

114TH CONGRESS
2D SESSION

H. R. 5129

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2016

Mr. LAMALFA (for himself, Mrs. LOVE, Mr. STEWART, Mr. MCCLINTOCK, and Mr. VALADAO) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

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

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

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

3 (c) DEFINITIONS.—In this Act:

4 (1) SECRETARY.—The term “Secretary”
 5 means—

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

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

11 (2) SECRETARIES.—The term “Secretaries”
 12 means the Secretary of the Interior and the Sec-
 13 retary of Agriculture acting jointly.

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

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

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

19 “(1) IN GENERAL.—The Secretary may—

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

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

5 “(2) SPECIAL RECREATION PERMITS.—The
6 Secretary may issue special recreation permits in the
7 following circumstances:

8 “(A) For specialized individual and group
9 use of Federal facilities and Federal rec-
10 reational lands and waters, such as, but not
11 limited to, use of special areas or areas where
12 use is allocated, motorized recreational vehicle
13 use, and group activities or events.

14 “(B) To recreation service providers who
15 conduct outfitting, guiding, and other recre-
16 ation services on Federal recreational lands and
17 waters managed by the Forest Service, Bureau
18 of Land Management, Bureau of Reclamation,
19 or the United States Fish and Wildlife Service.

20 “(C) To recreation service providers who
21 conduct recreation or competitive events, which
22 may involve incidental sales on Federal rec-
23 reational lands and waters managed by the For-
24 est Service, Bureau of Land Management, Bu-

1 reau of Reclamation, or the United States Fish
2 and Wildlife Service.

3 “(3) REDUCTION IN FEDERAL COSTS.—To re-
4 duce Federal costs in administering this subsection,
5 the issuance of a new special recreation permit for
6 activities under paragraph (2) that have been con-
7 sidered under previous analysis or that are similar
8 to existing uses or are not inconsistent with ap-
9 proved uses shall qualify for categorical exclusions
10 under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.).”.

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

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

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

1 (2) the permit application required under clause

2 (i) shall be—

3 (A) the application required by the lead

4 agency; and

5 (B) submitted to the lead agency.

6 (b) REQUIREMENTS OF THE LEAD AGENCY.—The

7 lead agency for a permit under subsection (a) shall—

8 (1) coordinate with the associated agencies,

9 consistent with the authority of the Secretaries

10 under section 330 of the Department of the Interior

11 and Related Agencies Appropriations Act, 2001 (43

12 U.S.C. 1703), to develop and issue the single, joint

13 permit that covers the entirety of the trip;

14 (2) in processing the joint permit application,

15 incorporate the findings, interests, and needs of the

16 associated agencies, provided that such coordination

17 shall not be subject to cost recovery; and

18 (3) complete the permitting process within a

19 reasonable time after receiving the permit applica-

20 tion.

21 (c) EFFECT ON REGULATIONS.—Nothing in this sec-

22 tion shall alter, expand, or limit the applicability of any

23 Federal law (including regulations) to lands administered

24 by the relevant Federal agencies.

25 (d) DEFINITIONS.—In this section:

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

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

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

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

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

15 (2) provide appropriate deductions from the fee
16 established under paragraph (1) for—

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

22 (B) fees to be paid by permit holder under
23 applicable law to provide services on other Fed-
24 eral lands, if separate permits are issued to
25 that permit holder for a single event.

1 (b) FEE CONDITIONS.—The fee charged by the Sec-
2 retary for a permit issued under section 803(h) of the
3 Federal Lands Recreation Enhancement Act (16 U.S.C.
4 6802(h)) shall not exceed 3 percent of the recreational
5 service provider’s annual gross revenue for activities au-
6 thorized by the permit on Federal lands, plus applicable
7 revenue additions, minus applicable revenue exclusions or
8 a similar flat per person fee.

9 (c) DISCLOSURE OF FEES.—A holder of a special
10 recreation permit may inform its customers of the various
11 fees charged by the Secretary under section 803(h) of the
12 Federal Lands Recreation Enhancement Act (16 U.S.C.
13 6802(h)).

14 **SEC. 5. USE OF PERMIT FEES FOR PERMIT ADMINISTRA-**
15 **TION.**

16 Revenues from special recreation permits issued to
17 recreation service providers under subparagraphs (B) and
18 (C) of section 803(h)(1) of the Federal Lands Recreation
19 Enhancement Act (16 U.S.C. 6802(h)(1)) shall be used—

20 (1) to partially offset the Secretary’s direct cost
21 of administering the permits; and

22 (2) to improve and streamline the permitting
23 process.

