

108TH CONGRESS  
1ST SESSION

# S. 1420

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

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## IN THE SENATE OF THE UNITED STATES

JULY 16, 2003

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

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 2003”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to authorize the Secretary  
8 of Agriculture and the Secretary of the Interior to facili-  
9 tate the use and enjoyment of recreational and educational

1 opportunities on Federal land by establishing a program  
2 for the permitting of providers of outfitted activities  
3 that—

4           (1) recognizes that outfitted activities constitute  
5 an important component of meeting the recreational  
6 and educational objectives of resource and land man-  
7 agement;

8           (2) is based on developing an effective relation-  
9 ship between the Federal agency and the outfitters  
10 that facilitates an administrative framework and  
11 regulatory environment that makes it possible for  
12 outfitters to engage in, and invest in, a successful  
13 business venture that provides for recreational use of  
14 Federal land by the segment of the public that needs  
15 or wants the services of outfitters and guides; and

16           (3) ensures that the United States receives fair  
17 value for use of Federal land.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20           (1) ALLOCATION OF USE.—

21                   (A) IN GENERAL.—The term “allocation of  
22 use” means a method or measurement of use  
23 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 (2) 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 (3) COMMERCIAL OUTFITTED ACTIVITY.—The  
9 term “commercial outfitted activity” means an activ-  
10 ity—

11 (A) conducted for a member of the public  
12 in an outdoor environment on Federal land,  
13 such as—

14 (i) outfitting;

15 (ii) guiding;

16 (iii) supervision;

17 (iv) education;

18 (v) interpretation;

19 (vi) skills training;

20 (vii) assistance; or

21 (viii) the dropping off or picking up of  
22 visitors, supplies, or equipment;

23 (B) conducted under the direction of com-  
24 pensated individuals; and

1 (C) for which an outfitted visitor is re-  
2 quired to pay more than shared expenses (in-  
3 cluding payment to an authorized outfitter that  
4 is a nonprofit organization).

5 (4) FEDERAL AGENCY.—The term “Federal  
6 agency” means—

7 (A) the Forest Service;

8 (B) the Bureau of Land Management;

9 (C) the United States Fish and Wildlife  
10 Service; or

11 (D) the Bureau of Reclamation.

12 (5) FEDERAL LAND.—

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

16 (B) EXCLUSION.—The term “Federal  
17 land” does not include—

18 (i) land held in trust by the United  
19 States for the benefit of an Indian tribe or  
20 individual; or

21 (ii) land held by an Indian tribe or in-  
22 dividual subject to a restriction by the  
23 United States against alienation.

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

- 1 (A) an outfitter permit;  
2 (B) a temporary outfitter authorization; or  
3 (C) any other authorization to use and oc-  
4 cupy Federal land under this Act.

5 (7) RESOURCE AREA.—The term “resource  
6 area” means a management unit that is described by  
7 or contained within the boundaries of—

- 8 (A) a national forest;  
9 (B) an area of public land;  
10 (C) a wildlife refuge;  
11 (D) a congressionally designated area;  
12 (E) a hunting zone or district; or  
13 (F) any other Federal planning unit (in-  
14 cluding an area in which outfitted activities are  
15 regulated by more than 1 Federal agency).

16 (8) SECRETARY.—The term “Secretary”  
17 means—

18 (A) with respect to Federal land adminis-  
19 tered by the Forest Service, the Secretary of  
20 Agriculture; and

21 (B) with respect to Federal land adminis-  
22 tered by the Bureau of Land Management, the  
23 United States Fish and Wildlife Service, or the  
24 Bureau of Reclamation, the Secretary of the In-  
25 terior.

1 **SEC. 4. OUTFITTER AUTHORIZATIONS.**

2 (a) IN GENERAL.—

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

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

14 (b) TERMS AND CONDITIONS.—An outfitter author-  
15 ization shall specify—

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

18 (2) other terms and conditions of the authoriza-  
19 tion.

20 (c) CRITERIA FOR ISSUING AN OUTFITTER PER-  
21 MIT.—The Secretary shall establish criteria for the  
22 issuance of an outfitter permit that—

23 (1) recognize skilled, experienced, and finan-  
24 cially capable persons or entities with knowledge of  
25 the resource area;

1           (2) consider the safety of, and the quality rec-  
2           reational experience, educational opportunities, and  
3           resources available to, the outfitted visitor; and

4           (3) recognize and provide a range of public  
5           services.

