

104TH CONGRESS  
2D SESSION

# S. 2194

To provide the public with access to quality outfitter and guide services on Federal lands and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 1996

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To provide the public with access to quality outfitter and guide services on Federal lands and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Outfitter and Guide Policy Act of 1996.”

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. Definitions.
- Sec. 5. Outfitter and guide authorizations.
- Sec. 6. Fees charged by the United States for authorizations.
- Sec. 7. Indemnification and acknowledgment of inherent risk.

- Sec. 8. Annual operating plan.
- Sec. 9. Assignment and management of allocation of use to the outfitted public.
- Sec. 10. Performance evaluation.
- Sec. 11. Requirements for renewal or termination of agreements.
- Sec. 12. Transferability of agreements.
- Sec. 13. Dispute resolution.
- Sec. 14. Rules of construction.
- Sec. 15. Regulations.
- Sec. 16. Savings Clause.
- Sec. 17. Authorization of appropriations.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the experience, skills, equipment and  
4 trained staff provided by outfitters and guides are  
5 necessary in meeting the need to assure the public  
6 of a means of access to recreational and educational  
7 opportunities on Federal lands;

8 (2) an effective commitment to use and enjoy-  
9 ment of the Federal lands by the outfitted public re-  
10 quires implementation of agency programs to pro-  
11 vide for—

12 (A) the health and welfare of the outfitted  
13 public in their enjoyment of recreational and  
14 educational opportunities;

15 (B) recognition that access to Federal  
16 lands by that segment of the public which uti-  
17 lizes the services of outfitters and guides can  
18 only be assured by an equitable share of the  
19 type, number and amount of use determined to

1 be suitable for the area through resource man-  
2 agement planning;

3 (C) protection of the resource values which  
4 support these activities;

5 (D) an effective means of evaluating the  
6 performance of outfitters and guides to assure  
7 the public of continued availability of quality  
8 visitor services; and

9 (E) fair return to the Government through  
10 fees and greater efficiency in management.

11 (3) a more effective relationship between the  
12 land management agencies and those offering outfit-  
13 ter and guide services requires implementation of  
14 agency programs to provide—

15 (A) encouragement to skilled, experienced,  
16 career-oriented persons from the private sector  
17 to invest in high quality visitor services which  
18 are available to the general public;

19 (B) a stable business climate in which gov-  
20 ernment managers receive training appropriate  
21 to the administration of this Act;

22 (C) a reasonable opportunity for profes-  
23 sional outfitters and guides to earn a profit and  
24 the incentive to reinvest in order to increase the

1 quality and scope of services available to the  
2 outfitted public;

3 (D) renewal of authorizations based on a  
4 performance evaluation system that rewards  
5 quality operators and eliminates those who fail  
6 to meet such standards; and

7 (E) recognition of the outfitter and guide  
8 investment as a family business which might be  
9 sold, inherited, or otherwise assigned, provided  
10 that the outfitted public is assured of continuity  
11 in the quality of visitor services.

12 **SEC. 3. PURPOSE.**

13 (a) The purpose of this Act is to codify the standards,  
14 customs, and practices of outfitters and guides operating  
15 on Federal lands whose services are necessary to assure  
16 the outfitted public an opportunity to renew their heritage  
17 through safe and enjoyable backcountry education and ad-  
18 venture.

19 (b) Rules and regulations promulgated under the au-  
20 thority of this Act should be consistent among the various  
21 agencies to the extent practicable in order to increase effi-  
22 ciency of the Federal Government, simplify requirements  
23 for those authorized to provide services, and provide the  
24 public with consistent quality in visitor services.

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

3 (1) The term “outfitter” means a person or  
4 other entity which provides services to the general  
5 public on Federal lands pursuant to the terms and  
6 conditions of an outfitter and guide authorization.  
7 The term “outfitter” includes any holder of an au-  
8 thorization who by local custom or tradition is  
9 known as a “guide.”

10 (2) The term “outfitter services” means those  
11 services provided to the public in an outdoor envi-  
12 ronment that rely upon the recreational, natural,  
13 historical, or cultural resources of Federal lands  
14 which include, but are not limited to; outfitting,  
15 guiding, education, interpretation, skills training,  
16 packing, transportation, subsistence, assistance, and  
17 other activities traditionally or historically provided  
18 by outfitters and guides. Examples of outfitter serv-  
19 ices governed by this Act include, but are not limited  
20 to; tours or trips conducted on foot, by raft, canoe,  
21 kayak, cataraft, other inflatable or motorized boat or  
22 water craft, horse, mule, llama, or other pack ani-  
23 mal, hot air balloon, bicycle, skis, snowshoes, jeep,  
24 motorcycle, snowmobile, all terrain vehicle or other  
25 conveyance and include a variety of outdoors sports  
26 and activities such as fishing, hunting, hiking, rock

1 climbing, ice climbing, mountaineering, skiing (ex-  
2 cept when conducted on Federal lands under a per-  
3 mit issued pursuant to the National Forest Ski Area  
4 Permit Act of 1986, 16 U.S.C. 497b), camping,  
5 boating, whitewater rafting, trail rides, environ-  
6 mental education programs, skills training programs  
7 and certain livery services.

