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Guides and Outfitters on Federal Lands: Issues for Congress

Updated June 14, 2022

Congressional Research Service

<https://crsreports.congress.gov>

R46381



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Guides and outfitters play a significant role in facilitating recreational use of the country's public lands, including those owned by the federal government. These service providers also can be of particular importance to the economies of local communities that surround these resources, providing jobs and generating tourism. As visitation to federal lands has increased in recent years, questions have arisen about the role of commercial guides and outfitters in facilitating visitor access and whether, or to what degree, the federal government should more effectively work with these service providers moving forward.

According to some industry estimates, of the roughly 40,000 small businesses nationwide that provide guide and outfitter services, approximately 15,000 operate under permit, contract, or other authorization from at least one of the four major federal land management agencies (FLMAs). These agencies are the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS)—all in the Department of the Interior (DOI)—and the Forest Service (FS) in the Department of Agriculture (USDA). Although data are not available on the specific economic impacts of guiding and outfitting businesses operating on federal lands, according to the Bureau of Economic Analysis, in real terms, guided tours and outfitted travel on all lands contributed an annual average of roughly \$10.9 billion in value added to the U.S. economy from 2012 to 2020. The guide and outfitter industry is of particular importance to the economies of rural communities.

Congress routinely considers issues related to commercial guides and outfitters on federal lands, often in the context of broader recreation issues—including provision of federal resources, planning efforts, and funding. For example, Congress has considered which types of recreational activities may be permitted on federal lands and waters and the extent to which commercial entities have access to these areas to provide their services. The role in which commercial operators—and, more specifically, the number of operators, usage implications, and types of activities offered by service providers—has been debated. Some stakeholders view increased access for commercial guides and outfitters as prioritizing private companies that primarily serve paying customers. Others see these services as allowing visitors to have a safer, more reliable experience on public lands than they could have individually.

In addition, Congress also has considered whether and how to simplify the current permitting framework for commercial guide and outfitting usage on lands managed by the four FLMAs. Generally, commercial guides and outfitters are required to obtain a permit to operate on lands owned and administered by the FLMAs. Some stakeholders view the rules, regulations, and guidance across the four FLMAs as disparate and see it as an administrative and financial hindrance to guiding and outfitting operators—particularly small businesses and those whose operations cross multiple federal jurisdictions. Opponents of adjusting permitting requirements assert that doing so may open federal lands to additional guide and outfitter operators, thereby limiting access to these resources for noncommercial visitor use.

Congress also considers extensions and other amendments to programmatic authorities that directly or indirectly relate to guide and outfitting permits—particularly, authorities provided under the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814). FLREA is set to expire on October 1, 2023. Congressional deliberations encompass whether to let FLREA expire, to extend it, or to make it permanent, with or without modifications.

Other considerations for Congress include issues related to economic and financial impacts to commercial guides and outfitters. In particular, Congress has debated and considered the potential impacts of federal minimum wage requirements on guides and outfitters and other recreational businesses operating on federal lands, as well as the short- and long-term disruptions facing these businesses caused as a result of the COVID-19 pandemic.

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Introduction¹

Guides and outfitters play a role in facilitating recreational use of the country's federal lands. These operators can provide specialized knowledge, skills, and expertise, as well as equipment, for people to recreate on public lands, regardless of their skill level or prior experience.

As visitation to public lands has increased in recent years, various stakeholders have raised questions about the degree to which the federal government should allocate access to lands and resources to commercial guides and outfitters. Although guides and outfitters and their clientele generally represent a small proportion of the total visitation to public lands, some stakeholders view some or any commercial access as infringing on the available use of these lands by do-it-yourself recreational users. Others have raised

Generally, an *outfitter* is considered a business that provides clients with various products and services (which may include food, shelter, horses, equipment, etc.) for a particular outdoor recreational activity. Outfitters often register and employ *guides* to lead clients in these activities. For example, an outfitter may supply clients wishing to engage in a fly-fishing trip with rods, flies, and waders, and it may engage a guide to lead clients to local fishing areas, advise on fishing techniques, and ensure clients' safety by monitoring local conditions. Guides also may operate independent of outfitters.

particular concerns about issues of overcrowding at specific sites that allow commercial guides and outfitters. By contrast, some see guides and outfitters as a valuable resource for visitors and an asset to local economies, providing safe, reliable access to federal lands. Supporters of guides and outfitters also have suggested that federal agencies rely on the expertise of guides and outfitters to reduce incidents that involve search and rescue or to promote ethical use of federal lands and resources (i.e., Leave No Trace ethics).²

This report discusses selected issues and other areas of congressional interest related to commercial guides and outfitters. It discusses the role commercial guides and outfitters have in providing access to federal lands and the economic impact the industry has on the broader recreation economy and local communities. The report pays particular attention to commercial guide and outfitting usage on lands managed by the four major federal land management agencies (FLMAs): the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS)—all in the Department of the Interior (DOI)—and the Forest Service (FS) in the Department of Agriculture (USDA). These issues include how best to facilitate access for existing or new recreational providers; whether and how to simplify the current permitting framework; the impacts of minimum wage requirements and standards on providers; and whether to reauthorize or amend existing laws related to guides and outfitters, particularly the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814). In addition, Congress has considered questions regarding the financial impacts of the Coronavirus Disease 2019 (COVID-19) pandemic on commercial guides and whether or how to address the continuing economic effects on the industry.