6           (d) ISSUANCE OF OUTFITTER PERMIT.—

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

9                   (A) the commercial outfitted activity to be  
10                  authorized is not inconsistent with an approved  
11                  resource management plan applicable to the re-  
12                  source area in which the commercial outfitted  
13                  activity is to be conducted; and

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

16           (2) USE OF COMPETITIVE PROCESS.—Except as  
17           otherwise provided by this Act, the Secretary shall  
18           use a competitive process to select an authorized  
19           outfitter if the Secretary determines that there is a  
20           competitive interest in the commercial outfitted ac-  
21           tivity to be conducted.

22           (e) PROVISIONS OF OUTFITTER PERMITS.—

23           (1) IN GENERAL.—An outfitter permit shall  
24           provide for—

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

1 (B) conservation of resources;

2 (C) a return to the United States through  
3 the fees authorized under section 5;

4 (D)(i) a term of 10 years; or

5 (ii) a term of less than 10 years if—

6 (I) foreseeable amendments in re-  
7 source management plans would create  
8 conditions that, less than 10 years after  
9 the date of issuance of the permit, would  
10 materially affect, and necessitate changes  
11 in the terms and conditions of, a permit;  
12 and

13 (II) the Secretary and the authorized  
14 outfitter agree to the reduced permit term;

15 (E) a probationary period of 2 years if the  
16 authorized outfitter is a new authorized out-  
17 fitter;

18 (F) the obligation of an authorized out-  
19 fitter to defend and indemnify the United  
20 States under section 6;

21 (G) a base allocation of outfitter use, and,  
22 if appropriate, a temporary allocation of use;

23 (H) a plan to conduct performance evalua-  
24 tions under section 8;

1 (I) a means to modify, on the initiative of  
2 the Federal agency or on the request of the au-  
3 thorized outfitter, an outfitter permit to reflect  
4 material changes in terms and conditions speci-  
5 fied in the outfitter permit;

6 (J) notice of a right of appeal and judicial  
7 review; and

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

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

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 of not more than 2 years.

22 (3) REISSUANCE OR RENEWAL.—A temporary  
23 outfitter authorization may be reissued or renewed  
24 at the discretion of the Secretary.

1 **SEC. 5. FEES.**

## 2 (a) AMOUNT OF FEE.—

3 (1) IN GENERAL.—In determining the amount  
4 of a fee, the Secretary shall—

5 (A) use consistent methodologies; and

6 (B) take into consideration—

7 (i) the financial obligations of the out-  
8 fitter under the outfitter permit;9 (ii) the provision of a reasonable op-  
10 portunity to engage in a successful busi-  
11 ness;12 (iii) the fair value of the use and oc-  
13 cupancy granted by the outfitter authoriza-  
14 tion; and15 (iv) other fees charged to the general  
16 public, such as entrance fees.

17 (2) REQUIREMENTS.—The amount of the fee—

18 (A)(i) shall be expressed as—

19 (I) a simple charge per day of actual  
20 use; or

21 (II) an annual or seasonable flat fee;

22 or

23 (ii) if calculated as a percentage of rev-  
24 enue—25 (I) shall be determined based on ad-  
26 justed gross receipts; and

1 (II) shall include a minimum fee;

2 (B) shall be subordinate to the objectives  
3 of—

4 (i) conserving resources;

5 (ii) protecting the health and welfare  
6 of the public;

7 (iii) providing reliable and consistent  
8 performance in conducting outfitted activi-  
9 ties; and

10 (iv) providing quality service to the  
11 public; and

12 (C) shall be required to be paid on a rea-  
13 sonable schedule during the operating season.

14 (3) ACTUAL USE.—For the purpose of calcu-  
15 lating a fee based on actual use, the Secretary  
16 shall—

17 (A) consider multiple outfitted activities  
18 conducted in 1 day with separate charges as 1  
19 actual use day; and

20 (B) consider an activity conducted across  
21 agency jurisdictions over the course of 1 day as  
22 1 actual use day.

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

1 (A) take into consideration revenue from  
 2 the gross receipts of the authorized outfitter  
 3 from commercial outfitted activities conducted  
 4 on Federal land; and

5 (B) exclude from consideration any rev-  
 6 enue that is derived from—

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

10 (I) hunting or fishing licenses;

11 (II) entrance or recreation fees;

12 or

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

16 (ii) a sale of assets used in the oper-  
 17 ations of the authorized outfitter; or

18 (iii) activities conducted on non-Fed-  
 19 eral land.