8 (3) The term “outfitted public” means that seg-  
9 ment of the public that relies upon outfitter and  
10 guide services for access, use, and enjoyment of the  
11 natural, cultural and historical resources on Federal  
12 lands.

13 (4) The term “livery services” means a person  
14 or other entity which provides a service in dropping  
15 off or picking up supplies or equipment, or conveys  
16 the outfitted public to or from points of access to  
17 Federal resource areas.

18 (5) The term “outfitter and guide authoriza-  
19 tion” means an outfitter and guide agreement or an  
20 outfitter and guide license, as applicable.

21 (6) The term “outfitter and guide agreement”  
22 means a written contract between the agency head  
23 and an outfitter which sets forth terms, conditions  
24 and an allocation of use under which the outfitter is  
25 authorized to provide visitor services.

1           (7) The term “outfitter and guide business per-  
2           mit” means a non-competitive authorization by the  
3           agency head and an outfitter which sets forth the  
4           terms, conditions and a temporary allocation of use  
5           under which the outfitter may provide visitor serv-  
6           ices on a limited basis.

7           (8) The term “holder” means any outfitter  
8           whose authorization to provide facilities or services  
9           is currently in effect.

10          (9) The term “agency head” means—

11                 (A) the Director or a designee with respect  
12                 to the National Park Service, the United States  
13                 Fish and Wildlife Service, and the Bureau of  
14                 Land Management; and

15                 (B) the Chief or a designee with respect to  
16                 the Forest Service; and

17                 (C) the Commissioner or a designee with  
18                 respect to the Bureau of Reclamation.

19          (10) The term “Federal lands” for purposes of  
20           this Act means all lands, and associated resources  
21           therein administered by an agency of the Federal  
22           Government or its designee, except lands held in  
23           trust by the United States for the benefit of any In-  
24           dian tribe or individual or held by any Indian tribe

1 or individual subject to a restriction by the United  
2 States against alienation.

3 (11) The term “resource area” means any plan-  
4 ning unit which is described by, or contained within,  
5 the boundaries of a unit of the National Park Sys-  
6 tem, a National Forest, wildlife refuge, or similar  
7 Federal land management unit which describes or  
8 contains outfitters offering same or similar services  
9 to the public, including those instances in which the  
10 area in which such directly competitive services  
11 occur may be administered by more than one Fed-  
12 eral agency.

13 (12) The term “allocation of use” means a  
14 commitment to provide access to Federal lands for  
15 the outfitted public through the assignment to out-  
16 fitters and guides of user days (or similar time fac-  
17 tors which may apply), launch dates, reserved or as-  
18 signed campsites, or other considerations provided in  
19 an outfitter and guide authorization, approved an-  
20 nual operating plan, or other agreement.

21 (13) The term “principal use” means an agency  
22 commitment to an outfitter operating under the au-  
23 thority of an outfitter and guide agreement for a  
24 specific annual allocation of use over the length of  
25 the term of the contract and any subsequent renewal

1 of such authorization, except as otherwise provided  
2 by this Act.

3 (14) The term “temporary use” means an  
4 agency commitment to an outfitter operating under  
5 the authority of an outfitter and guide authorization  
6 for an allocation of use for a period not to exceed  
7 two years.

8 (15) The term “traditional, historical or estab-  
9 lished use” means methods of transport, lodging,  
10 recreation or educational activities, including facili-  
11 ties or structures, which reflect earlier eras of Amer-  
12 ican exploration, technology and cultural evolution  
13 and were incorporated prior to enactment of this Act  
14 into outfitter and guide services with adaptations, as  
15 feasible, to insure health, safety, resource protection  
16 and humane treatment of stock in continuing to pro-  
17 vide such experiences to the outfitted public.

18 (16) The term “temporary structure” means  
19 corral, hitchrack, springbox, non-permanent tent  
20 frame or pad, fire ring, or other structure which lack  
21 footings and foundations made from modern con-  
22 struction materials such as concrete or cement; is  
23 capable of removal from the resource area at the end  
24 of the term of authorization; and is utilized to sup-  
25 port traditional means of access, as limited pack-

1 stock management structures, or for the humane  
2 treatment of animals, or for human shelter or sub-  
3 sistence.

4 (17) The term “assigned camp” means a camp-  
5 site authorized to be reserved for utilization by the  
6 outfitted public during the holder’s season or period  
7 of operation.

8 (18) The term “user day” means a day, or any  
9 part of a day, in which a member of the outfitted  
10 public utilizes outfitter and guide facilities or serv-  
11 ices on Federal lands.

12 (19) The term “adjusted gross receipts” means  
13 the results of a calculation in which revenue from  
14 goods or services provided to the outfitted public on  
15 non-Federal lands, fees conveyed to units of Govern-  
16 ment for hunting or fishing licenses or for entrance  
17 or recreation fees, sources other than outfitter activi-  
18 ties, or such other exclusions as the agency head  
19 might apply, are deducted from the gross receipts of  
20 the holder of an outfitter and guide authorization  
21 and revenue additions are added to the total of gross  
22 receipts.

