

107TH CONGRESS  
1ST SESSION

# S. 978

To provide for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 25, 2001

Mr. CRAIG (for himself, Mr. MURKOWSKI, Mr. ALLARD, Mr. BENNETT, Mr. CAMPBELL, Mr. CRAPO, Mr. HATCH, Mr. SMITH of Oregon, and Mr. THOMAS) 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 for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land, 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.**

4       This Act may be cited as the “Outfitter Policy Act  
5       of 2001”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

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

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

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

17                 (A)(i) quality outfitting services to the  
18                 public;

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

22                 (B) a return to the United States through  
23                 appropriate fees;

24                 (C) renewal of outfitter permits based on  
25                 a performance evaluation system that rewards

1 outfitters that meet required performance  
2 standards and withdraws authorizations for  
3 outfitters that fail to meet those standards; and

4 (D) transfer of an outfitter permit to the  
5 qualified purchaser of the operation of an au-  
6 thorized outfitter, an heir or assign, or another  
7 qualified person or entity; and

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

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are—

15 (1) to establish terms and conditions for occu-  
16 pancy and use of Federal land by an authorized out-  
17 fitter;

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

22 (3) to facilitate opportunities for recreational  
23 use of public lands by that segment of the public  
24 that needs or wants to use the services of outfitters  
25 and guides.

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

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

9 (2) **ALLOCATION OF USE.**—

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

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

16 (ii) takes the form of—

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

22 (II) in the case of a resource  
 23 area for which recreation capacity has  
 24 not been apportioned, a type of com-  
 25 mercial outfitted activity conducted in  
 26 a manner that is not inconsistent with

1 or incompatible with an approved re-  
2 source management plan; and

3 (iii) is calibrated in terms of amount  
4 of use, type of use, or location of a com-  
5 mercial outfitted activity, including user  
6 days or portions of user days, seasons or  
7 other periods of operation, launch dates,  
8 assigned camps, hunt, gun or fish day or  
9 other formulations of the type or amount  
10 of authorized activity.

11 (B) INCLUSION.—The term “allocation of  
12 use” includes the designation of a geographic  
13 area, zone, or district in which a limited num-  
14 ber of authorized outfitters are authorized to  
15 operate.

16 (3) AUTHORIZED OUTFITTER.—The term “au-  
17 thorized outfitter” means a person or entity that  
18 conducts a commercial outfitted activity on Federal  
19 land under an outfitter authorization.

20 (4) COMMERCIAL OUTFITTED ACTIVITY.—The  
21 term “commercial outfitted activity” means an au-  
22 thorized outfitted activity conducted on Federal  
23 lands—

24 (A) that is available to the public;

1 (B) that is conducted under the direction  
2 of compensated individuals; and

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

7 (5) FEDERAL AGENCY.—The term “Federal  
8 agency” means—

9 (A) the Forest Service;

10 (B) the Bureau of Land Management;

11 (C) the United States Fish and Wildlife  
12 Service; and

13 (D) the Bureau of Reclamation.

14 (6) FEDERAL LAND.—

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

18 (B) EXCLUSION.—The term “Federal  
19 land” does not include—

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

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

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

3           (A) such as outfitting, guiding, super-  
4 vision, education, interpretation, skills training,  
5 assistance, or livery operation conducted for a  
6 member of the public in an outdoor environ-  
7 ment; and

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

10          (8) OUTFITTED VISITOR.—The term “outfitted  
11 visitor” means a member of the public that engages  
12 an authorized outfitter to facilitate occupancy and  
13 use of Federal land.

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

18          (10) OUTFITTER AUTHORIZATION.—The term  
19 “outfitter authorization” means—

20           (A) an outfitter permit;

21           (B) a temporary outfitter authorization; or

22           (C) an authorization to use and occupy  
23 Federal land that references this Act as its au-  
24 thority.

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

3           (12) PRINCIPAL ALLOCATION OF OUTFITTER  
4 USE.—The term “principal allocation of outfitter  
5 use” means a grant by the Secretary in an outfitter  
6 permit for an allocation of use to an authorized out-  
7 fitter in accordance with section 9.