20 (5) FEES FOR SUBSTANTIALLY SIMILAR SERV-  
 21 ICES IN A SPECIFIC GEOGRAPHIC AREA.—

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

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

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

8 (6) ADJUSTMENT OF FEES.—The amount of a  
9 fee—

10 (A) shall be determined and made effective  
11 as of the date of the outfitter permit; and

12 (B) may be modified to reflect—

13 (i) changes in outfitted activities relat-  
14 ing to fees based on actual use;

15 (ii) extraordinary unanticipated  
16 changes affecting operating conditions,  
17 such as natural disasters, economic condi-  
18 tions, or other material adverse changes  
19 from the terms and conditions specified in  
20 the outfitter permit;

21 (iii) changes affecting operating or  
22 economic conditions determined by other  
23 governing entities, such as the availability  
24 of State fish or game licenses;

1 (iv) the imposition of new or increased  
2 fees assessed under other law; or

3 (v) authorized adjustments made to  
4 an allocation of use.

5 (b) OTHER FEES AND COSTS.—

6 (1) IN GENERAL.—In establishing fees other  
7 than the fees authorized under this Act that may di-  
8 rectly or indirectly affect authorized outfitters, the  
9 Secretary shall—

10 (A) ensure that the fees do not materially  
11 and adversely affect—

12 (i) the ability of authorized outfitters  
13 to provide quality services at reasonable  
14 rates; and

15 (ii) the opportunity of authorized out-  
16 fitters to engage in a successful business  
17 venture; and

18 (B)(i) consider the cumulative impact of  
19 fees levied under this Act, any cost recovery re-  
20 quirements, and State and local taxes and fees  
21 on authorized outfitters; and

22 (ii) adjust the fees as appropriate; and

23 (C) to the extent practicable, consolidate  
24 the fees into 1 predictable fee.

1           (2) PROCESSING FEES AND COSTS.—Fees for  
2           processing applications for outfitter permits or moni-  
3           toring compliance with permits terms and conditions  
4           shall not seek to recover costs of agency activities  
5           that benefit broadly the general public, relate di-  
6           rectly to agency statutory duties, or are not directly  
7           related to or required for processing of applications  
8           or monitoring of an authorization.

9           (3) NOTICE.—A change in the manner in which  
10          a fee charged under paragraph (1) or (2) is deter-  
11          mined shall be valid only if—

12                   (A) the Secretary provides written notice  
13                   to authorized outfitters affected by the change;  
14                   or

15                   (B) the authorized outfitter agrees to the  
16                   change.

17 **SEC. 6. LIABILITY AND INDEMNIFICATION.**

18          (a) GENERAL.—An authorized outfitter shall pay the  
19          United States for all injury, loss, damage, and costs aris-  
20          ing from negligence, gross negligence, or willful and wan-  
21          ton disregard for persons or property associated with the  
22          authorized outfitter’s conduct of a commercial outfitted  
23          activity under an outfitter authorization.

24          (b) INDEMNIFICATION.—An authorized outfitter shall  
25          defend and indemnify the United States for all injury,

1 loss, damage, and costs the United States may incur as  
2 a result of judgments, claims, or losses arising from neg-  
3 ligence, gross negligence, or willful and wanton disregard  
4 for persons or property associated with the authorized out-  
5 fitter's conduct of a commercial outfitted activity under  
6 an outfitter authorization.

7 (c) ENVIRONMENTAL AND OTHER LIABILITY.—Sub-  
8 sections (a) and (b) shall not be interpreted to limit any  
9 liability for, or prevent the United States from taking any  
10 action to address, injury, loss, damages, or costs associ-  
11 ated with environmental contamination, injury to natural  
12 resources, or other cause of action that arises under other  
13 law, including the Resource Conservation Recovery Act (7  
14 U.S.C. 1010, et seq.), the Comprehensive Environmental  
15 Response Compensation and Liability Act (42 U.S.C. 19  
16 9601, et seq.), and Clean Water Act (33 U.S.C. 1251, et  
17 seq.), in connection with the authorized outfitter's use and  
18 occupancy of Federal lands, or to diminish any inde-  
19 pendent obligation of the authorized outfitter to indemnify  
20 the United States with respect to the same.