23 (20) The term “revenue additions” means the  
24 market value of goods and services that are donated  
25 or bartered in exchange for goods and services re-

1 received that are directly related to an outfitted or  
2 guided trip.

3 (21) The term “Consumer Price Index”  
4 means—

5 (A) the Consumer Price Index-All Urban  
6 Consumers published by the Bureau of Labor  
7 Statistics of the Department of Labor; and

8 (B) from and after such time as such  
9 index is no longer published, the consumer price  
10 index or other regularly published cost-of-living  
11 index chosen by the agency head which reason-  
12 ably approximates the Consumer Price Index  
13 specified in subparagraph (A).

14 **SEC. 5. OUTFITTER AND GUIDE AUTHORIZATIONS.**

15 (a) **REQUIREMENT FOR AUTHORIZATION.**—A person  
16 or other entity who offers to provide or conduct outfitter  
17 and guide services for a fee on Federal lands shall be re-  
18 quired to obtain authorization under the authority of this  
19 Act.

20 (b) **LAW APPLICABLE TO AUTHORIZATIONS.**—The  
21 terms and conditions of outfitter and guide authorizations  
22 shall henceforth be governed by this Act.

23 (c) **CRITERIA FOR ISSUANCE OF AUTHORIZATION.**—  
24 The terms and conditions of an outfitter and guide author-  
25 ization shall specify the rights and obligations of both the

1 holder and the agency and be administered to satisfy,  
2 without limitation, criteria which—

3           (1) identify skilled, experienced and financially  
4           capable persons or other entities to offer and con-  
5           duct outfitters services in a manner to provide high  
6           quality visitor services, promote the health and wel-  
7           fare of the outfitted public, and protect the natural,  
8           historical and cultural resources in areas where  
9           these activities occur;

10           (2) acknowledge the traditional role of outfit-  
11           ters and guides in providing the experience, skills  
12           and equipment utilized by the outfitted public for  
13           their use and enjoyment of recreational and edu-  
14           cational opportunities on Federal lands;

15           (3) recognize the importance of the private sec-  
16           tor in providing a quality visitor experience on Fed-  
17           eral lands by encouraging outfitter and guide invest-  
18           ments in facilities, services, equipment and employee  
19           training; and

20           (4) encourage competitive opportunities in the  
21           award of authorization for new outfitter opportuni-  
22           ties.

23           (d) NATURE AND TYPES OF AUTHORIZATIONS.—The  
24           agency head may enter into outfitter and guide authoriza-  
25           tions as follows:

1           (1) OUTFITTER AND GUIDE AGREEMENT.—The  
2 agency head is authorized to enter into a written  
3 contract to be known as an outfitter and guide  
4 agreement for the use and occupancy of Federal  
5 lands for the purposes of providing facilities or serv-  
6 ices to the outfitted public. Such contract shall pro-  
7 vide for—

8           (A) a standard 10-year term for an outfit-  
9 ter and guide agreement. The agency head shall  
10 issue an agreement for longer than 10 years if  
11 the agency head determines that a longer term  
12 is in the public interest or necessary due to the  
13 extent of investment required to meet the obli-  
14 gations assumed. The term for an agreement  
15 may not exceed 20 years;

16           (B) a specified allocation of principal use  
17 which shall be assigned to the holder through  
18 the term of the agreement subject to section 9  
19 of this Act and, if appropriate, an allocation of  
20 temporary use;

21           (C) authorization of traditional, historical  
22 or established use, including temporary struc-  
23 tures and assigned camps, as defined by this  
24 Act notwithstanding other provisions of law;

1 (D) renewal of the agreement upon a find-  
2 ing of good performance during the overall term  
3 of the permit (including any extensions thereof)  
4 subject to the conditions set forth in section 11  
5 of this Act;

6 (E) reasonable modification or amendment  
7 to the terms and conditions of the agreement  
8 with the consent of the holder: *Provided*, That  
9 such modification or amendment during the  
10 term of existing agreement—

11 (i) shall be undertaken with reason-  
12 able advance notice of any new require-  
13 ment for capital expenditures arising dur-  
14 ing the term of the authorization which  
15 could be expected to affect pricing, adver-  
16 tising or service;

17 (ii) may be utilized to allow the holder  
18 to provide new services closely related to  
19 those authorized if the agency head deter-  
20 mines that such services would contribute  
21 toward the use and enjoyment of Federal  
22 lands by the outfitted public; and

23 (iii) shall not constitute the issuance  
24 of a new permit or adversely impact other

1 rights and obligations that exist in such  
2 agreement;

3 (F) approval of an outfitter's rates and  
4 charges to the public in those instances where  
5 the agency head determines that sufficient com-  
6 petition for services does not exist within, or in  
7 reasonable proximity to, the resource area in  
8 which the outfitter operates. In such instances  
9 in which sufficient competition does not exist—