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

11                   (A) a national forest;

12                   (B) an area of public land;

13                   (C) a wildlife refuge;

14                   (D) a congressionally designated area;

15                   (E) a hunting zone or district; or

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

19           (14) SECRETARY.—The term “Secretary”  
20 means—

21                   (A) with respect to Federal land adminis-  
22 tered by the Forest Service, the Secretary of  
23 Agriculture, acting through the Chief of the  
24 Forest Service or a designee;

1 (B) with respect to Federal land adminis-  
2 tered by the Bureau of Land Management, the  
3 Secretary of the Interior, acting through the  
4 Director of the Bureau of Land Management or  
5 a designee;

6 (C) with respect to Federal land adminis-  
7 tered by the United States Fish and Wildlife  
8 Service, the Secretary of the Interior, acting  
9 through the Director of the United States Fish  
10 and Wildlife Service or a designee; and

11 (D) with respect to Federal land adminis-  
12 tered by the Bureau of Reclamation, the Sec-  
13 retary of the Interior, acting through the Com-  
14 missioner of Reclamation or a designee.

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

19 (16) TEMPORARY OUTFITTER AUTHORIZA-  
20 TION.—The term “temporary outfitter authoriza-  
21 tion” means an outfitter authorization under section  
22 6(f).

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

2 Nothing in this Act is intended to diminish any right  
3 or privilege of occupancy and use of Federal land by the  
4 public including the non-outfitted visitor.

5 **SEC. 6. OUTFITTER AUTHORIZATIONS.**

6 (a) IN GENERAL.—

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

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

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

22 (b) TERMS AND CONDITIONS.—An outfitter author-  
23 ization shall specify—

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

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

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

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

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

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

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

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

23          (d) GRANT.—

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

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

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

9 (2) USE OF COMPETITIVE PROCESS.—

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

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

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

22 (ii) there is no competitive interest in  
23 the commercial outfitted activity to be con-  
24 ducted.

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

7 (e) PROVISIONS OF OUTFITTER PERMITS.—

8           (1) IN GENERAL.—An outfitter permit shall  
9 provide for—

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

11                   (B) conservation of resource values;

12                   (C) a return to the United States through  
13 an authorization fee in accordance with section  
14 7;

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

17                   (E) the obligation of an authorized out-  
18 fitter to defend and indemnify the United  
19 States in accordance with section 8;

20                   (F) a principal allocation of outfitter use,  
21 and, if appropriate, a temporary allocation of  
22 use, in accordance with section 9;

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

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

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

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

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

10 (L) such other terms and conditions as the  
11 Secretary may require.

12 (2) EXTENSIONS.—The Secretary may award  
13 not more than three temporary 1-year extensions of  
14 an outfitter permit, unless the Secretary determines  
15 that extraordinary circumstances warrant additional  
16 extensions.

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

23 (A) foreseeable amendments in resource  
24 management plans will create conditions that  
25 would materially impact and necessitate

1 changes in permit terms and conditions in less  
2 than 10 years;

3 (B) an authorized outfitter and the Sec-  
4 retary agree to a permit term of less than 10  
5 years.

6 (f) TEMPORARY OUTFITTER AUTHORIZATIONS.—

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

11 (2) TERM.—A temporary outfitter authorization  
12 shall have a term not to exceed 2 years.

13 (3) RENEWAL.—A temporary outfitter author-  
14 ization may be reissued or renewed at the discretion  
15 of the Secretary.

16 **SEC. 7. AUTHORIZATION FEES.**

17 (a) AMOUNT OF FEE.—

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

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

24 (A) the obligations of the outfitter under  
25 the outfitter permit;

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

3 (C) the fair market value of the use and  
4 occupancy granted by the outfitter authoriza-  
5 tion.

6 (b) CONSISTENCY.—The Federal agencies shall use  
7 consistent methodologies to determine the outfitter au-  
8 thorization fee.