21 (d) EXCEPTION.—An authorized outfitter shall have  
22 no obligation to pay, defend, or indemnify the United  
23 States under subsections (a) and (b) for any injury, loss,  
24 damage, or costs for which the United States is solely re-  
25 sponsible.

1 (e) FINDING OF COGNIZABLE CLAIM.—

2 (1) ACTIONS REQUIRED BEFORE PRESENTING  
3 CLAIM.—Before presenting any claim to an author-  
4 ized outfitter for injury, loss, damage, or costs in-  
5 curred by the United States pursuant to subsection  
6 (a) or (b), the Secretary shall—

7 (A) submit to the authorized outfitter a  
8 preliminary finding that the claim is cognizable;  
9 and

10 (B) provide the authorized outfitter with  
11 an opportunity to comment before submitting  
12 the final finding to the authorized outfitter.

13 (2) ADMINISTRATIVE CLAIMS.—Nothing in this  
14 section is intended to preclude the United States  
15 from pursuing its claims administratively, without  
16 first obtaining a judicial determination of liability.

17 (f) ASSUMPTION OF RISK AND WAIVERS OF LIABIL-  
18 ITY.—

19 (1) GENERAL REQUIREMENTS.—An authorized  
20 outfitter may enter into agreements with outfitted  
21 visitors for assumption of risk and waiver of liability  
22 for negligence in connection with inherently dan-  
23 gerous outfitted activities, if—

1 (A) the waiver of liability also runs in  
2 favor of the United States and its agents, em-  
3 ployees, or contractors;

4 (B) the waiver of liability adequately cov-  
5 ers the risks of loss to the United States associ-  
6 ated with the authorized outfitter's activities on  
7 Federal lands;

8 (C) the waiver of liability does not abro-  
9 gate, limit, or in any manner affect the author-  
10 ized outfitter's obligation to indemnify the  
11 United States under this section; and

12 (D) the waiver of liability does not affect  
13 the ability of the United States to recover as an  
14 additional insured under any insurance policy  
15 obtained by an authorized outfitter in connec-  
16 tion with a commercial outfitted activity.

17 (2) PRIOR WRITTEN APPROVAL REQUIRED.—No  
18 waiver of liability may be used by an authorized out-  
19 fitter without prior written approval of the Federal  
20 agency. The Federal agency has the discretion to  
21 deny requests for the use of waivers of liability for  
22 any reason if deemed not in the best interests of the  
23 United States.

24 (3) STANDARDIZATION.—Waivers of liability  
25 used by authorized outfitters and insurance policies

1       obtained by authorized outfitters in connection with  
2       a commercial outfitted activity shall be standardized  
3       to the greatest extent possible. Authorized outfitters,  
4       the insurance industry, and the Federal agencies  
5       shall work together to achieve this goal.

6 **SEC. 7. ALLOCATIONS OF USE.**

7       (a) **IN GENERAL.**—In a manner that is not incon-  
8       sistent with or incompatible with an approved resource  
9       management plan applicable to the resource area in which  
10      a commercial outfitted activity occurs, the Secretary—

11           (1) shall provide a base allocation of outfitter  
12      use to an authorized outfitter under an outfitter per-  
13      mit; and

14           (2) may provide a base allocation of use to an  
15      authorized outfitter under a temporary outfitter per-  
16      mit.

17      (b) **WAIVER OF ALLOCATION.**—

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

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

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

9           (c) ADJUSTMENT TO ALLOCATION OF USE.—The  
10          Secretary—

11           (1) may adjust a base allocation of use to re-  
12          flect—

13                   (A) a material change arising from ap-  
14                   proval of an amendment or revision in the re-  
15                   source management plan for the area of oper-  
16                   ation; or

17                   (B) requirements arising under other law;  
18          and

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

24           (d) RENEWALS, TRANSFERS, AND EXTENSIONS.—  
25          Except as provided in subsection (c), on renewal, transfer,

1 or extension of an outfitter permit, the same base alloca-  
2 tion of use shall be included in the terms and conditions  
3 of the outfitter permit.

4 (e) TEMPORARY ALLOCATION OF USE.—

5 (1) IN GENERAL.—A temporary allocation of  
6 use may be provided to an authorized outfitter at  
7 the discretion of the Secretary for a period not to  
8 exceed 2 years beyond the base allocation.

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

12 **SEC. 8. EVALUATION OF PERFORMANCE.**

13 (a) EVALUATION SYSTEM.—The Secretary shall de-  
14 velop a performance evaluation system that—

15 (1) ensures the continued availability of safe  
16 and dependable commercial outfitted activities for  
17 the public; and

18 (2) provides for the suspension or revocation of  
19 any outfitter permit if an outfitter fails to meet the  
20 required standards.

21 (b) EVALUATION CRITERIA.—Criteria used by the  
22 Secretary to evaluate the performance of an authorized  
23 outfitter shall—

24 (1) be objective, measurable, and attainable;  
25 and

1           (2) include, as determined to be appropriate by  
2 the Secretary—

3           (A) standards generally applicable to all  
4 commercial outfitted activities; and

5           (B) standards specific to a resource area  
6 or an individual outfitter operation.

7       (c) REQUIREMENTS.—In evaluating the level of per-  
8 formance of an authorized outfitter, the Secretary shall—

9           (1) appropriately account for factors beyond the  
10 control of the authorized outfitter;

11           (2) ensure that the effect of any performance  
12 deficiency reflected by the performance rating is pro-  
13 portionate to the severity of the deficiency, including  
14 any harm that may have resulted from the defi-  
15 ciency;

16           (3) schedule evaluations to ensure the author-  
17 ized outfitter is present, or represented, at inspec-  
18 tions of operations or facilities and inspections,  
19 which inspections shall be limited to the operations  
20 and facilities of the authorized outfitter located on  
21 Federal land; and

22           (4) provide written notice of any conduct or  
23 condition that, if not corrected, might lead to a per-  
24 formance evaluation of marginal or unsatisfactory,  
25 which notice shall include an explanation of needed

1 corrections and provide a reasonable period in which  
2 the corrections may be made without penalty.

3 (d) LEVELS OF PERFORMANCE.—The Secretary shall  
4 define 3 levels of performance, as follows:

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

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

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

14 (e) MARGINAL PERFORMANCE.—If an authorized  
15 outfitter’s annual performance is determined to be mar-  
16 ginal—

17 (1) the level of performance shall be changed to  
18 a “good” performance for the year if the authorized  
19 outfitter completes the corrections within the time  
20 specified; or

21 (2) the level of performance shall be determined  
22 to be unsatisfactory for the year if the authorized  
23 outfitter fails to complete the corrections within the  
24 time specified.

1 (f) DETERMINATION OF ELIGIBILITY FOR RE-  
2 NEWAL.—

3 (1) IN GENERAL.—The results of all annual  
4 performance evaluations of an authorized outfitter  
5 shall be reviewed by the Secretary in the year pre-  
6 ceding the year in which the outfitter permit expires  
7 to determine whether the authorized outfitter’s over-  
8 all performance during the term has met the re-  
9 quirements for renewal under section 9.

10 (2) FAILURE TO EVALUATE.—If, in any year of  
11 the term of an outfitter permit, the Secretary fails  
12 to evaluate the performance of the authorized out-  
13 fitter by the date that is 90 days after the conclu-  
14 sion of the authorized outfitter’s operating season,  
15 the performance of the authorized outfitter in that  
16 year shall be considered to have been good.

17 (3) NOTICE.—Not later than 90 days after the  
18 end of the year preceding the year in which an out-  
19 fitter permit expires, the Secretary shall provide the  
20 authorized outfitter with the cumulative results of  
21 performance evaluations conducted under this sub-  
22 section during the term of the outfitter permit.

23 (4) UNSATISFACTORY PERFORMANCE IN FINAL  
24 YEAR.—If an authorized outfitter receives an unsat-  
25 isfactory performance rating under subsection (d) in

1 the final year of the term of an outfitter permit, the  
2 review and determination of eligibility for renewal of  
3 the outfitter permit under paragraph (1) shall be re-  
4 vised to reflect that result.

5 **SEC. 9. RENEWAL, REVOCATION, OR SUSPENSION OF OUT-**  
6 **FITTER PERMITS.**

7 (a) RENEWAL AT EXPIRATION OF TERM.—

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

11 (2) CRITERIA FOR DETERMINATION.—The Sec-  
12 retary shall renew an outfitter authorization under  
13 paragraph (1) at the end of the term of an outfitter  
14 authorization and subject to the requirements of this  
15 Act if the Secretary determines that the authorized  
16 outfitter has received not more than 1 unsatisfactory  
17 annual performance rating under section 8 during  
18 the term of the outfitter permit.