10 (i) the outfitter and guide agreement  
11 shall state that the reasonableness of the  
12 outfitter's rates and charges to the public  
13 may be reviewed and approved by the  
14 agency head, utilizing a comparison with  
15 those rates and charges for facilities and  
16 services of comparable character under  
17 similar conditions, with due consideration  
18 for length of season, seasonal variations,  
19 average percentage of trip bookings, acces-  
20 sibility, availability and costs of labor and  
21 materials, type of patronage, and other  
22 factors deemed significant by the agency  
23 head;

24 (ii) such review shall be completed  
25 within 60 days of receipt of all necessary

1 information, or the requirement for the  
2 agency head's approval shall be waived and  
3 such rates and charges as proposed by the  
4 outfitter considered to be approved for im-  
5 mediate use; and

6 (G) temporary extensions of an agreement  
7 for up to two years to avoid interruption of  
8 services to the public.

9 (2) OUTFITTER AND GUIDE BUSINESS LI-  
10 CENSE.—The agency head is authorized to issue a  
11 noncompetitive outfitter and guide business license  
12 to a person or other entity qualified to provide visi-  
13 tor services on a limited basis at a resource area. In  
14 establishing criteria for such authorizations the  
15 agency head shall determine that—

16 (A) the term for an outfitter and guide  
17 business shall not exceed two years;

18 (B) such license is not renewable, but may  
19 be reissued at the discretion of the agency head;

20 (C) the assignment of temporary use for  
21 such licenses may be made from whatever unas-  
22 signed allocation of use for outfitters and  
23 guides is available, or from other authority for  
24 use and occupancy as the agency head deems to  
25 be appropriate;

1 (D) a license may be issued only when the  
 2 type and amount of activity is not inconsistent  
 3 with resource management goals for the area;

4 (E) such authorization shall not provide  
 5 for the construction of any structure, fixture, or  
 6 improvement on Federal lands, except tem-  
 7 porary structures as defined by this Act;

8 (F) appropriate steps be taken to limit the  
 9 liability of the United States arising from the  
 10 provision of visitor services or other activities;

11 (G) service activities conducted shall be  
 12 monitored to determine whether issuance of an  
 13 outfitter and guide agreement would be a more  
 14 appropriate authorization; and

15 (H) a person or other entity seeking or ob-  
 16 taining such license shall not be precluded from  
 17 also submitting a proposal for an outfitter and  
 18 guide agreement.

19 (e) ISSUANCE OF AN OUTFITTER AND GUIDE AGREE-  
 20 MENT.—

21 (1) Outfitter and guide agreements may be is-  
 22 sued when one or more of the following occurs—

23 (A) an increased allocation, capacity, or  
 24 public demand is identified through the re-  
 25 source planning process;

1 (B) an existing permit is terminated under  
2 conditions described in section 11;

3 (C) a reduction in assignment of principal  
4 use as provided in section 9(d) makes additional  
5 service days available;

6 (D) competitive interest in a resource area  
7 or activity arises where no previously authorized  
8 services exist and where the proposed use is not  
9 inconsistent with objectives in resource manage-  
10 ment plans; or

11 (E) an application has been submitted to  
12 provide outfitter and guide services for an area  
13 or activity for which there is no competitive in-  
14 terest.

15 (2) In situations fitting the criteria described in  
16 paragraphs (1) (A) through (D) the agency head—

17 (A) may solicit applicants by issuing a pro-  
18 spectus and contacting all parties who have ex-  
19 pressed an interest;

20 (B) shall determine the most qualified ap-  
21 plicant(s) by considering past experience and  
22 knowledge of the area, financial capability, eco-  
23 nomic viability of existing holders, performance  
24 record, and other factors: *Provided*, That con-  
25 sideration of revenue to the United States shall

1 be subordinate to the objectives of protecting  
2 natural resources and providing quality service  
3 to the outfitted public in the selection of such  
4 applicant; and

5 (C) shall establish fee requirements as  
6 specified by section 6 of this Act.

7 (3) The agency head is not precluded from  
8 awarding a noncompetitive authorization to an appli-  
9 cant who meets the criteria established.

10 (4) The agency head may issue a temporary au-  
11 thority to provide outfitter services for a term not to  
12 exceed two years in order to avoid interruption of  
13 services to the outfitted public. Prior to making such  
14 a determination the agency head shall take all rea-  
15 sonable and appropriate steps to consider pending  
16 applications for outfitter and guide authorizations.

17 (f) LANDS UNDER MULTIPLE JURISDICTIONS.—In  
18 order to reduce administrative costs, the agency heads  
19 concerned may designate a lead agency for the authoriza-  
20 tion and management of a single operation on Federal  
21 lands under the jurisdiction of more than one agency. The  
22 agency so designated shall issue a single outfitter and  
23 guide authorization and collect a single fee under para-  
24 graphs (1) and (2). Such authorization shall provide for

1 use in a manner consistent with the plans and policies for  
2 each agency.