9 (c) PAYMENT OF OUTFITTER AUTHORIZATION  
10 FEE.—

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

14 (2) REQUIREMENTS.—The amount of the au-  
15 thorization fee—

16 (A)(i) shall be expressed as—

17 (I) a simple charge per day of actual  
18 use; or

19 (II) an annual or reasonable flat fee;

20 (ii) if calculated as a percentage of rev-  
21 enue, shall be determined based on adjusted  
22 gross receipts; or

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

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

3 (i) conserving resources;

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

6 (iii) providing reliable, consistent per-  
7 formance in conducting outfitted activities;  
8 and

9 (C) shall be required to be paid by an au-  
10 thorized outfitter to the United States on a rea-  
11 sonable schedule during the operating season;  
12 and

13 (D) shall set a minimum fee.

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

16 (A) take into consideration revenue from  
17 the gross receipts of the authorized outfitter  
18 from commercial outfitted activities conducted  
19 on Federal land; and

20 (B) exclude from consideration any rev-  
21 enue that is derived from—

22 (i) fees paid by the authorized out-  
23 fitter to any unit of Federal, State, or local  
24 government for—

25 (I) hunting or fishing licenses;

1 (II) entrance or recreation fees;

2 or

3 (III) other purposes (other than  
4 commercial outfitted activities con-  
5 ducted on Federal land);

6 (ii) goods and services sold to out-  
7 fitted visitors that are not within the scope  
8 of authorized outfitter activities conducted  
9 on Federal land; or

10 (iii) operations on non-Federal land.

11 (4) SUBSTANTIALLY SIMILAR SERVICES IN A  
12 SPECIFIC GEOGRAPHIC AREA.—

13 (A) IN GENERAL.—Except as provided in  
14 subparagraph (B), if more than 1 outfitter per-  
15 mit is granted to conduct the same or similar  
16 commercial outfitted activities in the same re-  
17 source area, the Secretary shall establish an  
18 identical fee for those outfitter permits.

19 (B) EXCEPTION.—The terms and condi-  
20 tions of an existing outfitter permit shall not be  
21 subject to modification or open to renegotiation  
22 by the Secretary because of the grant of a new  
23 outfitter permit in the same resource area for  
24 the same or similar commercial outfitted activi-  
25 ties.

1 (5) ACTUAL USE.—

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

5 (i) multiple outfitted activities with  
6 separate charges shall count as one actual  
7 use day when conducted in one day; and

8 (ii) an activity conducted across agen-  
9 cy jurisdictions over the course of one day  
10 shall not exceed one actual use day.

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

15 (6) ADJUSTMENT OF FEES.—The amount of an  
16 authorization fee—

17 (A) shall be determined as of the grant  
18 date of the outfitter permit; and

19 (B) may be modified to reflect—

20 (i) changes relating to the terms and  
21 conditions of the outfitter permit, including  
22 one or more outfitter permits described in  
23 paragraph (5);

24 (ii) extraordinary unanticipated  
25 changes affecting operating conditions,

1           such as natural disasters, economic condi-  
2           tions, or other material adverse changes  
3           from the terms and conditions specified in  
4           the outfitter permit;

5           (iii) changes affecting operating or  
6           economic conditions determined by other  
7           governing entities, such as the availability  
8           of State fish or game licenses;

9           (iv) the imposition of new or higher  
10          fees assessed under other law; or

11          (v) authorized adjustments made to  
12          an allocation of outfitter use.

13          (d) ESTABLISHMENT OF AMOUNT APPLICABLE TO A  
14          TEMPORARY OUTFITTER AUTHORIZATION.—The Sec-  
15          retary shall determine the amount of an authorization fee  
16          under a temporary outfitter authorization.

17          (e) OTHER FEES AND COSTS.—Fees for processing  
18          applications for outfitter permits or monitoring compli-  
19          ance with permit terms and conditions shall not seek to  
20          recover costs of agency activities that benefit broadly the  
21          general public or are not directly related to or required  
22          for processing of applications or monitoring of an author-  
23          ization.