¹ For a more general overview of guide and outfitter activities on federal lands, see CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, by Mark K. DeSantis.

² See, for example, Testimony of Aaron Bannon, National Outdoor Leadership School, in U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Impediments to Public Recreation on Public Lands*, hearing, 113th Cong., 1st sess., May 7, 2013 (Washington: GPO, 2013). For examples of past agency perspectives, see Forest Service (FS) comments on agency need for outfitting and guiding services at FS, "Final Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits," 73 *Federal Register* 53829, September 17, 2008.

Guides and Outfitters in the Economy³

As Congress considers issues related to outdoor recreation—including provision of federal resources, planning efforts, and funding—data on the size, distribution, and relative importance of guides and outfitters to the local and national economy may inform these debates. According to some industry estimates, of the roughly 40,000 small businesses nationwide that provide guide and outfitter services, approximately 15,000 operate under a permit, contract, or other authorization issued by one of the FLMAs.⁴ Although the Congressional Research Service did not locate any estimates of the economic impact of guides and outfitters on federal lands, the Bureau of Economic Analysis’s (BEA’s) Outdoor Recreation Satellite Account (ORSA) provides some estimates for the industry’s impact overall. According to BEA, guided tours and outfitted travel on all lands (including federal lands) has contributed an annual average of \$10.9 billion in *value added* (the value of goods and services purchased by end-users minus the value of the goods and services used up in production) to the economy from 2012 to 2020.⁵

Given the distribution and location of federal lands, many commercial guides and outfitters operate in rural areas and gateway communities, where they are of particular importance to local economies.⁶ These operators provide economic opportunity in communities where tourism may be a job-creating industry.⁷ Businesses located in these communities often rely heavily on access to federal lands to execute their work and provide services to clients. In evaluating legislation and current and proposed agency regulations related to commercial guides and outfitters, Congress and various Administrations often have considered the impact outfitting can have in contributing to rural economies. In particular, the federal government has, at times, looked to minimize the regulatory burden for small businesses operating in rural communities reliant on this source of economic input (for example, see “Minimum Wage Requirements”).

Access to and Use of Federal Lands and Waters

The abundance and diversity of outdoor recreation on federal lands have increased the challenge of balancing recreation—and, in turn, guiding and outfitting operations—with other land uses for which the federal government manages lands and waters. Issues related to access and use of these resources, including the extent to which individuals and businesses have permission to access these areas to recreate, the degree to which such access is equally available, and the impact this recreation has on resources, are of perennial concern to Congress.

Generally, all commercial guides and outfitters are required to obtain permission to operate on lands owned and administered by the FLMAs (See “Permitting”). Congress has, at times,

³ For more information on the outdoor recreation economy overall, see CRS Report R45978, *The Outdoor Recreation Economy*, by Anne A. Riddle.

⁴ America Outdoors, “AO Letter to Senate Leadership re: Coronavirus Relief,” March 18, 2020, at https://www.americaoutdoors.org/assets/1/27/AO_letter_to_Senate_leadership_re_coronavirus_relief.pdf?6482.

⁵ CRS calculation from BEA, *Outdoor Recreation Satellite Account, U.S. and Prototype for States, 2020, Tables-Real Outdoor Recreation Value Added by Activity*, November 9, 2021. Note that ORSA data dates back only to 2012. Figures use chained 2012 dollars adjusted for inflation.

⁶ U.S. Congress, Senate Committee on Energy and Natural Resources, *Outfitter Policy Act of 1999*, report to accompany S. 1969, 106th Cong., 2nd sess. S.Rept. 106-491 (Washington, DC: GPO 2000), p. 11. Hereinafter referred to as “S.Rept. 106-491.”

⁷ S.Rept. 106-491. See also Outdoor Industry Association (OIA), *The Outdoor Recreation Economy*, 2017, at https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

considered ways to simplify the process by which commercial guides and outfitters obtain permission to operate. However, some stakeholders see efforts to streamline and expedite these processes as granting preferential access to commercial guides and outfitters at the expense of the unguided public.⁸ These stakeholders contend that legislative and administrative proposals aimed at facilitating access to commercial guides and outfitters could prevent other visitors from accessing lands, as some proposals would prioritize private companies that primarily serve paying customers.⁹ FLMA regulations typically specify that permits for guides and outfitters do not grant exclusive use of federal lands and waters to commercial operators.¹⁰ Supporters of additional access for guides and outfitters on federal lands claim that these services allow many visitors to have a safer, more reliable experience on public lands than they could have individually. Supporters also state that guides and outfitters play a vital role in introducing public lands to diverse visitor segments.¹¹ Some Members and stakeholders have raised concerns that not all communities benefit equitably from access to federal lands and waters and, in particular, services provided by outfitters, guides and other businesses.¹²