3 (g) PROVISION FOR ADDITIONAL RELATED SERV-  
4 ICES.—The agency head may modify an outfitter and  
5 guide agreement to allow the holder to provide services  
6 closely related to such agreement if the agency head deter-  
7 mines that such changes would enhance the health and  
8 welfare or enjoyment of visitors.

9 **SEC. 6. FEES CHARGED BY THE UNITED STATES FOR AU-**  
10 **THORIZATIONS.**

11 (a) IN GENERAL.—The agency head shall require  
12 payment of a reasonable fee for the opportunity of provid-  
13 ing outfitter and guide services pursuant to this Act which  
14 may include the following:

15 (1) An annual basis for cash payment, which  
16 shall include a reasonable schedule of deposits  
17 through the operating season; and

18 (2) Fees for rental or lease of Government-  
19 owned facilities occupied by the outfitter, as appro-  
20 priate.

21 (b) ESTABLISHMENT OF AMOUNT.—

22 (1) The agency head shall establish an amount  
23 applicable to an outfitter and guide which—

24 (A) reflects the value of the opportunity to  
25 conduct outfitter services on Federal lands.

1           Such fee may be expressed as a flat fee or, if  
2           calculated as a percentage of revenue, shall be  
3           determined based on adjusted gross receipts;  
4           and

5                   (B) takes into account other economic con-  
6           ditions within the area in which such services  
7           are to be provided in order to provide a reason-  
8           able opportunity for the financial viability of  
9           outfitter services at that location.

10           (2) The agency head shall establish an amount  
11           applicable to outfitter and guide business licenses  
12           sufficient to recover the cost of administering such  
13           authorizations.

14           (c) SUBSTANTIALLY SIMILAR SERVICES IN A SPE-  
15           CIFIC GEOGRAPHIC AREA.—If multiple outfitter and guide  
16           agreements are awarded to provide the same or similar  
17           outfitter services at the same approximate location or  
18           within a resource area, the agency head shall establish an  
19           identical fee for all such contracts, subject to periodic re-  
20           view and revision by the agency head.

21           (d) ADJUSTMENT OF FEES.—

22                   (1) IN GENERAL.—The amount of any fee for  
23           the term of an outfitter and guide agreement shall  
24           be set at the beginning of the outfitter and guide au-



1 or death to person or property resulting from the  
2 acts, omissions, negligence, gross negligence or will-  
3 ful or wanton misconduct of third parties, or the  
4 United States, its agents, employees or contractors;  
5 and

6 (2) shall not incur any liability of any kind or  
7 nature, to the United States, its agents, employees  
8 or contractors, or third parties, as a result of the is-  
9 suance of the outfitter and guide authorization or as  
10 a result of the provision of outfitter services under  
11 the outfitter and guide authorization absent a find-  
12 ing by a court of competent jurisdiction of holder's  
13 negligence, gross negligence, or willful and wanton  
14 disregard for persons or property; and in no event  
15 will the holder incur strict liability to the United  
16 States, its agents, employees or contractors, or third  
17 parties; and

18 (3) shall have no responsibility to indemnify the  
19 United States, its agents, employees or contractors,  
20 for costs or expenses associated with injury, damage  
21 or death to person or property resulting from the  
22 inherent risks of holder's outfitter services under the  
23 outfitter and guide authorization, or, the inherent  
24 risks present on Federal lands; and

1           (4) shall be allowed to enter into release, waiv-  
2           er, indemnification, or acknowledgment or allocation  
3           of risk agreements with the outfitted public.

4 **SEC. 8. ANNUAL OPERATING PLAN.**

5           (a) Prior to the first day in which operations are con-  
6           ducted under the authority of an outfitter and guide  
7           agreement the holder must file an annual operating plan  
8           with the agency head that includes—

9           (1) the names and mailing addresses of holder  
10          and its agents, along with a statement of ownership  
11          and authorization under which the outfitter serves  
12          are to be provided;

13          (2) a map, sketch or description providing in-  
14          formation sufficient to locate the authorized area of  
15          outfitter services on the ground, existing and pro-  
16          posed roads, if any, or access routes to be used in  
17          connection with the services provided, assigned  
18          camps (if any), and the approximate location where  
19          land, water or other resources will be utilized;

20          (3) information describing the nature of outfit-  
21          ter services to be provided and how they will be con-  
22          ducted, the period during which they will take place,  
23          and measures to be taken for the protection of natu-  
24          ral, historical, and cultural resources within the re-  
25          source area; and

1           (4) a statement of mutual agreement outlining  
2           the objective and attainable measurements of outfit-  
3           ter and agency performance to be evaluated not less  
4           than once during, or at the conclusion of, the oper-  
5           ating season.

6           (b) The holder shall be responsible for updating the  
7           annual operating plan as necessary or when required to  
8           do so by the agency.

9           (c) The agency head shall review and approve an an-  
10          nual operating plan based on criteria which are consistent  
11          with the requirements of this Act and other law or regula-  
12          tion which shall apply, including any additional criteria  
13          mutually agreed upon by the authorizing officer and the  
14          holder.