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

2 (a) LIABILITY.—An authorized outfitter shall be lia-  
3 ble to the United States for costs and expenses associated  
4 with damage to property of the United States caused by  
5 the authorized outfitter's—

6 (1) negligence,

7 (2) gross negligence, or

8 (3) willful and wanton disregard for persons or  
9 property,

10 arising directly out of the authorized outfitter's conduct  
11 of a commercial outfitted activity under an outfitter au-  
12 thorization.

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

17 (1) negligence,

18 (2) gross negligence, or

19 (3) willful and wanton disregard for persons or  
20 property,

21 arising proximately from the authorized outfitter's con-  
22 duct of a commercial outfitted activity under an outfitter  
23 authorization.

24 (c) NO LIABILITY.—An authorized outfitter shall  
25 have no responsibility to pay to or defend or indemnify  
26 the United States, or its agents, employees, or contractors

1 for costs or expenses associated with injury, death, or  
2 damage to any person or property to the extent the injury,  
3 death, or damage was caused by the acts, omissions, neg-  
4 ligence, gross negligence, or willful and wanton misconduct  
5 of the United States, its agents, employees, or contractors;  
6 or third parties.

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

15 (e) AGREEMENTS.—An authorized outfitter may  
16 enter into agreements with outfitted visitors, including for  
17 (i) assumption or allocation of risk, and (ii) release or  
18 waiver related to inherently dangerous activities or condi-  
19 tions, if the agreement also runs in favor of the United  
20 States and its agents, employees, or contractors. Copies  
21 of any such agreements shall be provided to the Federal  
22 agency before being presented to outfitted visitors by an  
23 authorized outfitter.

24 **SEC. 9. ALLOCATION OF USE.**

25 (a) IN GENERAL.—

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

4           (2) a temporary outfitter permit may include a  
5 principal allocation of outfitter use.

6           (b) RENEWALS, TRANSFERS, AND EXTENSIONS.—  
7 Except as provided in (d), upon renewal, transfer, or ex-  
8 tension of an outfitter permit, the same principal alloca-  
9 tion of use shall be included within the terms and condi-  
10 tions of the permit.

11          (c) WAIVER.—

12           (1) IN GENERAL.—At the request of an author-  
13 ized outfitter, the Secretary may waive any obliga-  
14 tion of the authorized outfitter to use all or part of  
15 the amount of allocation of use provided under the  
16 outfitter permit, subject to section 7(b), if the re-  
17 quest is made in sufficient time to allow the Sec-  
18 retary to temporarily reallocate the unused portion  
19 of the allocation of use in that season or calendar  
20 year.

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

1           (3) NO FEE OBLIGATION.—Subject to section  
2           7(b), an outfitter permit fee may not be charged for  
3           any amount of allocation of use subject to a waiver  
4           under paragraph (1).

5           (d) ADJUSTMENT TO ALLOCATION OF USE.—The  
6 Secretary—

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

8                   (A) material change arising from approval  
9                   of an amendment in the resource management  
10                  plan for the area of operation; or

11                   (B) requirements arising under other law;

12                  and

13           (2) shall provide an authorized outfitter with  
14           documentation supporting the basis for any adjust-  
15           ment in the principal allocation of outfitter use, in-  
16           cluding new terms and conditions that result from  
17           the adjustment.

18           (e) TEMPORARY ALLOCATION OF USE.—

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

23           (2) TRANSFERS AND EXTENSIONS.—A tem-  
24           porary allocation of use may be, transferred, or ex-  
25           tended at the discretion of the Secretary.

1 **SEC. 10. EVALUATION OF PERFORMANCE UNDER OUT-**  
2 **FITTER PERMITS.**

3 (a) **EVALUATION PROCESS.—**

4 (1) **IN GENERAL.—**The Secretary shall develop  
5 a process for annual evaluation of the performance  
6 of an authorized outfitter in conducting a commer-  
7 cial outfitted activity under an outfitter permit.