Some stakeholders see attempts to facilitate additional access by guides and outfitters—and the emphasis among some groups on increasing outdoor recreation and nature tourism more broadly—as an impediment to managing visitation and protecting valuable resources.¹³ Many federal lands across the country have experienced record-high visitation over the last decade.¹⁴ The effectiveness or extent to which FLMAs have policies in place to limit the amount of use by commercial operators in the event of overuse or resource degradation may be a subject of congressional interest.

Permitting¹⁵

As mentioned above, commercial guides and outfitters are required to obtain permission—typically in the form of a permit—to operate on lands owned and administered by the FLMAs.

⁸ For example, see public comments regarding updated FS permitting regulations at FS, “Final Directives for Forest Service Outfitting and Guiding Special Use Permits and Insurance Requirements for Forest Service Special Use Permits,” 73 *Federal Register* 53824, September 17, 2008. (“A number of respondents opposed the proposed directives because they perceived them as granting exclusive access to National Forest System (NFS) lands to commercial outfitters and guides at the expense of the unguided public and without the opportunity for public input.”)

⁹ River Runners for Wilderness, “Kiss Your Federal Land Access Goodbye,” September 18, 2019, at <https://rrfw.org/node/886>.

¹⁰ For example, see FS regulations at 36 C.F.R. §251.55(b).

¹¹ Letter from Outdoor Alliance to Sen. Joe Manchin and Sen. John Barrasso, Chair and Ranking Member, U.S. Senate Committee on Energy and Natural Resources, December 1, 2021, <https://www.outdooralliance.org/s/OA-June-8-NPFPL-hearing-2.pdf>.

¹² For example, in the 116th and 117th Congress, Members introduced bills that would direct the Secretaries of the Interior and Agriculture to complete a study and report on the use of special recreation permits by service providers that service “environmental justice communities,” as well as barriers to accessing public lands that do serve such communities. See H.R. 8401 in the 116th Congress and H.R. 3687 and S. 1269 in the 117th Congress.

¹³ Todd Wilkinson, “The Question That None of Greater Yellowstone’s Conservation Groups Are Willing to Confront,” *Mountain Journal*, August 7, 2020.

¹⁴ For example, NPS reported record number visitation from 2014 to 2019. Visitation decreased in 2020 and 2021, likely due to the COVID-19 outbreak that began in early 2020 (NPS, “Visitor Use Statistics,” at <https://irma.nps.gov/STATS/>). Other federal land management agencies saw visitation increase during the pandemic. For example, FS reported an estimated 12% increase in FY2020 from FY2019 in visitation (FS, “2020, National Visitor Use Monitoring Survey”).

¹⁵ For a detailed discussion of the permitting process across federal land management agencies for commercial guides and outfitters, see CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting*

The laws, regulations, and policies that guide this permitting process vary across the FLMAs. Over the years, the various FLMA permitting processes for commercial recreation providers have been of interest to Congress, Presidential administrations, and the guide and outfitting industry. Certain stakeholders view the rules, regulations, and guidance across the four FLMAs as disparate and as an administrative and financial hindrance to guide and outfitting operators—particularly small businesses and those whose operations cross multiple federal jurisdictions.¹⁶ These stakeholders generally support increasing consistency and uniformity across agencies and limiting the administrative costs of applying for and issuing permits. Opponents of such changes assert that doing so would open federal lands to additional guide and outfitter operators, to the detriment of noncommercial visitor use (see “Access to and Use of Federal Lands and Waters” above).¹⁷

Some of the permitting issues recently considered by Congress include establishing more standardized permitting processes across FLMAs, implementing multi-jurisdictional permits for guide and outfitting operations that span multiple federal lands, reforming cost-recovery calculations for applicable permits, addressing possible staff or budget capacity issues for processing guide and outfitting permits, and controlling liability and insurance costs for permit holders. These issues are discussed below.

Streamlining Efforts and Multi-jurisdictional Permitting

Each FLMA has established its own regulations, policies, and guidance for permitting guide and outfitter operations. Some stakeholders in the outfitting community claim that these various authorities have created a system that is difficult to navigate for commercial operators that work with multiple FLMAs.¹⁸ Some commercial guides who operate trips that cross multiple federal lands contend the current system—which may require guides to apply for and maintain multiple permits with different agencies for a single trip—is overly time-consuming and costly.¹⁹ Other stakeholders suggest the different permitting processes are necessary and tailored to the different legislative mandates under which each FLMA operates.²⁰ Several Members of Congress have introduced bills that would authorize the use of single joint permits for multi-jurisdictional trips, along with various amendments to FLREA that seek to improve the efficiency and reduce the cost of applying for and administering permits for commercial guides and outfitters.²¹ Agencies

Processes, by Mark K. DeSantis.

