESS TO RECORDS.—The Secretary, or an au-
2 thorized representative of the Secretary, shall for purposes
3 of audit and performance evaluation have access to and
4 the right to examine for five years following the effective
5 date of an outfitter authorization any books, papers, docu-
6 ments, and records of the authorized outfitter relating to
7 each outfitter authorization held by the authorized out-
8 fitter during the business year.

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

10 (a) APPEALS PROCEDURE.—The Secretary shall by
11 regulation—

12 (1) grant an authorized outfitter full access to
13 administrative remedies; and

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

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

1 **SEC. 15. LACK OF EFFECT ON EXISTING RIGHTS OF THE**
2 **UNITED STATES.**

3 Nothing in this Act limits or restricts any right, title,
4 or interest of the United States in or to any land or re-
5 source.

6 **SEC. 16. REGULATIONS.**

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

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

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

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

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

19 (a) OUTFITTERS WITH SATISFACTORY RATING.—An
20 outfitter that holds a permit, contract, or other authoriza-
21 tion to conduct commercial outfitted activities (or an ex-
22 tension of such permit, contract, or other authorization)
23 in effect on the date of promulgation of implementing reg-
24 ulations under section 16 shall be entitled, on expiration
25 of the authorization, to the issuance of an outfitter permit
26 under this Act if the outfitter's aggregate performance

1 under the permit, contract, or other authorization was
2 good or was the equivalent of good, satisfactory, or accept-
3 able under a rating system in use before the date of enact-
4 ment of this Act.

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

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

Union Calendar No. 472

107TH CONGRESS
2^D SESSION

H. R. 2386

[Report No. 107–752, Part I]

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.

OCTOBER 15, 2002

Reported from the Committee on Resources

OCTOBER 15, 2002

Referral to the Committee on Agriculture extended for a period ending not later than October 15, 2002

OCTOBER 15, 2002

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed