

115TH CONGRESS
1ST SESSION

H. R. 289

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2017

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To authorize the Secretary of the Interior and the Secretary of Agriculture to issue permits for recreation services on lands managed by Federal agencies, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; DEFINI-**
 2 **TIONS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Guides and Outfitters Act” or the “GO Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

- Sec. 1. Short title; table of contents; definitions.
- Sec. 2. Special recreation permit and fee.
- Sec. 3. Permit across multiple jurisdictions.
- Sec. 4. Guidelines and permit fee calculation.
- Sec. 5. Use of permit fees for permit administration.
- Sec. 6. Adjustment to permit use reviews.
- Sec. 7. Authorization of temporary permits for new uses for the Forest Service
and BLM.
- Sec. 8. Indemnification requirements.
- Sec. 9. Streamlining of permitting process.
- Sec. 10. Cost recovery reform.
- Sec. 11. Extension of Forest Service recreation priority use permits.

7 (c) **DEFINITIONS.**—In this Act:

8 (1) **SECRETARY.**—The term “Secretary”
 9 means—

10 (A) the Secretary of the Interior, with re-
 11 spect to a Federal land management agency
 12 (other than the Forest Service); and

13 (B) the Secretary of Agriculture, with re-
 14 spect to the Forest Service.

15 (2) **SECRETARIES.**—The term “Secretaries”
 16 means the Secretary of the Interior and the Sec-
 17 retary of Agriculture acting jointly.

1 **SEC. 2. SPECIAL RECREATION PERMIT AND FEE.**

2 Subsection (h) of section 803 of the Federal Lands
3 Recreation Enhancement Act (16 U.S.C. 6802) is amend-
4 ed to read as follows:

5 “(h) SPECIAL RECREATION PERMIT AND FEE.—

6 “(1) IN GENERAL.—The Secretary may—

7 “(A) issue a special recreation permit for
8 Federal recreational lands and waters; and

9 “(B) charge a special recreation permit fee
10 in connection with the issuance of the permit.

11 “(2) SPECIAL RECREATION PERMITS.—The
12 Secretary may issue special recreation permits in the
13 following circumstances:

14 “(A) For specialized individual and group
15 use of Federal facilities and Federal rec-
16 reational lands and waters, such as, but not
17 limited to, use of special areas or areas where
18 use is allocated, motorized recreational vehicle
19 use, and group activities or events.

20 “(B) To recreation service providers who
21 conduct outfitting, guiding, and other recre-
22 ation services on Federal recreational lands and
23 waters managed by the Forest Service, Bureau
24 of Land Management, Bureau of Reclamation,
25 or the United States Fish and Wildlife Service.

1 “(C) To recreation service providers who
2 conduct recreation or competitive events, which
3 may involve incidental sales on Federal rec-
4 reational lands and waters managed by the For-
5 est Service, Bureau of Land Management, Bu-
6 reau of Reclamation, or the United States Fish
7 and Wildlife Service.

8 “(3) REDUCTION IN FEDERAL COSTS AND DU-
9 PLICATION OF ANALYSIS.—

10 “(A) IN GENERAL.—The issuance of a new
11 special recreation permit for activities under
12 paragraph (2) shall be categorically excluded
13 from further analysis and documentation under
14 the National Environmental Policy Act of 1969
15 (42 U.S.C. 4321 et seq.), if the proposed use is
16 the same as or similar to a previously author-
17 ized use and the Secretary determines that such
18 issuance does not have significant environ-
19 mental effects based upon application of the ex-
20 traordinary circumstances procedures estab-
21 lished by the Secretary under the National En-
22 vironmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.).

24 “(B) DEFINITION.—For the purposes of
25 this paragraph, the term ‘similar’ means—

1 “(i) substantially similar in type, na-
2 ture, and scope; and

3 “(ii) will not result in significant new
4 impacts.

5 “(4) RELATION TO FEES FOR USE OF HIGH-
6 WAYS OR ROADS.—An entity that pays a special
7 recreation permit fee shall not be subject to a road
8 cost-sharing fee or a fee for the use of highways or
9 roads that are open to private, noncommercial use
10 within the boundaries of any Federal recreational
11 lands or waters, as authorized under section 6 of
12 Public Law 88–657 (16 U.S.C. 537).”.

