

116TH CONGRESS  
1ST SESSION

# H. R. 316

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2019

Mr. LAMALFA (for himself, Mr. O'HALLERAN, and Mr. SIMPSON) 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

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## 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 AND DU-  
4           PLICATION OF ANALYSIS.—

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

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

21                           “(i) substantially similar in type, na-  
22                           ture, and scope; and

23                           “(ii) will not result in significant new  
24                           impacts.

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

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

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

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

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

24                         (A) the application required by the lead  
25          agency; and

1 (B) submitted to the lead agency.

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

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

10 (2) in processing the joint permit application,  
11 incorporate the findings, interests, and needs of the  
12 associated agencies, provided that such coordination  
13 shall not be subject to cost recovery; and

14 (3) complete the permitting process within a  
15 reasonable time after receiving the permit applica-  
16 tion.

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

21 (d) DEFINITIONS.—In this section:

22 (1) ASSOCIATED AGENCY.—The term “associ-  
23 ated agency” means an agency that manages the  
24 land on which the trip of the special recreation per-

1       mit applicant will enter after leaving the land man-  
2       aged by the lead agency.

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

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

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

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

12              (2) provide appropriate deductions from gross  
13       revenues used as the basis for the fees established  
14       under paragraph (1) for—

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

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

24               (b) FEE CONDITIONS.—The fee charged by the Sec-  
25       retary for a permit issued under section 803(h) of the

1 Federal Lands Recreation Enhancement Act (16 U.S.C.  
2 6802(h)) shall not exceed 3 percent of the recreational  
3 service provider's annual gross revenue for activities au-  
4 thorized by the permit on Federal lands, plus applicable  
5 revenue additions, minus applicable revenue exclusions or  
6 a similar flat per person fee.

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

12 **SEC. 5. USE OF PERMIT FEES FOR PERMIT ADMINISTRA-**  
13 **TION.**

14 (a) DEPOSITS.—Subject to subsection (b), revenues  
15 from special recreation permits issued to recreation service  
16 providers under subparagraphs (B) and (C) of section  
17 803(h)(2) of the Federal Lands Recreation Enhancement  
18 Act (16 U.S.C. 6802(h)(2)) shall be held in special ac-  
19 counts established for each specific unit or area for which  
20 such revenues are collected, and shall remain available for  
21 expenditure, without further appropriation, until ex-  
22 pended.

23 (b) USE OF PERMIT FEES.—Revenues from special  
24 recreation permits issued to recreation service providers  
25 under subparagraphs (B) and (C) of section 803(h)(2) of



1 the Federal Lands Recreation Enhancement Act (16  
2 U.S.C. 6802(h)(2)) shall be used only—

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

5 (2) to improve and streamline the permitting  
6 process; and

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

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

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

21 (a) **IN GENERAL.**—To the extent that the Secretary  
22 utilizes permit use reviews, in reviewing and adjusting al-  
23 locations of use for permits for special uses of Federal rec-  
24 reational lands and waters managed by the Forest Service,  
25 and in renewing such permits, the Secretary of Agriculture

1 shall allocate to a permit holder a level of use that is no  
2 less than the highest amount of actual annual use over  
3 the reviewed period plus 25 percent, capped at the amount  
4 of use allocated when the permit was issued unless addi-  
5 tional capacity is available. The Secretary may assign any  
6 use remaining after adjusting allocations on a temporary  
7 basis to qualified permit holders.

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

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

23 Not later than 180 days after the date of the enact-  
24 ment of this Act, the Secretary of Agriculture and the Sec-  
25 retary of the Interior shall establish and implement a pro-

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

10 **SEC. 8. INDEMNIFICATION REQUIREMENTS.**

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

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

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

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

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

12 (2) provide for the use of programmatic envi-  
13 ronmental assessments and categorical exclusions for  
14 environmental reviews under the National Environ-  
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
16 for the issuance or renewal of outfitter and guide  
17 and similar recreation special use permits when the  
18 Secretary determines that such compliance is re-  
19 quired, to the maximum extent allowable under ap-  
20 plicable law, including, but not limited to, use of a  
21 categorical exclusion as provided under section  
22 803(h)(3) of the Federal Lands Recreation En-  
23 hancement Act (16 U.S.C. 6802(h)(3)).

24 (b) ONLINE APPLICATIONS.—To the maximum ex-  
25 tent practicable, where feasible and efficient, the Secretary

1 shall make special recreation permit applications available  
2 to be filled out and submitted online.

3 **SEC. 10. COST RECOVERY REFORM.**

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

16 (b) DE MINIMIS EXEMPTION.—

17 (1) COST RECOVERY LIMITATION.—Any regula-  
18 tions issued by the Secretary of the Interior or the  
19 Secretary of Agriculture to establish fees to recover  
20 processing costs for recreation special use applica-  
21 tions and monitoring costs for recreation special use  
22 authorizations shall include an exemption providing  
23 that at least the first 50 hours of work necessary in  
24 any one year to process and/or monitor such an ap-  
25 plication shall not be subject to cost recovery. The

1 application of a 50-hour credit per permit shall also  
2 apply to any monitoring fees on a per annum basis  
3 during the term of each permit.

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

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

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

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

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

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

22 (6) WAIVER OF COST RECOVERY.—The Sec-  
23 retary of the Interior and the Secretary of Agri-  
24 culture may waive the recovery of costs for proc-  
25 essing recreation special use permit applications and

1 renewals, on a categorical or case-by-case basis as  
2 appropriate, if the Secretary determines that—

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

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

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

17 **SEC. 11. EXTENSION OF FOREST SERVICE RECREATION**  
18 **PRIORITY USE PERMITS.**

19 Where the holder of a special use permit for outfitting  
20 and guiding that authorizes priority use has submitted a  
21 request for renewal of such permit in accordance with ap-  
22 plicable laws and regulations, the Secretary of Agriculture  
23 shall have the authority to grant the holder one or more  
24 extensions of the existing permit for additional items not  
25 to exceed 5 years in the aggregate, as necessary to allow



1 the Secretary to complete the renewal process and to avoid  
2 the interruption of services under such permit. Before  
3 granting an extension under this section, the Secretary  
4 shall take all reasonable and appropriate steps to complete  
5 the renewal process before the expiration of the special  
6 use permit.

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