¹⁶ Testimony of Matt Wade, American Mountain Guides Association in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, 116th Cong., 1st sess., September 19, 2019. (“It is time consuming and costly for guides to apply for and maintain multiple permits with different agencies for just a single trip.”)

¹⁷ For example, see Brodie Farquhar, “Sweet Deal for Outfitters? Some Criticize Forest Service’s Proposed Rule Change,” *Casper Star-Tribune*, December 23, 2007.

¹⁸ Coalition for Outdoor Access, “Comments on U.S. Department of the Interior Secretarial Order 3366, Issued on April 18, 2018,” June 29, 2018.

¹⁹ America Outdoors, Testimony to U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, June 11, 2021, at https://www.americaoutdoors.org/assets/1/27/AO_testimony_6-8-21_House_Hearing.pdf?6705. (“In many situations, especially when a commercial operator is crossing over multiple agency boundaries during a single trip, the layering of fees from multiple agencies will double or even triple the percentage of gross income across the permits.”)

²⁰ Testimony of Leah Baker, Acting Assistant Director for Resources and Planning, BLM, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing*, 116th Cong., 1st sess., September 19, 2019. Hereinafter, Testimony of Leah Baker, September 2019.

²¹ Multiple bills have been introduced in the 116th and 117th Congresses that address permitting issues for commercial

generally have expressed support for these efforts, although concerns have been raised regarding how single joint permits would ensure compliance with each agency's different statutory authorities and management mandates.²²

Permit Fee Calculations

Guides and outfitters pay various permitting fees to FLMAs to operate on federal lands. Although FLREA and other permitting and fee retention authorities provide general guidance as to how these fees shall be applied, the FLMAs have established specific regulations and policies that dictate permit costs. Two issues related to permit fees have attracted Congress's attention in recent years: *gross revenue* permit fee calculations and *cost-recovery* formulas.

Among the permitting fees established by FLMAs, commercial guides and outfitters generally are required to pay annual, nonrefundable land-use rental fees. These fees—primarily in the cases of FS and BLM—are set at 3% of the permit holder's *adjusted gross revenue*. However, FS and BLM differ in detail as to how to calculate adjusted gross revenue. BLM generally excludes the pre-trip and post-trip costs (e.g., for client transportation and lodging) incurred by the permittee outside federal land boundaries,²³ whereas FS fee policy requires revenue calculations to be based on the total cost of the trip, including services delivered outside the boundaries of public lands.²⁴ Congress has debated whether revenue generated on nonfederal land should be included in gross revenue calculations, with some Members introducing legislation to prohibit FLMAs from including such costs in future permitting fee calculations.²⁵

In addition, some FLMAs may charge a fee for cost recovery as a means to fund the costs incurred in issuing permits, including necessary environmental documentation, on-site monitoring, and permit enforcement.²⁶ For example, FS and BLM have cost-recovery requirements for commercial recreation permits if more than 50 hours of staff time are required to process and administer the permit.²⁷

In instances where extensive analysis is required (e.g., new permitted recreational uses), cost-recovery fees can reach into the tens of thousands of dollars. Some industry stakeholders and

guides and outfitters on federal lands. These bills include the Simplifying Outdoor Access for Recreation Act (SOAR Act; S. 1229/H.R. 3670), the Recreation Not Red Tape Act (RNR Act; S. 1874/H.R. 3527).

²² Testimony of Leah Baker, September 2019. ("The Department supports delegating enforcement authorities among agencies, but would like to ensure that these delegations conform with the statutory authorities for each agency.... If an agency needs to withdraw from a single joint [special recreation permit (SRP)], presumably it is because the agency needs to issue a permit under terms different from the single joint SRP, whether due to differing management concerns or other circumstances.").

²³ BLM, H-2930-1, *BLM Recreation Permit and Fee Administration Handbook*, 2014, p. 1-31, which states that, "For commercial use, deductions from gross receipts are allowed for actual transportation and lodging costs incurred by the permittee before the client's arrival at the beginning of a trip, and after departure at the end of a trip." Hereinafter referred to as BLM, H-2930-1.

²⁴ FS, FSH 2709.11, *Special Uses Handbook*, Section 37.05, 2008. The FS handbook definition of *gross revenue* specifically includes "Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded."

²⁵ For example, 102(b) of the SOAR Act (H.R. 3670) would limit permit fee calculations made by the FS, BLM, FWS, and the Bureau of Reclamation, to revenue generated on federal lands, unless otherwise specified.

²⁶ See 36 C.F.R. §251.58 for FS regulations related to cost recovery and 43 C.F.R. §2932.31(e) for BLM regulations.