8 (2) **EVALUATION CRITERIA.—**Criteria used by  
9 the Secretary to evaluate the performance of an au-  
10 thorized outfitter shall—

11 (A) be objective, measurable, and attain-  
12 able; and

13 (B) include as deemed appropriate by the  
14 Secretary—

15 (i) standards generally applicable to  
16 all commercial outfitted activities;

17 (ii) standards specific to a resource  
18 area or an individual outfitter operation;  
19 and

20 (iii) such other terms and conditions  
21 of the outfitter permit.

22 (3) **REQUIREMENTS.—**In evaluating the level of  
23 performance of an authorized outfitter, the Sec-  
24 retary shall—

25 (A) appropriately account for factors be-  
26 yond the control of the authorized outfitter, in-

1 including conditions described in section  
2 7(b)(6)(B) and 9(c); and

3 (B) ensure that the effect of any perform-  
4 ance deficiency reflected by the performance  
5 rating is proportionate to the severity of the de-  
6 ficiency, including any harm that may have re-  
7 sulted from the deficiency.

8 (b) LEVELS OF PERFORMANCE.—The Secretary shall  
9 define 3 levels of performance, as follows:

10 (1) Good, indicating a level of performance that  
11 fulfills the terms and conditions of the outfitter per-  
12 mit.

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

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

19 (c) PERFORMANCE EVALUATION.—

20 (1) EVALUATION SYSTEM.—The Secretary shall  
21 establish a performance evaluation system that  
22 assures the public of continued availability of de-  
23 dependable commercial outfitted activities and sus-  
24 pends or revokes an authorization for an authorized  
25 outfitter that fails to meet the required standards.

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

3                   (A) to be present, or represented, at in-  
4                   spections of operations or facilities, which in-  
5                   spections shall be limited to the operations and  
6                   facilities of the authorized outfitter located on  
7                   Federal land;

8                   (B) to receive written notice of any con-  
9                   duct or condition that, if not corrected, might  
10                  lead to a performance evaluation of marginal or  
11                  unsatisfactory, which shall include an expla-  
12                  nation of needed corrections and provide a rea-  
13                  sonable period in which the corrections may be  
14                  made without penalty; and

15                  (C) to receive written notice of the results  
16                  of the performance evaluation not later than 90  
17                  days after the conclusion of the authorized out-  
18                  fitter’s operating season, including the level of  
19                  performance and the status of corrections that  
20                  may have been required.

21       (d) MARGINAL PERFORMANCE.—If an authorized  
22       outfitter’s annual performance is determined to be mar-  
23       ginal, and the authorized outfitter fails to complete the  
24       corrections within the time specified under subsection

1 (c)(2)(B), the level of performance shall be determined to  
2 be unsatisfactory for the year.

3 (e) DETERMINATION OF ELIGIBILITY FOR RE-  
4 NEWAL.—

5 (1) IN GENERAL.—The results of all annual  
6 performance evaluations of an authorized outfitter  
7 shall be reviewed by the Secretary in the year pre-  
8 ceding the year in which the outfitter permit expires  
9 to determine whether the authorized outfitter’s over-  
10 all performance during the term has met the re-  
11 quirements for renewal under section 11.

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

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

1           (4) UNSATISFACTORY PERFORMANCE IN FINAL  
2 YEAR.—If an authorized outfitter receives an unsat-  
3 isfactory performance rating under subsection (d) in  
4 the final year of the term of an outfitter permit, the  
5 review and determination of eligibility for renewal of  
6 the outfitter permit under paragraph (1) shall be re-  
7 vised to reflect that result.

8 **SEC. 11. RENEWAL REVOCATION OR SUSPENSION OF OUT-**  
9 **FITTER PERMITS.**

10 (a) RENEWAL AT EXPIRATION OF TERM.—

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

14           (2) DETERMINATION BASED ON ANNUAL PER-  
15 FORMANCE RATING.—The Secretary shall renew an  
16 outfitter authorization under paragraph (1) at the  
17 request of the authorized outfitter and subject to the  
18 requirements of this Act if the Secretary determines  
19 that the authorized outfitter has received not more  
20 than 1 unsatisfactory annual performance rating  
21 under section 10 during the term of the outfitter  
22 permit.