13 **SEC. 3. PERMIT ACROSS MULTIPLE JURISDICTIONS.**

14 (a) IN GENERAL.—In the case of an activity requir-
15 ing permits pursuant to subsection (h) of section 803 of
16 the Federal Lands Recreation Enhancement Act (16
17 U.S.C. 6802) for use of lands managed by both the Forest
18 Service and the Bureau of Land Management—

19 (1) the Secretaries may issue a joint permit
20 based upon a single application to both agencies
21 when issuance of a joint permit based upon a single
22 application will lower processing and other adminis-
23 tration costs for the permittee, provided that the
24 permit applicant shall have the option to apply for
25 separate permits rather than a joint permit; and

1 (2) the permit application required under para-
2 graph (1) shall be—

3 (A) the application required by the lead
4 agency; and

5 (B) submitted to the lead agency.

6 (b) REQUIREMENTS OF THE LEAD AGENCY.—The
7 lead agency for a permit under subsection (a) shall—

8 (1) coordinate with the associated agencies,
9 consistent with the authority of the Secretaries
10 under section 330 of the Department of the Interior
11 and Related Agencies Appropriations Act, 2001 (43
12 U.S.C. 1703), to develop and issue the single, joint
13 permit that covers the entirety of the trip;

14 (2) in processing the joint permit application,
15 incorporate the findings, interests, and needs of the
16 associated agencies, provided that such coordination
17 shall not be subject to cost recovery; and

18 (3) complete the permitting process within a
19 reasonable time after receiving the permit applica-
20 tion.

21 (c) EFFECT ON REGULATIONS.—Nothing in this sec-
22 tion shall alter, expand, or limit the applicability of any
23 Federal law (including regulations) to lands administered
24 by the relevant Federal agencies.

25 (d) DEFINITIONS.—In this section:

1 (1) ASSOCIATED AGENCY.—The term “associ-
2 ated agency” means an agency that manages the
3 land on which the trip of the special recreation per-
4 mit applicant will enter after leaving the land man-
5 aged by the lead agency.

6 (2) LEAD AGENCY.—The term “lead agency”
7 means the agency that manages the land on which
8 the trip of the special recreation permit applicant
9 will begin.

10 **SEC. 4. GUIDELINES AND PERMIT FEE CALCULATION.**

11 (a) GUIDELINES AND EXCLUSION OF CERTAIN REV-
12 ENUES.—The Secretary shall—

13 (1) publish guidelines in the Federal Register
14 for establishing recreation permit fees; and

15 (2) provide appropriate deductions from gross
16 revenues used as the basis for the fees established
17 under paragraph (1) for—

18 (A) revenue from goods, services, and ac-
19 tivities provided by a recreation service provider
20 outside Federal recreational lands and waters,
21 such as costs for transportation, lodging, and
22 other services before or after a trip; and

23 (B) fees to be paid by permit holder under
24 applicable law to provide services on other Fed-

1 expenditure, without further appropriation, until ex-
2 pended.

3 (b) USE OF PERMIT FEES.—Revenues from special
4 recreation permits issued to recreation service providers
5 under subparagraphs (B) and (C) of section 803(h)(2) of
6 the Federal Lands Recreation Enhancement Act (16
7 U.S.C. 6802(h)(2)) shall be used only—

8 (1) to partially offset the Secretary’s direct cost
9 of administering the permits;

10 (2) to improve and streamline the permitting
11 process; and

12 (3) for related recreation infrastructure and
13 other purposes specifically to support recreation ac-
14 tivities at the specific site for which use is author-
15 ized under the permit, after obtaining input from
16 any related permittees; provided, however, that the
17 Federal Advisory Committee Act (5 U.S.C. App. 1
18 et seq.) shall not apply to any advisory committee or
19 other group established to carry out this paragraph.

20 (c) LIMITATION ON USE OF FEES.—The Secretary
21 may not use any permit fees for biological monitoring on
22 Federal recreational lands and waters under the Endan-
23 gered Species Act of 1973 (16 U.S.C. 1531 et seq.) for
24 listed or candidate species.

1 **SEC. 6. ADJUSTMENT TO PERMIT USE REVIEWS.**

2 (a) IN GENERAL.—To the extent that the Secretary
3 utilizes permit use reviews, in reviewing and adjusting al-
4 locations of use for permits for special uses of Federal rec-
5 reational lands and waters managed by the Forest Service,
6 and in renewing such permits, the Secretary of Agriculture
7 shall allocate to a permit holder a level of use that is no
8 less than the highest amount of actual annual use over
9 the reviewed period plus 25 percent, capped at the amount
10 of use allocated when the permit was issued unless addi-
11 tional capacity is available. The Secretary may assign any
12 use remaining after adjusting allocations on a temporary
13 basis to qualified permit holders.