²⁷ 36 C.F.R. §251.58(g)(4) and 43 C.F.R. §2932.31(e)(2). This policy has, at times, been referred to as a 50-hour "credit" for commercial recreation permits. However, in practice, the policy operates more as a threshold in which permit holders are subject to complete cost-recovery fees when administrative costs surpass 50 hours. For example, a permit that takes 60 hours to process would be subject to all 60 hours of cost recovery, as opposed to 10 hours.

some Members of Congress have suggested that in such cases, recovery costs are prohibitive to small businesses, which may be shut out of federal lands as a result.²⁸ Some Members have introduced legislation that would adjust the cost-recovery process, seeking to limit the potential burden placed on small businesses and other guide and outfitting operators. For example, legislation in the 116th Congress would have provided FS and BLM with authority to waive cost recovery on a case-by-case basis if such costs “would impose a significant economic burden on any small business.”²⁹ FS and BLM have suggested that such cost-recovery reforms likely would have little impact on most small service providers, as permits for these entities typically require few administrative hours to process and rarely exceed the existing 50-hour threshold for cost-recovery fees. Instead, the agencies assert that the proposed new exemptions generally would benefit large recreation service providers and would result in processing delays for new and existing permits.³⁰ Other legislative proposals regarding cost recovery would prorate aggregate recovery costs for multiple applications for similar services in the same area and provide categorical exclusions for certain agency actions subject to the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) review, thereby reducing administrative costs.³¹

Agency Capacity and Funding

Some Members of Congress have shown interest in reducing the backlog and processing time for guide and outfitter permit applications. According to FS, as of 2019, that agency alone had a backlog of more than 5,000 applications for new special-use permits and renewals of existing special-use permits that are awaiting environmental analysis and decision.³² Industry groups have raised concerns regarding the processing times, and agencies have pointed to their limited staff capacity as a main reason for permit backlogs.³³ Some estimates suggest that agency employees conduct anywhere from 70% to nearly 90% of all FS permitting work as a collateral duty (meaning the employees have other primary job assignments that may not include processing permits).³⁴ Other FLMA also have indicated that processing special-use permits is largely a

²⁸ For example, see U.S. Congress, House Committee on Natural Resources, *Guides and Outfitters Act*, Report to accompany H.R. 289, 115th Cong., 1st sess., September 21, 2017, H.Rept. 115-320, p. 6. See also U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, 113th Cong., 2nd sess., April 4, 2014, H.Hrg. 113-68 (Washington: GPO, 2015). In the publication of its final rule on cost-recovery fees, FS acknowledged the potential negative economic impact of cost recovery on small entities: “The Forest Service has prepared a cost-benefit analysis of the final rule, which concludes that the final rule could have an economic impact on small businesses if their application or authorization requires a substantial amount of time and expense to process or monitor.” FS, “Recovery of Costs for Processing Special Use Applications and Monitoring Compliance with Special Use Authorizations,” 71 *Federal Register* 8897, February 21, 2006.

²⁹ See, for example, the Guides and Outfitters Act (“GO Act”), H.R. 316 in the 116th Congress.

³⁰ Testimony of Chris French, Deputy Chief, NFS, FS, in U.S. Congress, Senate Committee on Energy and Natural Resources, 116th Cong., 1st sess., October 31, 2019. See also, Testimony of Mark Lambrecht, Assistant Director, National Conservation Lands & Community Partnerships, BLM, in U.S. Congress, Senate Committee on Energy and Natural Resources, 117th Cong., 1st sess., December 2, 2021.

³¹ See, for example, SOAR Act; S. 1229 §5/H.R. 3670 §104.

³² These numbers reflect total special-use authorization applications under review, some of which are for activities conducted by commercial guides and outfitters. FS, “National Environmental Policy Act (NEPA) Compliance,” 84 *Federal Register* 27544, June 13, 2019.

³³ Justin Wingerter, “Colorado guides say they can’t get enough permits on federal land,” *The Denver Post*, June 18, 2021, at <https://www.denverpost.com/2021/06/18/federal-land-colorado-permits-recreation/>.

³⁴ A December 2019 estimate from FS put the figure at 87% (FS, “Working with Federal Agencies,” presentation at 2019 America Outdoors Conference, Salt Lake City, UT, December 2019). Other sources have cited figures closer to 70%; see Testimony of Betsy Robblee, Conservation & Advocacy Director, The Mountaineers, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Legislative*

collateral duty for staff. In 2010, DOI officials testified that fewer than 20 national park units had staff dedicated to managing the special park uses program and processing permit requests.³⁵ However, NPS has since indicated that more than 80 units of the National Park System have dedicated staff for such purposes.³⁶

Insurance and Liability Requirements

All guide and outfitter permits issued by FLMA require the operator to possess commercial general liability insurance.³⁷ Commercial general liability insurance is a type of insurance policy that, broadly speaking, provides coverage to a business for certain harms such as bodily injury, personal injury, and property damage that may be alleged to have been caused by the business or its products. The scope and amount of coverage provided by a commercial general liability policy typically depend on the given insurance policy's provisions.

Requirements for operators to possess commercial general liability insurance vary across FLMA. Some FLMA have issued agency-wide guidance or policies that set minimum coverage limits—based on either aggregate or per occurrence policies—whereas others evaluate guide and outfitter permits on a case-by-case basis.³⁸ These various policies have been the subject of congressional interest in recent years. For instance, concerns about increasing insurance minimums were raised in 2012, when Grand Teton National Park increased general liability requirements for rafting guides and outfitters from a minimum of \$500,000 to a minimum of \$5 million in coverage.³⁹ Following this decision, concessioners and permit holders testified before Congress that such a change would increase premium costs and place a substantial burden on their ability to continue offering services to park visitors.⁴⁰ NPS testified that these increases were the result of insurance experts' recommendations to the agency and were in line with industry standards.⁴¹ NPS policies

Hearing, 117th Cong., 1st sess. June 8, 2021.

³⁵ Testimony from Marcilynn A. Burke, Deputy Director, BLM, in U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands and Forests, 112th Cong., 2nd sess., April 28, 2010, S.Hrg. 111–744, p. 35.

³⁶ Personal communication between Mark K. DeSantis, Analyst in Natural Resources Policy, and National Park Service Office of Legislative and Congressional Affairs, June 13, 2022.

³⁷ For a full overview of these requirements by agency, see CRS Report R46380, *Guides and Outfitters on Federal Lands: Background and Permitting Processes*, by Mark K. DeSantis. Depending on the activity in question and the facilities used, operators also may be required to carry additional insurance coverage, such as automobile insurance, property insurance, and/or umbrella policies that provide liability coverage higher than the limits set under individual policies held by the operator.

³⁸ For example, FS policies require a minimum of \$300,000 aggregate coverage for low-risk activities; including backcountry, nature hikes, and Nordic skiing (see FS, Exhibit 01 in 2713.1, Forest Service Manual). For FWS, insurance requirements are generally established by individual FWS units based on activity and perceived risk. Insurance policies may be issued on a *per occurrence* (or *per claim*) basis, in which the limit refers to the amount the insurer pays per incident during the policy term. *Aggregate* policies establish the limit the insurer will pay for multiple claims over the course of a single policy term.

³⁹ Mike Koshmr, “Guides, Outfitters Question Liability Insurance Requirements,” *Casper Star Tribune*, August 27, 2012.

⁴⁰ For stakeholder perspectives, see Testimony of David L. Brown, Executive Director, America Outdoors Association, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Concession Contract Issues for Outfitters, Guides and Smaller Concessions*, 112th Cong., August 2, 2012 (Washington: GPO, 2012).

⁴¹ Testimony of Peggy O’Dell, Deputy Director, NPS, in U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Concession Contract Issues for Outfitters, Guides and Smaller Concessions*, 112th Cong., 2nd sess., August 2, 2012 (Washington: GPO, 2012).

now set insurance minimums based on the class level of a guided rafting trip. Lower-risk trips (Class I-Class III) require lower insurance minimums, whereas trips deemed high risk (Class IV-Class V) require higher minimums, similar to those set at Grand Teton National Park.⁴²

Some agencies also have established policies that either allow or prohibit the use of liability waivers and/or visitor acknowledgment-of-risk (VAR) forms by commercial guides and outfitters operating by permit on lands managed by FLMAAs. VAR forms inform visitors of the inherent risk of the activity and provide a means for visitors to declare in writing that they understand the risks of the activities they are to engage in and possess certain prerequisite skills or experience. In contrast, liability waivers are exculpatory contracts wherein, in order to participate in an activity, a party waives its rights to bring tort claims against the party responsible for the activity for harm caused by known or unknown risks involved in the activity or by the other party's negligence. The enforceability of a liability waiver may vary depending on the provisions in the waiver and the state in which the outfitter or guide is operating, as state tort and contract law generally governs whether and to what extent such waivers are valid and enforceable.⁴³ Due to this and other issues, agencies such as NPS have prohibited the use of liability waivers, instead permitting only the use of VAR forms.

Some Members and stakeholders contend that FLMAAs could limit the need for high insurance minimums, which have caused concern among some permit holders, by generally allowing guides and outfitters to require trip participants to sign liability waivers.⁴⁴ Some industry advocates have asserted that this approach would be particularly beneficial for small-scale operators that may not be able to afford the premium costs associated with coverage required by a given agency.⁴⁵ Since liability waivers may be unenforceable depending on the state in which an operator is licensed or operating, allowing for the use of liability waivers may be a limited or ineffective solution to concerns about insurance coverage.

Reauthorization of FLREA

Congress often considers extensions and other amendments to programmatic authorities that directly or indirectly relate to guide and outfitting permits. In particular, ongoing deliberations often relate to the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814). Among other provisions, FLREA provides the four FLMAAs and the Bureau of Reclamation with authority to issue special recreation permits for specialized recreation uses—including guide and outfitting operations—and to charge fees for those permits. FLREA also authorizes these agencies to retain certain fee revenues and use them for specified purposes that aim to benefit visitors directly. FLREA is set to expire on October 1, 2023.⁴⁶ Congressional deliberations encompass

⁴² See NPS, *Commercial Services Guide*, §4.3.8, Table 4-1, 2018.