15       **SEC. 9. ASSIGNMENT AND MANAGEMENT OF ALLOCATION**  
16                               **OF USE TO THE OUTFITTED PUBLIC.**

17          (a) **QUALIFIED HOLDERS.**—The agency head shall  
18          assign an allocation of use to the holder of an outfitter  
19          and guide authorization whose services are marketed and  
20          available to the public, as provided herein.

21          (b) **ASSIGNMENT OF PRINCIPLE USE.**—

22               (1) The agency head shall assign an amount of  
23               principal use to be utilized annually through the  
24               term of an outfitter and guide agreement, which  
25               may be defined in terms of user days, the season,

1 months, weeks, days, people-at-one-time, or like fac-  
2 tors which may be appropriate considering, without  
3 limitation, the nature of the outfitter service, the  
4 amount of use required to sustain an economically  
5 viable operation, the nature and limitations of the  
6 resource area within which the service is to be au-  
7 thorized, the various modes of transportation to be  
8 used in the provision of the service, assigned camps,  
9 and other appropriate factors.

10 (2) Where recreation use levels are planned and  
11 managed in terms of launches and people per  
12 launch, camps and people per camp, or trips and  
13 people per trip, the agency head shall establish the  
14 amount of principal use in terms of user days, but  
15 also specify, as appropriate, numbers of launches,  
16 campsites, or trips associated with such user days.

17 (3) The agency head shall review and approve  
18 the terms and conditions related to utilization of the  
19 amount of principal use assigned as a factor in the  
20 consideration of a holder's annual operating plans:  
21 *Provided*, That in the course of that review no re-  
22 duction in the amount of principal use assigned to  
23 the holder may be made except as provided in (c) or  
24 (d).

1           (4) Under normal circumstances, the agency  
2 head shall base the amount of principal use in the  
3 renewal, extension or transfer of an agreement on  
4 the amount of recurring annual use previously as-  
5 signed, except as provided in (d).

6           (5) Assignment of principal use shall have no  
7 effect on type or amount of use by the non-outfitted  
8 public.

9           (c) SEASONAL DEVIATION FROM ASSIGNED AMOUNT  
10 OF PRINCIPAL USE.—The agency head shall have the au-  
11 thority to—

12           (1) waive a holder's obligation to use all or part  
13 of the assigned amount of principal use when such  
14 request from the holder is timely to allow reassign-  
15 ment of the unused allocation to other holders: *Pro-*  
16 *vided*, That such waiver shall not be permanently de-  
17 ducted from the original allocation assigned to the  
18 holder except by mutual consent of the holder and  
19 the agency;

20           (2) create a pool of available, unassigned user  
21 days, including any portion of allocation waived by  
22 or withdrawn from use a holder, which may be dis-  
23 tributed at the discretion of the agency head to hold-  
24 ers authorized to provide services in the resource  
25 area.

1 (d) ADJUSTMENTS IN ASSIGNMENT OF PRINCIPAL  
2 USE.—

3 (1) In renewing an outfitter and guide agree-  
4 ment, the amount of principal use currently assigned  
5 may be reduced at the discretion of the agency head  
6 if the holder has failed in more than 50 percent of  
7 the term of the current contract to utilize 70 percent  
8 or more of assigned principal use; or

9 (2) In exercising such discretion to determine a  
10 possible reduction in the amount of principal use in  
11 the renewal of an outfitter and guide agreement to  
12 provide services described in section 6(c), the agency  
13 head shall calculate whether a holder failed in some  
14 more than 50 percent of the term of the holder's  
15 current contract to utilize 70 percent or more of the  
16 average amount of allocation used by all holders in  
17 the same approximate location; and

18 (3) In determining a reduction in the amount  
19 of principal use to be assigned in the renewal of an  
20 agreement, the agency head shall—

21 (A) normally assign an amount consistent  
22 with the amount of principal and temporary use  
23 the holder effectively utilizes through the term  
24 of the current authorization;

1 (B) not make any reduction related to fac-  
2 tors beyond the holder's control, such as gen-  
3 eral market and other economic fluctuations,  
4 availability of state hunting licenses, and natu-  
5 ral phenomena, such as weather, which may  
6 have adversely affected the ability of the holder  
7 to make full use of the allocation assigned; and

8 (C) not make any reduction related to an  
9 amount of the assigned use withheld from use  
10 by agency action.

11 (4) The agency head shall provide the holder  
12 with documentation of the basis for any adjustment  
13 in the assigned amount of principal use, including  
14 new terms and conditions which result from such  
15 change.

16 (e) ASSIGNMENT OF TEMPORARY USE.—

17 (1) Temporary use may be assigned at the dis-  
18 cretion of the agency head for a period not to exceed  
19 two years.

20 (2) Temporary use assigned and effectively uti-  
21 lized for two years by the holder may be converted  
22 at the discretion of the agency head to an allocation  
23 of principal use and assigned to such holder accord-  
24 ingly.