14 (b) WAIVER.—Use reviews under subsection (a) may
15 be waived for periods in which circumstances that pre-
16 vented use of assigned capacity, such as weather, fire, nat-
17 ural disasters, wildlife displacement, business interrup-
18 tions, insufficient availability of hunting and fishing li-
19 censes, or when allocations on permits include significant
20 shoulder seasons. The authorizing office may approve non-
21 use without reducing the number of service days assigned
22 to the permit in such circumstances at the request of the
23 permit holder. Approved non-use may be temporarily as-
24 signed to other qualified permit holders when conditions
25 warrant.

1 **SEC. 7. AUTHORIZATION OF TEMPORARY PERMITS FOR**
2 **NEW USES FOR THE FOREST SERVICE AND**
3 **BLM.**

4 Not later than 180 days after the date of the enact-
5 ment of this Act, the Secretary of Agriculture and the Sec-
6 retary of the Interior shall establish and implement a pro-
7 gram to authorize temporary permits for new recreational
8 uses of Federal recreational lands and waters managed by
9 the Forest Service or the Bureau of Land Management,
10 respectively, and to provide for the conversions of such
11 temporary permits to long-term permits after 2 years of
12 satisfactory operation. The issuance and conversion of
13 such permits shall be subject to subsection (h)(3) of sec-
14 tion 803 of the Federal Lands Recreation Enhancement
15 Act (16 U.S.C. 6802).

16 **SEC. 8. INDEMNIFICATION REQUIREMENTS.**

17 (a) INDEMNIFICATION.—A permit holder that is pro-
18 hibited by the State from providing indemnification to the
19 Federal Government shall be considered to be in compli-
20 ance with indemnification requirements of the Department
21 of the Interior and the Department of Agriculture if the
22 permit holder carries the required minimum amount of li-
23 ability insurance coverage or is self-insured for the same
24 minimum amount.

25 (b) EXCULPATORY AGREEMENTS.—The Secretary
26 shall not implement, administer or enforce any regulation

1 or policy prohibiting the use of exculpatory agreements be-
2 tween recreation service providers and their customers for
3 services provided under a special recreation permit.

4 **SEC. 9. STREAMLINING OF PERMITTING PROCESS.**

5 (a) REGULATIONS.—Not later than 180 days after
6 the date of the enactment of this Act, the Secretary of
7 Agriculture shall revise part 251, subpart B, of title 36
8 Code of Federal Regulations, and the Secretary of the In-
9 terior shall revise subpart 2932, of title 43, Code of Fed-
10 eral Regulations, to streamline the processes for the
11 issuance and renewal of outfitter and guide special use
12 permits. Such amended regulations shall—

13 (1) shorten application processing times and
14 minimize application and administration costs; and

15 (2) provide for the use of programmatic envi-
16 ronmental assessments and categorical exclusions for
17 environmental reviews under the National Environ-
18 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
19 for the issuance or renewal of outfitter and guide
20 and similar recreation special use permits when the
21 Secretary determines that such compliance is re-
22 quired, to the maximum extent allowable under ap-
23 plicable law, including, but not limited to, use of a
24 categorical exclusion as provided under section

1 803(h)(3) of the Federal Lands Recreation En-
2 hancement Act (16 U.S.C. 6802(h)(3)).

3 (b) ONLINE APPLICATIONS.—To the maximum ex-
4 tent practicable, where feasible and efficient, the Secretary
5 shall make special recreation permit applications available
6 to be filled out and submitted online.

7 **SEC. 10. COST RECOVERY REFORM.**

8 (a) REGULATORY PROCESS.—Not later than 180
9 days after the date of enactment of this Act, the Secretary
10 of Agriculture shall revise section 251.58 of title 36, Code
11 of Federal Regulations, and the Secretary of the Interior
12 shall revise section 2932.31(e) and (f) of title 43, Code
13 of Federal Regulations, to reduce costs and minimize the
14 burden of cost recovery on small businesses and adverse
15 impacts of cost recovery on jobs in the outfitting and guid-
16 ing industry and on rural economies provided, however,
17 that nothing in the revised regulations shall further limit
18 the Secretary's authority to issue or renew recreation spe-
19 cial use permits.