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

2 (a) IN GENERAL.—In reviewing and adjusting alloca-
3 tions of use for priority use permits for special uses of
4 Federal recreational lands and waters managed by the
5 Forest Service, and in renewing such permits, the Sec-
6 retary of Agriculture shall allocate to a permit holder the
7 highest amount of actual annual use over the reviewed pe-
8 riod plus 25 percent, capped at the amount of use allo-
9 cated when the permit was issued unless additional capac-
10 ity is available.

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

22 **SEC. 7. AUTHORIZATION OF TEMPORARY PERMITS FOR**
23 **NEW USES FOR THE FOREST SERVICE AND**
24 **BLM.**

25 Not later than 180 days after the date of the enact-
26 ment of this Act, the Secretary of Agriculture and the Sec-

1 retary of the Interior shall establish and implement a pro-
2 gram to authorize temporary permits for new recreational
3 uses of Federal recreational lands and waters managed by
4 the Forest Service or the Bureau of Land Management,
5 respectively, and to provide for the conversions of such
6 temporary permits to long-term permits after 2 years of
7 satisfactory operation. The issuance and conversion of
8 such permits shall be subject to subsection (h)(3) of sec-
9 tion 803 of the Federal Lands Recreation Enhancement
10 Act (16 U.S.C. 6802).

11 **SEC. 8. INDEMNIFICATION REQUIREMENTS.**

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

20 (b) EXCULPATORY AGREEMENTS.—The Secretary
21 shall not implement, administer or enforce any regulation
22 or policy prohibiting the use of exculpatory agreements be-
23 tween recreation service providers and their customers for
24 services provided under a special recreation permit when

1 such agreements are enforceable pursuant to the law of
2 the State in which the permitted services are provided.

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

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

11 (1) shorten application processing times and
12 minimize application and administration costs; and

13 (2) provide for the use of programmatic envi-
14 ronmental assessments and categorical exclusions for
15 environmental reviews under the National Environ-
16 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
17 for the issuance or renewal of outfitter and guide
18 and similar recreation special use permits, to the
19 maximum extent allowable under applicable law, in-
20 cluding, but not limited to, use of a categorical ex-
21 clusion for the issuance of a new special recreation
22 permit for activities under paragraph (2)(B) of sub-
23 section (h) of section 803 of the Federal Lands
24 Recreation Enhancement Act (16 U.S.C. 6802) that
25 have been considered under previous analysis or that

1 are similar to existing uses or are not inconsistent
2 with approved uses.

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

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

8 (a) **REGULATORY PROCESS.**—Not later than 180
9 days after the date of enactment of this Act, the Secre-
10 taries shall revise section 251.58 of title 36, Code of Fed-
11 eral Regulations, and section 2932.31(e) and (f) of title
12 43, Code of Federal Regulations, to reduce costs and mini-
13 mize the burden of cost recovery on small businesses and
14 adverse impacts of cost recovery on jobs in the outfitting
15 and guiding industry and on rural economies provided,
16 however, that nothing in the revised regulations shall fur-
17 ther limit the Secretaries' authority to issue or renew
18 recreation special use permits.

19 (b) **DE MINIMIS EXEMPTION.**—

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

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

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

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

1 whether the applications are solicited or unsolicited
2 and whether there is competitive interest—

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

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

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

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

24 (6) WAIVER OF COST RECOVERY.—The Sec-
25 retary of the Interior and the Secretary of Agri-

1 culture may waive the recovery of costs for proc-
2 essing recreation special use permit applications and
3 renewals, on a categorical or case-by-case basis as
4 appropriate, if the Secretary determines that—

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

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

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

19 **SEC. 11. EXTENSION OF FOREST SERVICE RECREATION**
20 **PRIORITY USE PERMITS.**

21 Where the holder of a special use permit for outfitting
22 and guiding that authorizes priority use has submitted a
23 request for renewal of such permit in accordance with ap-
24 plicable laws and regulations, the Secretary of Agriculture
25 shall have the authority to grant the holder one or more

1 extensions of the exiting permit for additional items not
2 to exceed 5 years in the aggregate, as necessary to allow
3 the Secretary to complete the renewal process and to avoid
4 the interruption of services under such permit. Before
5 granting an extension under this section, the Secretary
6 shall take all reasonable and appropriate steps to complete
7 the renewal process before the expiration of the special
8 use permit.

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