1 **SEC. 10. PERFORMANCE EVALUATION.**

2 (a) OBJECTIVES.—The agency head shall utilize the  
3 following objectives to develop a program for evaluation  
4 of visitor provided in resource areas under the jurisdiction  
5 of the agency head—

6 (1) delivery of quality visitor service to the out-  
7 fitted public;

8 (2) protection of natural, historical and cultural  
9 resources;

10 (3) responsible financial performance, including  
11 payment of fees; and

12 (4) compliance with the outfitter and guide  
13 agreement, annual operating plans and pertinent  
14 laws and regulations.

15 (b) EVALUATION CRITERIA.—

16 (1) Specific criteria to be utilized by the agency  
17 head to evaluate the holder's performance in meeting  
18 these objectives shall be objective, measurable and  
19 attainable, including—

20 (A) standards generally applicable to all  
21 visitor service operations;

22 (B) standards specific to an individual  
23 sport or activity; and

24 (C) such other terms and conditions of an  
25 agreement or annual operating plan as are

1           agreed upon by the agency head and the holder  
2           as measurements of performance.

3           (2) In awarding points for the fulfillment of  
4           such criteria, the agency head shall—

5                   (A) not place undue weight on matters of  
6                   limited importance; and

7                   (B) allow points to be earned for elements  
8                   of service which exceed the requirements of the  
9                   agreement.

10           (3) In evaluating the holder's performance the  
11           agency head shall appropriately account for factors  
12           beyond the control of the outfitter including, without  
13           limitation, agency actions, general market or other  
14           economic fluctuations, or weather or other natural  
15           phenomena which resulted in actions or conditions  
16           that might otherwise adversely affect the holder's  
17           annual performance rating.

18           (c) LEVELS OF PERFORMANCE.—The agency head  
19           shall define three levels of performance—

20                   (1) good, which means a level of performance  
21                   which fulfills the terms and conditions of the outfit-  
22                   ter and guide and guide agreement and annual oper-  
23                   ating plans;

1           (2) marginal, which means a level of perform-  
2           ance which, if not corrected, will result in an unsat-  
3           isfactory rating; or

4           (3) unsatisfactory, which means a level of per-  
5           formance that fails to satisfy the requirements of the  
6           holder's outfitter and guide agreement.

7           (d) ANNUAL PERFORMANCE EVALUATION.—

8           (1) Performance evaluation shall occur not less  
9           than once a year and normally include on-site in-  
10          spection of facilities or operations.

11          (2) The holder shall be entitled to—

12                (A) be present, or represented, at such in-  
13                spection;

14                (B) written notice of any conduct or condi-  
15                tion which, if not corrected, might lead to a  
16                performance rating of unsatisfactory. Such no-  
17                tice of marginal performance shall provide an  
18                explanation of needed corrections and a reason-  
19                able period of time in which such corrections  
20                may be made without penalty; and

21                (C) written notification of an annual per-  
22                formance rating which is the result of all eval-  
23                uations conducted and such corrections as may  
24                have been acquired.

1 (e) AGGREGATION OF RESULTS.—The results of all  
2 annual performance ratings of a holder shall be aggre-  
3 gated following determination of the annual rating in the  
4 final year of the term of the outfitter and guide agreement  
5 to determine whether the holder’s overall performance  
6 during such term has been good, marginal or unsatisfac-  
7 tory.

8 **SEC. 11. REQUIREMENTS FOR RENEWAL OR TERMINATION**  
9 **OF AUTHORIZATION.**

10 (a) RENEWAL AT EXPIRATION OF TERM.—Upon a  
11 finding of good overall performance during the term of an  
12 agreement the agency head shall renew such authorization  
13 at the request of the holder for an appropriate term sub-  
14 ject to the terms and conditions of this Act.

15 (b) TERMINATION AT EXPIRATION OF TERM.—

16 (1) Renewal of an agreement may be denied  
17 upon a finding of marginal overall performance by  
18 the holder during the term of such authorization.

19 (2) Renewal of an agreement shall be denied  
20 upon a finding of unsatisfactory overall performance  
21 by the holder during the term of such authorization.

22 (c) TERMINATION FOR CAUSE.—

23 (1) An agreement may be terminated for cause  
24 prior to the expiration of the term of such authoriza-  
25 tion when the holder fails to correct conduct or con-

1        conditions brought to such holder's attention under pro-  
2        cedures described in section 10(d)(2)(B) and which  
3        are deemed by the agency head to be of significant  
4        importance with respect to the quality of services of-  
5        fered, the health and welfare of the outfitted public  
6        or the protection of resource values.

7            (2) An agreement or license may be terminated  
8        prior to the expiration of the term of such authoriza-  
9        tion when the holder fails to pay fees.

10           (3) Immediate termination of an agreement or  
11        license may occur upon the finding of the agency  
12        head that the holder's operation threatens the health  
13        or welfare of the outfitted public or other users.