20 (b) DE MINIMIS EXEMPTION.—

21 (1) COST RECOVERY LIMITATION.—Any regula-
22 tions issued by the Secretary of the Interior or the
23 Secretary of Agriculture to establish fees to recover
24 processing costs for recreation special use applica-
25 tions and monitoring costs for recreation special use

1 authorizations shall include an exemption providing
2 that at least the first 50 hours of work necessary in
3 any one year to process and/or monitor such an ap-
4 plication shall not be subject to cost recovery. The
5 application of a 50-hour credit per permit shall also
6 apply to any monitoring fees on a per annum basis
7 during the term of each permit.

8 (2) APPLICATION OF EXEMPTION.—An exemp-
9 tion under paragraph (1) shall apply to the proc-
10 essing of each recreation special use permit applica-
11 tion and monitoring of each recreation special use
12 authorization for which cost recovery is required, in-
13 cluding any application or authorization requiring
14 more than 50 hours (or such other greater number
15 of hours specified for exemption) to process or mon-
16 itor. In the event that the amount of work required
17 to process such an application or monitor such an
18 authorization exceeds the specified exemption, the
19 amount of work for which cost recovery is required
20 shall be reduced by the amount of the exemption.

21 (3) MULTIPLE APPLICATIONS.—In situations
22 involving multiple recreation special use applications
23 for similar services in the same unit or area that re-
24 quire more than 50 hours (or such other greater
25 number of hours specified for exemption) in the ag-

1 gregate to process, the Secretary shall, regardless of
2 whether the applications are solicited or unsolicited
3 and whether there is competitive interest—

4 (A) determine the share of the aggregate
5 amount to be allocated to each application, on
6 an equal or prorated basis, as appropriate; and

7 (B) for each application, apply a separate
8 exemption of up to 50 hours (or such other
9 greater number of hours specified for exemp-
10 tion) to the share allocated to such application.

11 (4) COST REDUCTION.—The agency processing
12 a recreation special use application shall utilize ex-
13 isting studies and analysis to the greatest extent
14 practicable in order to reduce the amount of work
15 and cost necessary to process the application.

16 (5) LIMITATION.—The Secretary of the Interior
17 and the Secretary of Agriculture may not recover as
18 processing costs for recreation special use applica-
19 tions and monitoring costs for recreation special use
20 authorizations any costs for consultations conducted
21 under section 7 of the Endangered Species Act of
22 1973 (16 U.S.C. 1536) or for biological monitoring
23 on Federal recreational lands and waters under such
24 Act for listed, proposed, or candidate species.

1 (6) WAIVER OF COST RECOVERY.—The Sec-
2 retary of the Interior and the Secretary of Agri-
3 culture may waive the recovery of costs for proc-
4 essing recreation special use permit applications and
5 renewals, on a categorical or case-by-case basis as
6 appropriate, if the Secretary determines that—

7 (A) such costs would impose a significant
8 economic burden on any small business or cat-
9 egory of small businesses;

10 (B) such cost recovery could threaten the
11 ability of an applicant or permittee to provide,
12 in a particular area, a particular outdoor rec-
13 reational activity that is consistent with the
14 public interest and with applicable resource
15 management plans; or

16 (C) prevailing economic conditions are un-
17 favorable, such as during economic recessions,
18 or when drought, fire, or other natural disasters
19 have depressed economic activity in the area of
20 operation.

21 **SEC. 11. EXTENSION OF FOREST SERVICE RECREATION**
22 **PRIORITY USE PERMITS.**

23 Where the holder of a special use permit for outfitting
24 and guiding that authorizes priority use has submitted a
25 request for renewal of such permit in accordance with ap-

1 plicable laws and regulations, the Secretary of Agriculture
2 shall have the authority to grant the holder one or more
3 extensions of the existing permit for additional items not
4 to exceed 5 years in the aggregate, as necessary to allow
5 the Secretary to complete the renewal process and to avoid
6 the interruption of services under such permit. Before
7 granting an extension under this section, the Secretary
8 shall take all reasonable and appropriate steps to complete
9 the renewal process before the expiration of the special
10 use permit.

Passed the House of Representatives October 2,
2017.

Attest:

KAREN L. HAAS,
Clerk.