⁴³ See, for example, *Miller v. Sunapee Difference, LLC*, 918 F.3d 172, 174-76 (1st Cir. 2019). Note that waivers generally may only release claims for harm from a defendant's negligence or reckless conduct, not from intentional harm. See, for example, *id.*; *Jones v. Dressel*, 623 P.2d 370, 376 (Colo. 1981); RESTATEMENT (2D) TORTS § 496B. Liability waivers "have historically been disfavored in law and have thus been subjected to close judicial scrutiny." *Stelluti v. Casapenn Enters.*, 203 N.J. 286, 303 (2010). See also *Jones v. Dressel*, 623 P.2d 370, 376 (Colo. 1981).

⁴⁴ See Sen. Martin Heinrich, "Heinrich, Capito Introduce Simplifying Outdoor Access for Recreation Act," May 23, 2019, at <https://www.heinrich.senate.gov/press-releases/heinrich-capito-introduce-simplifying-outdoor-access-for-recreation-act>.

⁴⁵ Testimony of Rick J. Lindsey, Prime Insurance Company, U.S. Congress, House Committee on Natural Resources, Subcommittee on Public Lands and Environmental Regulation, *Impediments to Public Recreation on Public Lands*, 113th Cong., 1st sess., May 7, 2013 (Washington: GPO, 2013).

⁴⁶ P.L. 117-103, Division G, Title IV, §421.

whether to let FLREA expire, to extend it, or to make it permanent, with or without modifications.⁴⁷ If FLREA were to expire, some FLMAs still may have other authority to set fees for commercial recreational use on federal lands; however, fees established under these other authorities generally would be directed to the Treasury rather than retained by agencies.⁴⁸

Some stakeholders have suggested that should FLREA authority lapse, agency capacity to administer recreation programs would be diminished. According to these stakeholders, the loss of permit and amenity fee retention would “likely result in the elimination of outfitted services and recreation access” on FLMA lands.⁴⁹ In the FY2023 budget request, the Administration sought a one-year extension (through October 1, 2024) in appropriations law.⁵⁰

Minimum Wage Requirements

Commercial guides and outfitters that operate under permits on federal lands can sometimes be subject to federal mandates regarding minimum wage increases and requirements. For example, in 2014, President Obama signed Executive Order (E.O.) 13658 “Establishing a Minimum Wage for Contractors,” that mandated a \$10.10 minimum hourly wage be paid by employers who contract with the federal government.⁵¹ Pursuant to the implementing rules finalized by the Department of Labor, permits issued to commercial guides and outfitters on federal lands were generally considered “contracts” under the purposes of the E.O., and therefore, subject to these requirements.⁵²

In May 2018, President Trump issued Executive Order (E.O.) 13838, “Exemption from Executive Order 13658 for Recreational Services on Federal Lands,” which created an exemption for commercial guides and outfitters from the federal minimum wage requirements established under E.O. 13658.⁵³ Then-Secretary of the Interior Ryan Zinke and industry stakeholders largely supported this exemption, claiming the order would “have a positive effect on rural economies

⁴⁷ For more information on particularly the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814), see CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues*, by Carol Hardy Vincent.

⁴⁸ For example, a number of statutes other than FLREA authorize FS to charge fees for the occupancy and use of NFS lands. A difference between FLREA and other fee authorities is that FLREA provides the agencies with the flexibility to test different types of fees and retain most of the revenue at the site where the fee was collected. The primary exception to this would be the National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391; 54 U.S.C. §§101911-101926), which is the authority the National Park Service (NPS) typically uses to issue permits to commercial guides and outfitters operating on agency lands. Similar to FLREA, the law allows 80% of fees to be retained at the park where they are collected and stipulates that these funds may be used for visitor services and high-priority resource management activities. The remaining 20% of the fees are deposited in a special account to support activities throughout the park system.

⁴⁹ Testimony of David L. Brown, Executive Director, America Outdoors Association, in U.S. Congress, Subcommittee on Public Lands and Environmental Regulation of the House Committee on Natural Resources, *Citizen and Agency Perspectives on the Federal Lands Recreation Enhancement Act*, 113th Cong., 1st sess., June 18, 2013.

⁵⁰ Department of the Interior (DOI), *Fiscal Year 2023, The Interior Budget in Brief*, p. NPS-4, at <https://www.doi.gov/sites/doi.gov/files/fy2023-bib-entire-book-508.pdf>.

⁵¹ Executive Order 13658, “Establishing a Minimum Wage for Contractors,” 79 *Federal Register* 9849, February 20, 2014.

⁵² Department of Labor, “Establishing a Minimum Wage for Contractors,” 79 *Federal Register* 60634-60732, October 7, 2014.