19 (3) TEMPORARY OUTFITTER AUTHORIZATION.—  
20 If the Secretary determines that the authorized out-  
21 fitter has received an unsatisfactory annual perform-  
22 ance rating in the last year of the 10-year term of  
23 the outfitter permit—

24 (A) the Secretary may issue to the author-  
25 ized outfitter a temporary outfitter permit; and

1 (B) if during the 2-year period of the tem-  
2 porary outfitter permit issued under subpara-  
3 graph (A), the authorized outfitter receives a  
4 good performance rating, the Secretary shall  
5 renew the outfitter permit for an 8-year term.

6 (b) SUSPENSION OR REVOCATION.—An outfitter per-  
7 mit may be suspended or revoked if the Secretary deter-  
8 mines that—

9 (1)(A) the authorized outfitter has failed to cor-  
10 rect a condition for which the authorized outfitter  
11 received notice under section 8(c)(4); and

12 (B) the condition is considered by the Secretary  
13 to be significant with respect to the terms and condi-  
14 tions of the outfitter permit;

15 (2) the authorized outfitter—

16 (A) is in arrears in the payment of fees  
17 under section 5; and—

18 (B)(i) has not entered into a payment plan  
19 with the Federal agency; or

20 (ii) has not brought a civil action or  
21 brought an administrative claim under section  
22 12; 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 other visitors; or

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

6 **SEC. 10. TRANSFERABILITY OF OUTFITTER PERMITS.**

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

11 (b) APPROVAL.—

12 (1) IN GENERAL.—The Secretary shall approve  
13 a transfer of an outfitter permit unless the Secretary  
14 determines that the transferee is—

15 (A) not qualified; or

16 (B) unable to satisfy the terms and condi-  
17 tions of the outfitter permit.

18 (2) QUALIFIED TRANSFEREES.—Subject to sec-  
19 tion 4(d)(1), the Secretary shall approve a transfer  
20 of an outfitter permit—

21 (A) to a purchaser of the operation of the  
22 authorized outfitter;

23 (B) at the request of the authorized out-  
24 fitter, to an assignee, partner, or stockholder or

1 other owner of an interest in the operation of  
2 the authorized outfitter; or

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

5 (c) TRANSFER TERMS.—The terms and conditions of  
6 any outfitter permit shall not be subject to modification  
7 or open to renegotiation by the Secretary because of a  
8 transfer described in subsection (a) unless—

9 (1) the modification is agreed to by, or at the  
10 request of, the transferee;

11 (2) the terms and conditions of the outfitter  
12 permit that is proposed to be transferred have be-  
13 come inconsistent or incompatible with an approved  
14 resource management plan for the resource area; or

15 (3) the transferee proposes activities outside the  
16 scope of the existing authorization.

17 (d) CONSIDERATION PERIOD.—

18 (1) TIMEFRAME FOR REVIEW.—Subject to  
19 paragraph (2), if the Secretary fails to act on the  
20 transfer of an outfitter permit within 180 days after  
21 the date of receipt of an application containing the  
22 information required with respect to the transfer,  
23 the transfer shall be deemed to have been approved.

1           (2) EXTENSION.—The Secretary may extend  
2           the period for consideration of an application under  
3           paragraph (1) if—

4                   (A) the Secretary and the authorized out-  
5                   fitter applying for transfer of an outfitter per-  
6                   mit agree to extend the period; or

7                   (B)(i) the transferee requests a modifica-  
8                   tion of the terms and conditions of the outfitter  
9                   permit; and

10                   (ii) the modification requires environ-  
11                   mental analysis under the National Environ-  
12                   mental Policy Act of 1969 (42 U.S.C. 4321 et  
13                   seq.).

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

18   **SEC. 11. RECORDKEEPING REQUIREMENTS.**

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

23           (b) OBLIGATIONS OF THE SECRETARY AND AUTHOR-  
24           IZED OUTFITTER.—The recordkeeping requirements es-  
25           tablished by the Secretary shall incorporate simplified pro-

1 cedures that do not impose an undue burden on an author-  
2 ized outfitter.

3 (c) ACCESS TO RECORDS.—The Secretary, or an au-  
4 thorized representative of the Secretary, shall for audit  
5 and performance evaluation purposes have access to and  
6 the right to examine for the 5-year period beginning on  
7 the termination date of an outfitter permit any records  
8 of the authorized outfitter relating to each outfitter au-  
9 thorization held by the authorized outfitter during the  
10 business year.