14        **SEC. 12. TRANSFERABILITY OF AGREEMENTS.**

15           (a) **TRANSFERABILITY.**—An outfitter and guide  
16        agreement is transferable or assignable only with the ap-  
17        proval of the agency head, which approval may not be un-  
18        reasonably withheld or delayed. Normally, such authoriza-  
19        tion shall be transferred, assigned, or otherwise conveyed  
20        by the agency head to—

21            (1) the purchaser of a company, or a portion of  
22        a company's services or facilities, who satisfies the  
23        criteria established in section 5.(c)(1) of this Act; or

1           (2) the heirs, partner or corporate stockholders  
2           of a holder who is deceased or who requests such ac-  
3           tion.

4           (b) APPROVAL.—In approving a transfer, assign-  
5           ment, or conveyance of an outfitter and guide agreement  
6           to a qualified purchaser, the agency head shall—

7           (1) allow for recovery of the current holder's in-  
8           vestment in the business; and

9           (2) allow a purchase price based on the value  
10          of the business as a going concern.

11          (c) NO MODIFICATION OF TERMS AND CONDI-  
12          TIONS.—The terms and conditions of the agreement shall  
13          not be subject to modification by reason of any transfer  
14          or assignment under this section.

15          (d) CONSIDERATION PERIOD.—If the agency head  
16          fails to approve or disapprove a transfer or assignment  
17          under paragraph (a) within 90 days of receipt of an appli-  
18          cation containing the information required with respect to  
19          such transfer, the transfer or assignment shall be deemed  
20          to have been approved.

21          (e) DEFAULT.—In the event a transfer, assignment  
22          or conveyance is not approved by the agency head or is  
23          subsequently defaulted, the authorization of the original  
24          holder shall be fully restored or shall be renewed subject  
25          to the provisions of section 11 (a) or (b).

1 **SEC. 13. DISPUTE RESOLUTION.**

2 (a) BOARD OF LAND APPEALS.—

3 (1) The Interior Board of Land Appeals shall  
4 adjudicate disputes between agencies of the United  
5 States Department of the Interior and outfitters and  
6 guides arising under this Act.

7 (2) Disputes arising between the Forest Service  
8 and outfitters and guides shall be adjudicated under  
9 applicable law.

10 (b) ADMINISTRATIVE REVIEW.—

11 (1) Appeals of decisions by agencies of the  
12 United States Department of the Interior may be  
13 taken to the Interior Board of Land Appeals after  
14 one level of review of decisions made within the  
15 agency.

16 (2) Appeals of decisions made by the Forest  
17 Service shall be reviewed subject to applicable law.

18 (c) EXPEDITED PROCEDURE.—Appeals of decisions  
19 to suspend, revoke or terminate an authorization shall be  
20 considered under an expedited procedure.

21 (d) JUDICIAL REVIEW.—A person may seek judicial  
22 review of a decision reached at the conclusion of such pro-  
23 cedure. Such review shall be conducted on a de novo basis  
24 by a court of competent jurisdiction.

1 **SEC. 14. RULES OF CONSTRUCTION.**

2 Outfitter and guide programs of agencies administer-  
3 ing Federal lands subject to this Act shall be fully consist-  
4 ent with an agency's mission and laws applicable to such  
5 agency. Nothing in this Act shall be construed as limiting  
6 or restricting any right, title, or interest of the United  
7 States in or to any land or resources.

8 **SEC. 15. REGULATIONS.**

9 The agency head shall promulgate regulations to im-  
10 plement this Act no later than 2 years after the date of  
11 enactment of this Act. Prior to final publication of such  
12 regulations, the agency head may not rely on any provision  
13 of this Act as cause for not awarding an outfitter and  
14 guide authorization under authority existing prior to en-  
15 actment of this Act.

16 **SEC. 16. SAVINGS CLAUSE.**

17 (a) IN GENERAL.—The superseding of any provision,  
18 or the amendment of any provision, of an Act referred to  
19 in subsection (a) shall not affect the validity of any au-  
20 thorizations entered into under any such Act.

21 (b) TRANSITION.—

22 (1) The holder of an outfitter and guide special  
23 use permit or concessioner permit or contract (or ex-  
24 tension thereof) which is in effect on the date of en-  
25 actment of this Act shall be entitled to the issuance  
26 of an outfitter and guide authorization under the

1 provision of this Act at the time of the expiration of  
2 the term of the existing authorization if the holder  
3 has received a satisfactory or equivalent rating in  
4 the evaluation of overall performance through the  
5 term of the authorization in effect on the date of en-  
6 actment of this Act. For purposes hereof, the right  
7 of “issuance of an outfitter and guide permit” under  
8 this subsection shall be deemed a renewal or reissu-  
9 ance of the outfitter and guide permit for purposes  
10 of satisfying the provisions of this Act.

11 (2) A holder who exercises this right of issuance  
12 in accordance with the requirements of this Act shall  
13 be entitled to receive an outfitter and guide agree-  
14 ment.

15 (c) ANILCA.—Nothing in this Act shall be construed  
16 to amend, supersede or otherwise affect any provision of  
17 the Alaska National Interest Lands Conservation Act (16  
18 U.S.C. 3101 et seq.) relating to revenue-producing visitor  
19 services.

20 **SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums  
22 as may be necessary to carry out this Act.

○