⁵³ E.O. 13838, “Exemption From Executive Order 13658 for Recreational Services on Federal Lands,” 83 *Federal Register* 25341, May 25, 2018.

and American families, allowing guides and outfitters to bring tourists out on multi-day hiking, fishing, hunting, and camping expeditions, without enduring costly burdens.”⁵⁴

In 2021, President Biden issued E.O. 14026, revoking the 2018 order, and increasing the minimum hourly wage to \$15.00.⁵⁵ In response, a lawsuit was filed in federal district court on behalf of outdoor recreation groups against the Biden Administration challenging the new E.O.⁵⁶ In February 2022, the U.S. Court of Appeals for the Tenth Circuit granted the plaintiffs an injunction pending appeal, halting the required wage increase for seasonal recreation or equipment rental services operating on federal lands.⁵⁷

Since the introduction of the initial minimum wage requirement set in 2014, Congress has regularly considered and held hearings regarding the potential impacts these requirements might have on guides and outfitters and other recreational businesses.⁵⁸ Supporters of the requirements generally have viewed them as an important means to bolster economic growth and ensure employees make sufficient wages to support themselves and their families.⁵⁹ Others, including many stakeholders within the guide and outfitter industry, have indicated that compliance with the regulations would force many providers out of business or would require them to significantly reduce their services due to higher labor costs.⁶⁰ In response to these concerns, some Members have introduced legislation that would exempt commercial guides and outfitters from such wage requirements.⁶¹

Coronavirus Response and Assistance

During the COVID-19 pandemic, businesses in the outdoor recreation economy have experienced varying degrees of disruption to the continuity of their operations. Stakeholders and interest groups point to months of closures on federal lands and waters, supply chain disruptions, and workforce shortages contributing to a loss of billions of dollars in revenue due to the pandemic.⁶² According to the BEA’s ORSA figures, value added for the outdoor recreation economy decreased 19.0% from 2019 to 2020, compared with a 3.4% decrease for the overall U.S.

⁵⁴ DOI, “Secretary Zinke Applauds Presidential Action Supporting Public Lands Outfitters and Guides,” May 25, 2018.

⁵⁵ Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors,” 86 *Federal Register* 22835, April 30, 2021.

⁵⁶ *Bradford v. U.S. Dep’t of Labor*, No. 21-cv-03283-PAB-STV (D. Colo. Jan. 24, 2022).

⁵⁷ *Bradford v. U.S. Dep’t of Labor*, No. 22-1023 (10th Cir. Feb. 17, 2022) (granting injunction pending appeal).

⁵⁸ U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on the Interior, *The Impact of Executive Order 13658 on Public Land Guides and Outfitters*, 114th Cong., 1st sess., June 10, 2015, 114-34. (Hereinafter referred to as “2015 House Oversight Hearing.”)

⁵⁹ See Opening Statement of Ranking Member Rep. Lawrence, 2015 House Oversight Hearing. (“I want to also note that decades of research have shown that raising the minimum wage raises economic growth, and raising the minimum wage is one of the most effective economic tools we have to ensure that the American working class retains its position as the most affluent in the world, a destination it’s recently lost.”)

⁶⁰ See Testimony of David L. Brown, American Outdoors, 2015 House Oversight Hearing.

⁶¹ For example, see H.R. 6280 and S. 4092 in the 117th Congress.

⁶² Statement for the Record of Outdoor Recreation Roundtable, U.S. Congress, Senate Committee on Energy and Natural Resources, 117th Cong., 1st sess., December 2, 2021, at <https://recreationroundtable.org/wp-content/uploads/2021/11/ORR-Recreation-Legislation-Hearing-Testimony-Final1.pdf>.

economy.⁶³ During that period, the “Guided Tours/Outfitted Travel” subaccount decreased 35.8% in real terms.⁶⁴

Some Members have advocated for providing financial relief to commercial guides and outfitters impacted by the pandemic. This has included exemption from federal land use and permitting fees, as well as direct financial assistance for lost revenue resulting from closures. For example, in the 116th Congress, the 21st Century Conservation Corps for Our Health and Our Jobs Act (H.R. 7264) would have required federal land management agencies to waive recreation permit fees and to reimburse those fees paid during a period starting in March 2020.⁶⁵ H.R. 7264 and a similar bill (S. 3684) also would have established an Outfitters and Guides Relief Fund that would have allowed certain commercial guides and outfitters to apply for funding based on an estimate of revenue lost as a result of “State or Federal action resulting from the Coronavirus Disease 2019.”⁶⁶

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⁶³ BEA, *Outdoor Recreation Satellite Account, U.S. and Prototype for States, 2020, Tables-Real Outdoor Recreation Value Added by Activity*, November 9, 2021.

⁶⁴ *Ibid.*

⁶⁵ H.R. 7264 §§7-8.

⁶⁶ H.R. 7264 §3(e)(1); S. 3684 §3(e)(1).