11 **SEC. 12. APPEALS AND JUDICIAL REVIEW.**

12 (a) APPEALS PROCEDURE.—The Secretary shall by  
13 regulation—

14 (1) grant an authorized outfitter full access to  
15 administrative remedies; and

16 (2) establish an expedited procedure for consid-  
17 eration of appeals of Federal agency decisions to—

18 (A) deny, suspend, fail to renew, or revoke  
19 an outfitter permit; or

20 (B) change a principal allocation of out-  
21 fitter use.

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

1 **SEC. 13. COLLECTION AND USE OF FUNDS.**

2 Except as provided in section 7 of the Act of April  
3 24, 1950 (commonly known as the “Granger-Thye Act”)  
4 (16 U.S.C. 580d), funds deposited under this Act shall  
5 be available to the Secretary without further appropriation  
6 and shall remain available for—

- 7 (1) administration of the outfitter permit;  
8 (2) interpretive programs;  
9 (3) trail maintenance; or  
10 (4) any other activity to carry out this Act.

11 **SEC. 14. REGULATIONS.**

12 Not later than 2 years after the date of enactment  
13 of this Act, the Secretary of the Interior and the Secretary  
14 of Agriculture shall promulgate regulations for permitting  
15 commercial outfitted activities on Federal land.

16 **SEC. 15. RELATIONSHIP TO OTHER LAW.**

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

21 (b) ANILCA.—Nothing in this Act modifies, amends,  
22 or otherwise affects section 1307 of the Alaska National  
23 Interest Lands Conservation Act (16 U.S.C. 3197).

24 (c) STATE OUTFITTER LICENSING LAW.—This Act  
25 does not preempt any outfitter or guide licensing law (in-  
26 cluding any regulation) of any State or territory.

1 **SEC. 16. TRANSITION PROVISIONS.**

2 (a) **OUTFITTERS WITH SATISFACTORY RATING.**—An  
3 outfitter that holds a permit, contract, or other authoriza-  
4 tion to conduct commercial outfitted activities (or an ex-  
5 tension of such a permit, contract, or other authorization)  
6 in effect on the date of enactment of this Act shall be  
7 entitled, on expiration of the authorization, to the issuance  
8 of a new outfitter permit under this Act if the performance  
9 of the outfitter under the permit, contract, or other au-  
10 thorization was determined to be good or was the equiva-  
11 lent of good, satisfactory, or acceptable under a rating sys-  
12 tem in use before the date of enactment of this Act.

13 (b) **OUTFITTERS WITH NO RATINGS.**—For the pur-  
14 pose of subsection (a), if no recent performance evalua-  
15 tions exist to determine the outfitter’s performance, the  
16 performance shall be deemed to be good.

17 (c) **EFFECT OF ISSUANCE OF OUTFITTER PERMIT.**—  
18 The issuance of an outfitter permit under subsection (a)  
19 shall not adversely affect any right or obligation that ex-  
20 isted under the permit, contract, or other authorization  
21 (or an extension of the permit, contract, or other author-  
22 ization) on the date of enactment of this Act.

23 **SEC. 17. EFFECT.**

24 (a) **IN GENERAL.**—Nothing in this Act limits or re-  
25 stricts any right, title, or interest of the United States in

1 or to any land or resource or establishes a property right  
2 in favor of the authorized outfitter.

3 (b) EFFECT ON NON-OUTFITTED RECREATIONAL OR  
4 ACADEMIC USE.—Nothing in this Act—

5 (1) establishes any preference for outfitted or  
6 non-outfitted use;

7 (2) diminishes or impairs—

8 (A) any existing use or occupancy of Fed-  
9 eral land by the public (including the non-out-  
10 fitted public); or

11 (B) any right or privilege of use, occu-  
12 pancy, or access to Federal land by the public  
13 (including the non-outfitted public);

14 (3) diminishes the existing authority of Federal  
15 agencies to—

16 (A) establish levels of use; and

17 (B) allocate such use among or between  
18 the outfitted and non-outfitted public; and

19 (4) applies to outdoor activity and services on  
20 Federal land for or directly related to academic cred-  
21 it and provided by a bona fide and accredited aca-  
22 demic institution.

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