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

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

6           (2) the authorized outfitter is in arrears in the  
7 payment of fees under section 7; and

8           (A) has not entered into a payment plan  
9 with the agency; or

10           (B) has not sought relief subject to section  
11 14.

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

14           (A) the health and welfare of outfitted visi-  
15 tors; or

16           (B) the conservation of resources on which  
17 the commercial outfitted activities are con-  
18 ducted.

19 (c) SUSPENSION.—

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

23           (2) ADMINISTRATIVE REVIEW.—Subject to sec-  
24 tion 17 the Secretary shall provide for an expedited  
25 review of suspension cases.

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

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

6 (b) APPROVAL.—

7 (1) IN GENERAL.—The Secretary shall approve  
8 a transfer of an outfitter permit unless the Secretary  
9 finds that the transferee is not qualified or able to  
10 satisfy the terms and conditions of the outfitter per-  
11 mit.

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

15 (A) to a purchaser of the operation of the  
16 authorized outfitter;

17 (B) at the request of the authorized out-  
18 fitter, to an assignee, partner, or stockholder or  
19 other owner of an interest in the operation of  
20 the authorized outfitter; or

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

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

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

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

6 (d) CONSIDERATION PERIOD.—

7 (1) THRESHOLD FOR AUTOMATIC APPROVAL.—

8 Subject to paragraph (2), if the Secretary fails to  
9 approve or disapprove the transfer of an outfitter  
10 permit within 90 days after receiving a complete ap-  
11 plication containing the information required with  
12 respect to the transfer, the transfer shall be deemed  
13 approved unless the transferee requests a modifica-  
14 tion of terms and conditions of the outfitter author-  
15 ization and such modifications require environmental  
16 analysis under the National Environmental Policy  
17 Act.

18 (2) EXTENSION.—The Secretary and the au-  
19 thorized outfitter applying for transfer of an out-  
20 fitter permit may agree to extend the period for con-  
21 sideration of the application.

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

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

2 (a) IN GENERAL.—An authorized outfitter shall keep  
3 such reasonable records as the Secretary may require to  
4 enable the Secretary to determine that all the terms of  
5 the outfitter authorization are being met.

6 (b) OBLIGATIONS OF THE SECRETARY AND AUTHOR-  
7 IZED OUTFITTER.—The recordkeeping requirements es-  
8 tablished by the Secretary shall incorporate simplified pro-  
9 cedures that do not impose an undue burden on an author-  
10 ized outfitter.

11 (c) ACCESS TO RECORDS.—The Secretary, or an au-  
12 thorized representative of the Secretary, shall for purposes  
13 of audit and performance evaluation have access to and  
14 the right to examine for five years following the effective  
15 date of an outfitter authorization any books, papers, docu-  
16 ments, and records of the authorized outfitter relating to  
17 each outfitter authorization held by the authorized out-  
18 fitter during the business year.

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

20 (a) APPEALS PROCEDURE.—The Secretary shall by  
21 regulation—

22 (1) grant an authorized outfitter full access to  
23 administrative remedies, and

24 (2) establish an expedited procedure for consid-  
25 eration of appeals of Federal agency decisions to  
26 deny, suspend, fail to renew, or revoke an outfitter

1 permit or change a principal allocation of outfitter  
2 use.

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

7 **SEC. 15. LACK OF EFFECT ON EXISTING RIGHTS OF THE**  
8 **UNITED STATES.**

9 Nothing in this Act limits or restricts any right, title,  
10 or interest of the United States in or to any land or re-  
11 source.

12 **SEC. 16. REGULATIONS.**

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

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

1 **SEC. 18. 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 permit, contract, or other authorization)  
6 in effect on the date of promulgation of implementing reg-  
7 ulations under section 16 shall be entitled, on expiration  
8 of the authorization, to the issuance of an outfitter permit  
9 under this Act if the outfitter’s aggregate performance  
10 under the permit, contract, or other authorization was  
11 good or was the equivalent of good, satisfactory, or accept-  
12 able under a rating system in use before the date of enact-  
13 ment of this Act.

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

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

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